

**THE LEGAL AND REGULATORY ENVIRONMENT FOR ECONOMIC ACTIVITY IN  
HUNGARY: MARKET ACCESS AND LEVEL PLAYING-FIELD IN THE SINGLE MARKET**

A LEGAL EXPERT REVIEW REPORT

PREPARED IN SPRING 2016 BY THE LENDÜLET-HPOPs RESEARCH GROUP

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## Summary

The legal and regulatory environment for economic activity in Hungary, in general, ensures the operation of open and competitive markets where the fundamental requirements arising from the law of the EU Single Market are observed. Overall, law and regulation enable the operation of market mechanisms, foster competition in individual sectors and protect it under general legislation, ensure equal treatment and have eliminated provisions discriminating between market participants, and provide acceptable and reasonable barriers to entry to markets. From the perspective of the applicable EU legal obligations, law and economic regulation in Hungary, on the whole, guarantee the equal treatment of EU nationals and market operators, access to the domestic market for market participants from other Member States, and a level playing-field for competition for domestic and EU economic operators. The institutional hiatuses, which were brought to light in the process of economic transition, such as corruption, a weak public procurement framework, politicised economic regulation, or an ineffective and inefficient public administration and judiciary, have been recognized by the modernisation agendas of successive governments.

The Hungarian economy remains to be characterized by a significant structural asymmetry. On the one hand, there are the export-driven, value-producing industries financed by foreign investment and owned, predominantly, by foreign parent-companies. On the other, there are the sectors producing for the domestic product and services market, including public services, where foreign investment, competition and market mechanisms may be less prevalent. This asymmetry is clearly reflected in the legal and regulatory environment. While the export oriented sectors are subject to market-friendly and pro-competitive regulatory frameworks, the inward looking sectors of the national economy often remained closed for competition, or there was evident reluctance from the State to open them to full competition, and they may be characterised by direct State involvement in the form of State ownership or even price regulation. The distinct treatment in law of these different sectors was further entrenched after the economic crisis when growth-promising exporting sectors maintained their privileged, market- and competition-friendly regulatory treatment, and the sectors producing for the domestic market faced an increased tax and regulatory burdens, a robust policy of direct State involvement, and the maintaining of old and the introduction of new barriers to entry.

After the crisis, and especially after the elections in 2010, the legal and regulatory environment for economic activity in Hungary experienced significant changes which in certain of the economic sectors affected threatened their operation according to the fundamental requirements of the Single Market. Economic policy and regulation became characterized by a

high degree of volatility and uncertainty, which undermined the overall quality of law and regulation and put the rights and interests of the individuals affected to jeopardy. Regulatory volatility and uncertainty also raised the possibility of arbitrary, potentially abusive use of public powers in the private economic domain and put pressure on the mechanisms of legal protection available. From the perspective of the law of the Single Market, the most significant change was the marked political and policy determination to increase State involvement in certain of the inward looking sectors of the national economy. This manifested in the use of regulation to restructure competitive conditions in individual markets, close or open markets, introduce new regulatory and tax burdens and barriers to entry, and to strengthen State prerogatives and ownership. Certain sectors saw a reduction in the scope of competition as a result of State interference, liberalization efforts were withheld or reversed on government decision, and in some instances market mechanisms were replaced by strict price regulation or were subjected to direct political discretion.

In the quarter of a century after the regime change, successive governments in Hungary, despite repeated commitments to modernize, failed to improve substantially the effectiveness and efficiency of public administration, reduce the regulatory and the administrative burdens on economic activity, and to develop a positive and transparent business environment where equal opportunities and a level playing-field are provided to market participants. Although the ideas of good governance, better regulation, and the reduction of administrative burdens appeared regularly in government policy, the legal and regulatory environment for economic activity in Hungary remains overly complex and legalistic, the needs of users of regulation are underrepresented, the impacts of regulation are inadequately assessed and monitored, and participatory or collaborative forms of regulation are severely underused.

The older and the more recent particularities of the legal and regulatory environment for economic activity in Hungary raise doubts, despite the continued political and policy commitment to maintaining a functioning market economy, as to whether market participants can trust the currently operating institutional framework. Regulatory volatility and unpredictability, which could take form in far-reaching and sudden interventions in markets allowing no transitional period for the individuals affected and overlooking their rights and interests protected by domestic and EU law, confuse stakeholders and expose them to raw political power. The explicit political nature and the less explained policy background of certain interventions, for instance, the compulsory price reductions and freezes by regulation in the energy sector, enable the government to hide its intentions with certain markets and the resulting changes in the market question whether the interventions took place in good faith. Economic favouritism supported by

legal regulation in certain sectors sheds doubts as to the justifiability of State intervention in the public interest. Overall, in the market economy sustained by this legal and regulatory framework competition and the operation of market mechanisms as well as openness and the equal treatment of market participants cannot – in certain of the inward looking sectors of the national economy – be taken for granted even after a decade in the Single Market.

# Introduction

The aim of this legal expert report is to review the legal and regulatory environment of economic activity in Hungary, in particular from the perspective of the obligations which follow from EU law. It focuses primarily on barriers of entry and other restrictions – both discriminatory and non-discriminatory – on taking up and pursuing an economic activity in Hungary as laid down in legislation. It investigates the legislative provisions in force which determine the different markets in Hungary and regulate the legal conditions and the administrative environment of participating in those markets. The review report aims to test the assumption that despite nearly two decades of harmonization with the law of the European Union there remain provisions in Hungarian economic regulation which contradict the requirements of EU law, which since 2010 have been accompanied by conscious policy efforts from the government to roll back competition and market mechanisms in certain segments of the national economy and to withdraw certain economic sectors from the Single Market.

The report forms the integral part of the research programme of the Lendület-HPOPs research group which was set up to investigate in law the policy opportunities available to Hungary in the European Union. Its work, on the one hand, focuses on developing comprehensive legal mapping reports in individual common policy areas, such as the fundamental freedoms, which indicate and analyse in depth the scope and the weight of obligations imposed on the Member States and of the possibilities available to depart from those obligations. On the other, our research examines the reactions given by law and policy in Hungary to EU obligations, especially those of non-compliance and of national legal and policy particularism. The Hungarian policy on Europe, which places a considerable emphasis on representing and protecting Hungary's national interests within the EU, has led, especially in the wake of the global financial and economic crisis and after the 2010 elections, to a number of significant developments in economic policy-making and regulation which seem to depart from the original, conflict-avoiding approach of the country.

The review report begins with an overview of the changes and trajectories of legal development after 1989 leading up to Hungary's accession to the European Union in 2004 which laid down the basis of a functioning market economy based on competition and tried to consolidate the achievements (Part. 1.1). This is followed by a general scrutiny of the changes and trends in Hungarian economic policy and regulation which emerged after the global financial and economic crisis and after the elections in 2010 (Part. 1.2). Our analysis relies foremost on the numerous State reports published by the OCED in its regular scrutiny mechanism and by the European Union in its pre-accession reporting and in the Europe 2020 monitoring mechanisms. In

order to provide a deeper insight into current developments, the report offers a number of short case studies in key areas of economic regulation indicating the direction of changes (Part 2).

The main body of the review report is provided by the comprehensive legal mapping reports produced on the legal and regulatory environment of individual sectors of the national economy (Part 3). The legal mapping reports identify and analyse the main issues raised by Hungarian legislation under EU law, identify the markets regulated, introduce the areas of State intervention including the special prerogatives or reserved rights of the State, map the conditions of entry to the market (barriers to entry) as laid down in legislation, cover the conditions imposed on carrying out economic activity in the affected markets, and, finally, analyse the problematic provisions concerning the general administrative environment.

# 1 The Hungarian legal system and the (European) market economy

The legal changes implemented in economic regulation after 1989 – in the second half of the 1990s predominantly as part of the EU accession process – established a market economy in Hungary. By the time of EU accession, the larger part of the Hungarian economy had been prepared in law to integrate into the Single Market. Barriers to intra-EU trade were removed, markets were opened to EU competition, and the administration was prepared to address the cross-border governance issues of the Single Market. Despite these changes, the opening of some sectors of the national economy to competition remained limited, or was refused, and the State maintained its influence, either through ownership or through regulation, over a number of markets. State involvement and delayed or reduced market opening characterised especially the public service markets where governments remained reluctant to dispose of political controls. In the aftermath of the global financial and economic crisis, especially after the 2010 elections, Hungarian economic policy further reinforced State presence in these sectors. The government was prepared to reduce competition further, in particular by reserving economic activity for State or local council owned economic operators, and to override market mechanisms by direct regulation. In some domains, equal treatment and the level playing-field demanded by the Single Market were side-lined so as to favour certain domestic economic operators. Law and regulation became to be characterized by volatility and uncertainty, which allowed for broad executive discretion in economic regulation and opened the possibility for arbitrary, possibly abusive State intervention.

A mixed market economy in the Single Market

## 1.1 The legal and regulatory environment of the transition economy

The post-1989 transformation process led to the creation of a functioning market economy in Hungary. Law and regulation was used to reduce State ownership (i.e., privatization), introduce market mechanisms, and to protect competition in the newly formed markets. The legal changes also ensured, as a general rule, the protection of private property and free enterprise and the enforceability of contracts. From the mid-1990s, the opening of markets to trade and competition was mainly the result of the gradual incorporation of European Union rules in the EU accession process. The Hungarian market economy thus created was, however, characterized by a significant systemic asymmetry. On the one hand, it included a developed exporting sector based on foreign investment which was supported by competition and functioning market mechanisms and a legal framework protecting

The development of the mixed market economy

those. On the other, there was a much less developed non-exporting production and services economy, which included public services, where State influence (and ownership) was often maintained, and liberalization and the introduction of competition and market mechanisms were either restricted, or completely withheld. This was also reflected in law and regulation. Exporting sectors were subjected to market-friendly and pro-competition regulation, including a developed private law framework serving the interests of market participants. In contrast, inward looking sectors had to endure a burdensome public law regulatory framework and an ineffective and inefficient administrative environment. Some components of the public law framework of the market economy, such as public procurement, the fight against corruption, or a better regulation programme, never reached their potential.

The 2004 OECD paper on product market competition and economic performance in Hungary (hereinafter, the 2004 OECD paper),<sup>1</sup> which formed part of the 2004 OECD economic survey of Hungary (hereinafter, the 2004 OECD economic survey),<sup>2</sup> noted that economic transition Hungary could fall back on the post-Soviet 'relatively market-based' economy developed after 1968, where production facilities were State-owned and were governed by central planning and where gradually some market-type mechanisms were introduced.<sup>3</sup> It observed that the Hungarian market prior to 1989 was generally isolated from international trade, international investment and international competition as its external markets consisted principally of COMECON countries. The report highlighted that after 1989 the majority of State-owned enterprises in manufacturing and services were privatized and they were placed to operate in a regular market environment. In general, their conduct was subjected to competition law and policy. In the network industries, liberalization and privatization were, however, much more limited. The OECD's 2000 report on regulatory reform in Hungary<sup>4</sup> indicated that in the transition process a large amount of legal and regulatory reform needed to be carried out in Hungary as the institutional features of the planned economy had to be removed and the legal conditions for the functioning of a market economy had to be established. It noted that the constitutional reforms of the early 1990s, by ensuring protection to the right to property and freedom of enterprise, provided the basis of this legal transformation

The 2004  
OECD  
assessment

The 2000  
OECD scrutiny  
of the  
regulatory  
environment

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<sup>1</sup> Carl Gjersem, Philip Hemmings, Andreas Reindl, Product market competition and economic performance in Hungary, Economics Department Working Papers No. 381, OECD 2004.

<sup>2</sup>  
<sup>3</sup> See also Regulatory Reform in Hungary: enhancing market openness through regulatory reforms, OECD 2000. A 'gradualist approach' had been pursued since the late 1960s with the gradual abolishment of central planning and the gradual introduction of the institutional and legal infrastructure for a market economy (e.g., two-tier banking system, import liberalization, income tax and VAT), Commission Opinion on Hungary's Application for Membership of the European Union DOC/97/13.

<sup>4</sup> Regulatory Reform in Hungary: enhancing market openness through regulatory reforms, OECD 2000.

process which led to the adoption of new legislation on companies, intellectual property, taxation, accounting, bankruptcy and insolvency, and competition. In this process, direct price regulation was gradually, although not completely, phased out, foreign direct investment was liberalized, investment protection rules were introduced, and the restrictions on capital flows were removed. The report also recognized that in the EU accession process economic regulation in Hungary was subject to extensive harmonization covering areas, such as product standards, public procurement, and competition policy.

The 2004 OECD paper established that Hungary since 1989 had managed, as an economic policy priority, to set up competitive markets characterized by a generally healthy level of competition protected by a good standard of competition regulation and enforcement.<sup>5</sup> It highlighted that national economic policy, in general, is devoid of intentions of sheltering domestic industries by adopting protectionist measures, and it emphasized that ‘in terms of privatization, competition law, sector-specific regulation, subsidies and public procurement, the approach to competition in many respects (Hungary) now differs little from many OECD countries.’ It observed, however, that Hungary had developed a ‘two-speed economy’ including, on the one hand, a highly competitive foreign-owned exporting sector and, on the other, small-scale domestically owned manufacturing and service industries which are exposed only to a limited extent to competition.<sup>6</sup> It also noted that domestic businesses may in certain instances be sheltered from international competition, and that progress towards competitive markets had been rather sluggish in the network industries, irrespective of whether they had been privatized or remained in State-ownership. The paper also stated that the State had been keen on continuing with practices of price regulation, and it had been reluctant to give up State-ownership and other forms of State influence which enable the sheltering of incumbents from competition. Some sectors, such as professional services, were seen as protected from competition by the maintaining of considerable barriers of entry.

The European Commission’s 1997 report on Hungary’s application for EU membership<sup>7</sup> established that, continuing with the ‘gradualist approach’ introduced as early as the late 1960s, the Hungarian economy had developed to be characterized, if not in all areas, by functioning market mechanisms and by a considerable experience in operating within the basic institutional framework of a market economy. As to the general state of the legal and regulatory environment, the report concluded that a stable institutional framework is in place which is able to guarantee that the rule of

**Achievements  
and systemic  
asymmetries  
in the mixed  
economy**

**The Hungarian  
economy’s  
preparedness  
to join the  
Single Market  
in 1997**

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<sup>5</sup> For similar conclusions, see 2001 OECD Territorial Review Hungary

<sup>6</sup> For similar conclusions, see 1999 OECD Economic Survey Hungary,

<sup>7</sup> Commission Opinion on Hungary’s Application for Membership of the European Union DOC/97/13

law is observed.<sup>8</sup> It added that the legal system provides a 'stable statutory framework in which economic actors can operate' and there are no significant administrative hurdles to setting up economic activities. The report highlighted that the credible commitment of the government to establishing a market economy, as reflected in the 'government's consensual approach to policy formulation', lessened the risk of major policy reversal and enabled the reduction of policy and regulatory uncertainty. It also listed in detail the gradual developments in the 1990s – in parallel with the extensive privatization process – towards establishing a legal framework for a market economy, such as the progressive liberalization of trade and prices, the liberalization of capital flows, the introduction of competition regulation, the setting up of an effective public procurement framework, the protection of IP rights, and the protection and the enforcement of property rights.

The report highlighted the following general and specific shortcomings of the legal and regulatory environment.

The legal and regulatory framework still lacking stability and predictability.

Gaps between the legal framework and the expectations of economic stakeholders.

Weak regulation and enforcement in some areas, such as competition law or IP law,

- pharmaceutical IP protection and copyright protection suffering from significant hiatuses.

Public sector (administrative) inefficiencies, human resources and training problems, and institutional shortcomings which can affect implementation, especially

- a weak institutional framework for standardization,
- the lack of inland administrative capacities to replace border-controls,
- transparency and efficiency issues with State aid controls,
- institutional hiatuses in consumer protection capable of undermining enforcement.

The justice system does not operate 'in a satisfactory way at all levels', especially there are

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<sup>8</sup> It mentioned, in particular, that the 'Parliament functions satisfactorily' and 'the central institutions of the State function smoothly'.

- excessive caseloads,
- excessively long procedures,
- overly complex procedural rules,
- human resources, training, and qualification problems within the judiciary.

Remaining price regulation and price controls, mainly, in public utilities.

The domestic establishment requirement hindering the free movement of banking and financial services.

Issues with transparency and efficiency in the public procurement system, and broad exceptions and local preference clauses in public procurement legislation.

Network industries protected by law from competition and liberalization.

The Commission's seminal report analysed extensively the administrative and judicial capacities available in Hungary to give effect to EU obligation. Its findings provide clear indications as to the state of the administrative environment of the Hungarian market economy at that time. Overall, the report found that the administrative framework in place is comparable to that found in EU countries, administrative tasks and competences are reasonably well defined, the administrative system is sufficiently modernized to be able to adapt to the requirements of the market economy, and it is equipped with the necessary powers and responsibilities. It noted that there are further administrative reforms on the agenda, which at the level of planning seem adequately considered. In respect of both the administration and the judiciary, the report concluded that, provided that the planned reforms are implemented, Hungary will have sufficient capacities to enable an effective operation of the State machinery at high standards. The report identified, however, the following hiatuses in the Hungarian administrative and judicial system.

Issues with administrative and judicial capacities

In central administration, certain bodies, including the bodies which need to be set up under EU law, lack sufficiently clearly defined scope, tasks, competences, and control powers.

Local government administration is poorly managed and supervised, and its institutional structure is inadequately defined.

An increasing lack of experienced public sector staff, lack of management and other softer skills in civil service, lack of sufficient

training, and increasing inability to recruit quality candidates.

Public confidence in the administration is relatively low mostly as a result of experiences of the administration being 'excessively legalistic and non-transparent'.

An increasing exposure to corruption.

Problems with inter-institutional communication and coordination.

The judiciary operates at a low level of efficiency (delays), the quality of judgments is low, and there are considerable institutional deficiencies (e.g., lack of administrative support and technological facilities).

The ensuing regular reports of the European Commission<sup>9</sup> noted gradual, although not necessarily satisfactory improvements in the problematic areas. They monitored the modernization efforts in public administration aiming to increase efficiency and effectiveness,<sup>10</sup> the reforms of the judiciary addressing efficiency, quality and institutional organization problems,<sup>11</sup> and the measures adopted to address corruption problems. They also followed the further expansion of the market economy and the further opening of economic sectors to market forces.<sup>12</sup> The criticisms concerning the legal and regulatory environment of economic activity remained, however, the same.<sup>13</sup> There was a continuing need to improve the enforcement of competition law, conduct a coherent and credible regulatory policy, improve

**Gradual  
improvement  
and continuing  
problems**

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<sup>9</sup> Regular report on Hungary's progress towards accession 1998, [http://ec.europa.eu/enlargement/archives/pdf/key\\_documents/1998/hungary\\_en.pdf](http://ec.europa.eu/enlargement/archives/pdf/key_documents/1998/hungary_en.pdf); Regular report on Hungary's progress towards accession 1999, [http://ec.europa.eu/enlargement/archives/pdf/key\\_documents/1999/hungary\\_en.pdf](http://ec.europa.eu/enlargement/archives/pdf/key_documents/1999/hungary_en.pdf); Regular report on Hungary's progress towards accession 2000, [http://ec.europa.eu/enlargement/archives/pdf/key\\_documents/2000/hu\\_en.pdf](http://ec.europa.eu/enlargement/archives/pdf/key_documents/2000/hu_en.pdf); Regular report on Hungary's progress towards accession 2001, [http://ec.europa.eu/enlargement/archives/pdf/key\\_documents/2001/hu\\_en.pdf](http://ec.europa.eu/enlargement/archives/pdf/key_documents/2001/hu_en.pdf); Regular report on Hungary's progress towards accession 2002, [http://ec.europa.eu/enlargement/archives/pdf/key\\_documents/2002/hu\\_en.pdf](http://ec.europa.eu/enlargement/archives/pdf/key_documents/2002/hu_en.pdf)

<sup>10</sup> E.g. territorial reform and regionalisation, modernization of public administration services, addressing human resources and training issues.

<sup>11</sup> E.g. training and qualification; efficiency and case load problems; internal organization shortcomings; technical background

<sup>12</sup> E.g., railway transport services and energy, where developments were particularly slow.

<sup>13</sup> The 1999 Report noted an overall positive business climate with the legal and institutional framework of the market operating effectively and to the satisfaction of stakeholders. The 2000 report noted that the legal system functions well, property rights are protected and contract enforcement is good. The 2001 report noted that there are no significant barriers to market entry and exit, and that there is a high degree of legal certainty. The reports noted the gradual strengthening of the legal and institutional framework of the market economy, but brought attention to the necessity for increasing regulatory quality and enhancing regulatory implementation.

the overall regulatory environment, roll back regulated prices,<sup>14</sup> and to ensure that the implementation of regulatory policy is more consistent and less uncertain.<sup>15</sup> The reports indicated, in particular, the following hiatuses.

The State continues to keep a permanent stake in a high number of privatized undertakings which secures a broad range of direct influence over their decisions.<sup>16</sup>

There remain issues with transparency and efficiency in the public procurement system, and broad exceptions and local preference clauses are maintained in public procurement legislation.

Weak protection of copyright and pharmaceutical patents.

Weak institutional framework for

- implementing standardization regulation,
- implementing food safety regulation,
- the supervision of financial services,
- implementing information society services regulations,
- the enforcement of intellectual property rights,
- State aid monitoring,
- implementing consumer protection policy,
- implementing AFSJ policies,
- implementing animal and plant health regulation.

The European Commission's 2003 comprehensive report on Hungary's preparation of membership<sup>17</sup> closing the EU accession process assessed as the positive attributes of the legal and regulatory environment of economic activity in Hungary the following.

Accession  
with known  
hiatuses

A credible economic policy involving a commitment to privatization and liberalization, and a commitment to the liberalization of regulated

<sup>14</sup> The 2000 and 2001 reports noted that 18 per cent of the consumer price index follows from regulated prices.

<sup>15</sup> In particular, there is a clear need to consolidate the legal framework with regard to regulated monopolies and privileged undertakings.

<sup>16</sup> The 1999 report noted a clear change in policy in this matter after the 1998 elections with an emphasis on maintaining State influence and control.

<sup>17</sup> Comprehensive monitoring report on Hungary's preparation for membership, [http://ec.europa.eu/enlargement/archives/pdf/key\\_documents/2003/cmr\\_hu\\_final\\_en.pdf](http://ec.europa.eu/enlargement/archives/pdf/key_documents/2003/cmr_hu_final_en.pdf)

prices.

A continued functional, institutional, and legal modernization of public administration.

A continued strengthening of regional and local public administration.

A more effective judiciary emerging from long-needed territorial reorganization and other organizational reforms.

A more efficient judiciary with a rationalized caseload and reasonably well-managed procedures.

An improved legal and institutional framework for the fight against corruption.

The comprehensive report identified the following as remaining issues.

The human resources and training problems of public administration and the judiciary.

Considerable corruption risks, especially in public procurement.

The government did not carry out a detailed compliance review of the regulatory framework on the basis of the EU fundamental freedoms and the mutual recognition principle.

Lack of progress in the opening up of the transport (railways) and the energy markets.

The public procurement framework needs further alignment and clarification.

The institutional framework in need of development in

- food safety,
- consumer protection,
- the application of the mutual recognition principle,
- the supervision of financial services,
- the supervision of information society services,
- the enforcement of intellectual property rights.

The OECD's 2000 report on regulatory reform in Hungary<sup>18</sup> examined law and regulation in Hungary from the perspective of their ability to serve the economic policy aim of establishing and maintaining a functioning market economy. It highlighted that changes executed by subsequent governments, such as guaranteeing the protection of the right to property and freedom of enterprise, the reducing of the role of the State in the economy, and the lifting up of restrictions on capital flows and foreign direct investment contributed significantly to the opening up of the Hungarian economy to international competition and enabled its integration into the world economy.<sup>19</sup> Overall, legal and regulatory reforms, coupled with pro-competitive policy reforms and regulatory streamlining were seen as the cornerstones of the business friendly environment developed following the objective of ensuring the equality of competitive opportunities in the Hungarian market. The legal and regulatory framework in Hungary, as it emerged from years of EU harmonization in the accession process, was held to provide equal competitive opportunities for domestic and foreign economic operators (investment), avoid unnecessary trade restrictiveness, and to encourage the reduction of technical barriers to trade.

The report, however, highlighted significant shortcomings which, in general, correspond to those indicated in parallel at regular intervals by the European Commission. The OECD regarded the belated and ineffective implementation and enforcement of market-oriented rules by the administration, and, generally, the suboptimal functioning of the administration as the most fundamental hiatuses of the Hungarian legal and regulatory environment. The report referred, in particular, to the excessive length of administrative procedures, the continued presence of burdensome administrative requirements, and to the damaging inefficiencies in the operation of the administration.<sup>20</sup> The regulatory process was criticized for its low level of transparency and inclusiveness, and also for the lack of genuine opportunities for stakeholders to participate and influence. The ensuing unpredictability and uncertainty (volatility) of regulation was identified as a major shortcoming. The lack of adaptability and responsiveness in the regulatory system to the demands of the market economy was another hiatus mentioned.<sup>21</sup>

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<sup>18</sup> Regulatory Reform in Hungary: enhancing market openness through regulatory reforms, OECD 2000.

<sup>19</sup> Pro-competitiveness and market-opening pursued by every Hungarian government since 1990 irrespective of political orientation was named as the 'most fundamental strength of the regulatory environment in Hungary.' This commitment was seen as providing 'a certain assurance against piecemeal approaches and temptations to backtrack.' For a similar conclusion, see Commission Opinion on Hungary's Application for Membership of the European Union DOC/97/13.

<sup>20</sup> The report noted, however, the lack of significant administrative hurdles to set up business in Hungary.

<sup>21</sup> The report warned that while market failures may need to be addressed through regulation, regulatory intervention, if it is ill-conceived, excessively restrictive or burdensome, is likely to hurt more the domestically-owned small- and medium-sized enterprises than the more robust foreign-owned enterprises. It maintained that consolidation requires high-quality regulation which are trade-neutral or

Regarding the general state of the Hungarian legal and regulatory system, the report established that while the requirements of non-discrimination, regulatory harmonization and the recognition of equivalence and the application of competition principles had been given sufficient attention, the aims of increasing transparency and avoiding trade restrictiveness were pursued with considerably lower intensity. The report revealed, in particular,

a varied experience with regulatory transparency and openness as

- legislation is accessible and adequately disseminated,
- in contrast, decisions of the executive 'seem fairly opaque' and raise concerns about transparency and corruption, and the decision-making process lacks sufficient openness and transparency,
- there are no formal mechanisms of consultation when preparing or reviewing regulation,
- there is, however, the possibility of carrying out impact assessment, and informal consultations with stakeholders and other constituents are regularly organized,
- both administrative and judicial redress are available in administrative procedures, and they, in general, provide sufficient safeguards to individuals.

a similarly varied experience with public procurements as

- while the public procurement system is, in general, fairly advanced, concerns were raised regarding the transparency and the lawfulness of individual processes,
- the public procurement system suffers from further problems, such as the continued presence of the public utilities exemption, the tendency to promote less transparent procurement forms, the habitual lax treatment of evaluation criteria, and the failure to publicize the content of public procurement contracts.

a varied experience with regulatory discrimination as

- discrimination in regulation on the basis of nationality or origin had nearly been eliminated, with the exception of the regulation of professional services,
- there are, however, a number of measures which favour residents or entities established domestically, and may require Hungarian establishment for market entry, or involve a 'buy

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market-opening which are, nevertheless, capable of achieving non-trade related policy objectives. For this, Hungarian governments need to make a much clearer commitment to adhere to the principles of efficient regulation.

Hungarian' clause,

- market opening often led to domestic companies facing less favourable regulatory conditions (e.g., tax burdens) than their foreign competitors.

a varied experience with the reduction of trade restrictions as

- Hungary pursues a clear policy of eliminating restrictions to international trade from the legal system,
- which is, however, affected by low quality implementation as a result of a largely uneven practice of impact assessment of regulation, the lack of formal consultation mechanisms with stakeholders, an underdeveloped administrative culture, considerable regulatory volatility and uncertainty, excessive administrative burdens, and of inefficiencies in the administration and the judiciary.

a more reassuring experience with the harmonization of technical regulation and standards as

- Hungary is seriously committed to harmonizing domestic legislation with international and European regulatory and standardization systems, mainly in the framework of the EU accession process,
- standardization in Hungary was remodelled according to the EU approach on standardization (a voluntary character of national standards was established and standardization was transferred to the private domain),
- Hungarian standards were replaced on a regular basis by European and international standards,
- Hungary, mainly in the framework of the EU accession process, showed a clear determination to grant a recognition of equivalence under the mutual recognition principle to foreign regulatory measures,
- there were, however, obvious shortcomings in the Hungarian certification system – mainly, in the area of conformity assessment – as a direct consequence of the weaknesses of the relevant institutional framework.

a low transparency and divergent application of customs procedures.

an overall satisfactory experience with competition regulation and enforcement, in which equal opportunities and considerable guarantees are offered to both Hungarian and foreign undertakings.

The 2004 OECD economic survey, while it accepted that Hungary had in general succeeded in creating a business friendly legal and regulatory environment, maintained that there remained a number of serious hiatuses

Continued  
criticisms

in the business environment. These include the weakness of regulation and competition in the network industries and in non-exporting economic sectors, which serve predominantly the domestic market. The general institutional framework of market regulation was also found to be in need of improvement. As to individual economic sectors serving the domestic market, in professional services entry restrictions and price setting were criticized as unnecessarily delimiting competition, and it was urged that sectoral regulation should be rolled back and competition law should be allowed to regulate these newly deregulated areas. The number of entry barriers and other provisions delimiting competition and protecting certain producers were held to be detrimental to competition and productivity in the affected markets. Price regulation, other forms of direct State interventions and State influence over market decisions, the privileged treatment of incumbents, and continued State-ownership were indicated as the main problems with the network industries.<sup>22</sup>

The 2004 OECD paper made a separate assessment of the state of larger individual areas of economic regulation. In competition law, developments in legislation and enforcement were praised, and it was suggested that the state of competition law compares favourably with other OECD countries. However, the paper emphasized the need for procedural and organizational reforms so that resources are used more effectively and that the Competition Authority is able to prioritize better and increase the effectiveness of competition law enforcement. The system of public procurements regulating a comparatively large public market was seen as adequately designed in general, but the paper was critical of the application of public procurement rules, especially those regulating exemptions from tendering obligations. Concerning market regulation, the paper noted that privatization and subjecting privatized sectors to market regulation had been making a steady progress. It found, however, that little effort had been made to remove incumbents from their dominant position in the network industries, some network industries remained in the operation of State-owned enterprises, certain retail sectors remained over-regulated (e.g., pharmaceuticals)<sup>23</sup> or the intensity of competition in those sectors remained lower than expected, and that entry into professional services remained severely restricted by regulatory barriers. The paper also highlighted that there was a tendency towards the government returning from market prices to direct cost-based price regulation.

In the regulation of the electricity, natural gas, and telecommunications markets, the 2004 OECD paper noted that Hungary achieved – to a different

Sectoral  
issues

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<sup>22</sup> For similar conclusions, see 2002 OECD Economic Survey Hungary.

<sup>23</sup> The paper noted, however, the general low level of regulatory burdens in the retail sector. It also discussed the emerging policy direction that a larger number of traditional retailers should be protected from competition by larger retail chains.

extent and in a different pace in each of the sectors – the EU liberalization agenda. It engaged in progressive privatization, unbundled ownership and the operation of the network component of the industry, opened up the markets to new entrants, established regulatory authorities, and deregulated prices. The paper mentioned, however, that the programming of the liberalization process was to a considerable extent affected by extraneous political considerations, such as the shielding of public revenues hoped to be secured from privatization from the negative consequences of liberalization. It was also critical of the ‘reluctance by the authorities to relinquish control’ over the market. In particular, the State preserved strong rights to intervene in the activities of regulators (e.g., the government had the final word on pricing regulation which led to evidently politically motivated prices), it maintained strong influence over the activities of incumbents (e.g., through special rights granted for the State in its remaining shareholdings),<sup>24</sup> and it allowed incumbents to remain significant or even dominant market participants. The paper, finally, emphasized that a number of network industries, such as railway transport and postal services, had remained unaffected by liberalization and the markets continued to be controlled by a State-owned monopoly.

## 1.2 Trends and patterns after 2010

The global financial and economic crisis left damaging consequences for the Hungarian economy.<sup>25</sup> The economic policy pursued after the 2010 change of government aimed, in part, at addressing the dire state of public finances and the economy as caused by the crisis. Other changes followed a declaredly patriotic, new economic policy direction which focused, in certain sectors, on prioritizing local economic and economic policy interests.<sup>26</sup> In the emerging economic model, the structural asymmetry which had become to characterize the Hungarian economy after 1989 was further reinforced. In law and regulation, which reflected that asymmetry, the different treatment of the different segments of the national economy became even more characteristic. While export-oriented growth-producing sectors benefited from productivity and competitiveness enhancing regulatory policies, such as tax reductions, sectors producing for the domestic market, mainly in the services industry, were subjected to increasing tax and regulatory burdens and to a renewed interest in direct government interference with the market and competition. State-ownership increased and market mechanisms were rolled back in some key sectors.

Deepening  
asymmetries

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<sup>24</sup> E.g., veto rights over capital decreases, changing shareholders’ or ownership rights, and special rights of representation, or special rights concerning ‘strategic interests’.

<sup>25</sup> COMission report:

<sup>26</sup> Moni: unorthodox.

The government relied on law and regulation as useful and effective instruments in the creation of new markets and in the far-reaching restructuring or closing of existing markets. Competition in certain markets was delimited as a policy direction using a mixture of regulatory instruments, new barriers to entry were erected in regulation, State ownership introduced in regulation reduced the scope for private enterprise, and direct price regulation, including price freezes, especially in the energy sector was given an even broader scope than before. Some of the old shortcomings of economic law and regulation remained unaddressed, or were further aggravated. The unpredictability and uncertainty (volatility) of law and regulation increased considerably, the quality of the legislative process and the legal measures produced further decreased, the risk of corruption increased, and the efficiency and effectiveness of public administration remained, in general, at previous levels.<sup>27</sup>

Regulatory  
changes and  
hiatuses

Despite the robustness, and the often visible unfairness of the controversial changes introduced in law and regulation in certain sectors, on the whole the legal and regulatory framework for economic activity in Hungary continues to serve the interests of a functioning market economy.<sup>28</sup> Regression in some areas of economic regulation is unable to challenge the fact that EU accession and EU membership resulted in the near complete eradication from the legal and regulatory framework of discrimination on the basis of nationality and/or residence<sup>29</sup> and of direct barriers to intra-Union trade. Furthermore, while barriers to entry remain high in certain sectors, intra-Union market access does not pose critical problems, economic regulation, even in the network industries, is nearly fully harmonized to EU rules, and the local governance and administration of the Single Market is generally adequate.<sup>30</sup> Violations of EU obligations are duly monitored and controlled by the Commission and, with the help of the EU Court of Justice, by national courts.<sup>31</sup> The legal system, although not without controversies, continues to protect property rights and freedom of enterprise, contracts are enforced in law, legally recognized market mechanisms govern domestic markets populated by private economic operators, and the administration and the judiciary perform their market related tasks.<sup>32</sup> As the 2014 OECD Economic Survey of Hungary (hereinafter, 2014 OECD economic survey)<sup>33</sup>

The overall  
relevance of  
new policy  
directions

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<sup>27</sup> High administrative burdens and the limitation of competition 'in major non-tradeable sectors' have always characterized the Hungarian business environment, 2014 OECD Economic Survey of Hungary, OECD 2014

<sup>28</sup> The 2016 OECD Economic Survey stated that 'on average regulation is not particularly strict' and it accepted that considerable efforts were made towards regulatory simplification. *kiemelt beruházások* burdens, general deregulation, burden reduction and administrative rationalization plans

<sup>29</sup> A notable exception is the case of public notaries, INFRA

<sup>30</sup> INFRA

<sup>31</sup> LINK? OUR PAPER HUNG ECON PArt

<sup>32</sup> On backsliding in the economic constitution in Hungary, see VARJU AND Chronowski 2x.

<sup>33</sup> OECD Economic Surveys: Hungary 2014, OECD 2014

stated, the overall regulatory framework of economic activity (the product market) ‘continues to reflect the substantial pro-competitive reforms started in the 1990s and is characterised in particular by very high openness to trade and foreign investment’.<sup>34</sup>

### 1.2.1 Policy directions

Reinforcing and increasing State involvement in certain economic sectors – on the basis of some kind of a patriotic policy agenda – became one of the hallmarks of Hungarian economic policy after 2010.<sup>35</sup> The changes introduced in this context can be linked to different rationales. On the one hand, law and regulation assisted in the restructuring of existing markets and the creation of new markets, mainly to the benefit of certain domestic economic operators, and possibly the State. Incumbents were expelled, and they were replaced by new private or State-owned market operators. Often the introduction of sector-specific taxes and surtaxes supported this process, especially when they were discriminatorily or selectively progressive, the use of which was fundamentally necessitated by the imperative of maintaining a balanced structure for public finances following a competitiveness and growth enhancing reshuffling of the Hungarian tax structure.

On the other, there was a clear intention to secure, through State-ownership or other State involvement, the safe and sustainable operation of strategic public infrastructure, including some aspects of network industries and public services. In this economic policy direction, which has its roots in the mixed market economy developed in the 1990s, the State, acting alongside and often in place of competitive markets, plays a crucial stabilizing and providing role, and, therefore, it needs to be strengthened and enabled by enhancing the protection of its assets, establishing exclusive State functions in relation to strategic public infrastructure, emphasizing the public or public interest nature of certain activities in the market, and by anchoring State ownership or other forms of control in certain segments of the market. The reduction, and in certain instances the eradication of competition in these sectors may also be supported by other policy considerations, such as a need to respond to a ‘cost-of-living crisis’, which may demand regulated compulsory price reductions or freezes or the establishing in law of the ‘not-for-profit’ nature of certain economic activities.

The new policy approach was given clear expression in the adoption of Act 2011:CXCVI on national assets. In general, the act is a positive and constructive legal measure which aims at ensuring that national assets are

Economic  
patriotism and  
increasing  
State  
involvement

Enhanced  
protection for  
national  
assets

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<sup>34</sup> 2014 OECD Economic Survey of Hungary, OECD 2014, 28

<sup>35</sup> Similar developments between 1998 – 2002 under , OECD SURVEY

used in the public interests and to the benefit of the community,<sup>36</sup> and that their use is subject to the requirement of transparent and responsible management. The act introduced the new, suggestive terminology of ‘national assets having special relevance for the national economy’, and it regulated in detail the economic assets falling under exclusive State ownership (Art. 4).<sup>37</sup> These latter include national public roads, the national core railway network, the State-owned international commercial airport and the related aviation premises, and natural gas emergency reserve storage facilities.<sup>38</sup> The objective pursued by these provisions was to restrict the tradeability of these assets and to erect further legal safeguards concerning their use and/or transfer. The act also regulated State- and local council ownership (Art. 5) in economic operators carrying out public service tasks,<sup>39</sup> which were recognised as having restricted tradeability.<sup>40</sup> The act regulated extensively the economic activities reserved to the State and to local councils (‘exclusive economic activities’)<sup>41</sup> (Art. 12). These are

Economic activities reserved for the State

Transport by pipelines and storage in pipelines.

Mine exploration and exploitation.

The production and trade of nuclear matter.

The construction and the operation of water channels, water utilities and regional utility systems.

The organisation and the operation of gambling and betting services.

<sup>36</sup> Restricted to discharging public tasks and the delivery of public services, including the development of the necessary infrastructure.

<sup>37</sup> For local councils, similar provisions in Art. 5.

<sup>38</sup> Art. 124/B of 2008:XL on natural gas provision states that natural gas safety storage facilities must be in the direct or indirect majority ownership of the State. Art. 124/A, with a view to the intended purchase of gas storage facilities by the State, provided a prioritised right of pre-emption for the State in the sale of these facilities. Policy of State ownership in banks: Bill T/10536 on the 2017 budget Art. 11 replacing Art. 45/A of Act 2011: CXCV on ÁHT: State ownership in banks with their center of administration in Hungary through the increase of capital felemese: provided that the principle of private market economy investor is followed, supported by the midterm business strategy of the bank, and legal and financial screening is undertaken.

<sup>39</sup> Including public parking services and the Balatoni Hajózási Zrt.

<sup>40</sup> Restricted tradeability means that ownership rights - with the exception of the transfer of these assets to economic operators owned fully by the State or by local governments in the form of non-monetary asset transfer or under an other title (these undertakings, until these transferred assets are held by them, may only be sold to the State or to local government) – may only be transferred to local governments. Restricted tradeability is lifted only when the economic operator ceases to carry out the public service task.

<sup>41</sup> Local councils: the construction and operation of local public roads, the construction and operation of the local council-owned international commercial airport, including the related aviation premises but excluding the provision of ground services, regular and special regular local passenger transport services, the construction and operation of local utilities which constitute core assets, the construction and operation of constructions underneath the surface of local council-owned public squares and parks, the operation of local council waters and the related public use premises,

Passenger and freight transportation on the national core network railway.

Regular passenger transportation by road.

The construction and the operation of the State-owned international commercial airport, including the related aviation premises, but excluding the provision of ground services.

The construction and the operation of national roads and national core network railways.

The construction and the operation of constructions underneath the surface of State-owned public squares and parks.

The construction and the operation of natural gas emergency reserve storage facilities.

Tobacco retail and the supply of tobacco retailers.

The construction and the operation of other State-owned assets ('things').

In connection with 'exclusive economic activities', the act introduced a concessions clause applicable as the main rule (Art. 12).<sup>42</sup> It holds that the right to exercise these activities can be transferred temporarily (a timeframe determined in a contract but for a maximum of 35 years) by the State or the local council to another person in the form of a concession granted on the basis of Act 1991:XVI on concessions and the other acts regulating the procedure.<sup>43</sup> There are, however, several general and specific exemptions from the concessions clause recognized in the act which enable direct State and/or local council involvement and which reduce opportunities for market operators. These are

The  
concessions  
clause

The reservation for the State of the operation of core national network railways, or of railway networks which contain core national network railways, or for a business corporation owned exclusively by the State, or in direct or indirect majority State-ownership.

The clause which enables the continuation of carrying out some of the above economic activities, which before the entry into force of the act had been carried out outside the concessions framework,

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<sup>42</sup> The transfer of ownership of national assets: The tendering clause (Art. 13): as a general rule the transfer of ownership of national assets may only take place in a competitive procedure, to the benefit of the offeror making of the in general most advantageous offer, and subject to the proportionality of the asset and the consideration.

<sup>43</sup> Sectoral legislation may allow a single extension of the concession contract – for a duration of half of the original duration – provided that the parties have delivered their obligations according to the contract and in time.

without putting out an open call or without a concession contract (the same provision also mentions explicitly that the act may also enable further specific exemptions from the general concession clause, and that provisions of directly applicable EU measures may also override that clause).

The exemption for the construction and operation water public utilities owned exclusively by the State or the local council (in the form of an economic operator in exclusive single or joint ownership, by the State and/or the local council).

The rules on transferring the right of carrying out the exclusive economic activity without a concession contract (only by the State, local government, central public body, local council institution, economic operators owned exclusively by them, economic operators owned exclusively by the these economic operators, and in some instances economic operators under direct or indirect State and/or local council ownership).

The main problem with pursuing this patriotic economic policy agenda and with its implementation in law and regulation is that acting under such a broad authorisation in the general interest reduces the possibility of subjecting government interventions to limitations which require that the use of public powers is rational, proportionate and that it respects the rights and interests of the individuals affected. The execution of these policies in law and regulation raised the possibility of selectivity and discrimination to the disadvantage of other domestic and of non-domestic economic operators, and it enabled practices of favouritism and protectionism in violation of the fundamental principles of the Single Market. The adoption of controversial economic legislation in rushed, low-transparency and low-accessibility procedures<sup>44</sup> and their enforcement, which allowed no or very limited time for the affected individuals to adjust their conduct and which had only limited regard to property rights and legitimate expectations, all in what was perceived to be the national economic interest, risked abusive uses of public powers and the disrespecting of considerations arising from the rule of law. Regulatory opportunism, potentially in bad faith, to serve individual business interests may also be hidden behind claims of economic patriotism.

The risks of economic patriotism

### 1.2.2 The quality of the legal and regulatory environment

The monitoring reports on the Hungarian economy issued after 2010 indicated rather clearly the new and old shortcomings and controversies of the post-2010 legal and regulatory framework for economic activity in Hungary. The reports of the Hungarian business community, for instance, the economic reports of the German-Hungarian Chamber of Industry and

Old hiatuses and new problems

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<sup>44</sup> Compulsory impact assessment was avoided by bills presented to Parliament as private members' bills.

Commerce, raised similar issues.<sup>45</sup> The 2012 OECD Economic Survey of Hungary,<sup>46</sup> which was still rather reserved in assessing the changes, brought attention to the policy unpredictability which characterized the Hungarian business environment and it warned about the uncertainty of contracts. It urged that a level playing-field in the economy is ensured, and that checks and balances are in place so that a more predictable and better controlled operation of institutions is ensured.<sup>47</sup> The 2014 OECD economic survey, together with the 2014 OECD paper on enhancing competition and the business environment in Hungary (hereinafter, the 2014 paper),<sup>48</sup> identified the following general and individual shortcomings.

High administrative burdens.

Worsening regulatory instability and uncertainty.

Decreasing regulatory quality, partly due to poor consultation mechanisms and weak impact assessment.

Weakened competition law and enforcement.

Deteriorating perceptions of institutional quality owing to weak checks and balances.

Significant barriers to entry which limit competition in retail, professional services, and telecommunications, which affect productivity in these sectors and in the downstream industries.

Direct price regulation in energy with significant impact on the sustainability of the sector

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<sup>45</sup> <http://www.ahkungarn.hu/hu/kiadvanyok/konjunktura-jelentes/>. They noted decreasing legal certainty and political stability, economic policy volatility, corruption, the low transparency of public procurement, and administrative burdens and public sector inefficiencies as problematic, but previously not unknown developments in the Hungarian business environment.

<sup>46</sup> OECD Economic Surveys: Hungary 2012 (OECD, 2012)

<sup>47</sup> The report focused, in particular, on the instruments adopted to address the foreign currency indebtedness of households, and stated that the burdens of debt consolidation must be shared adequately among all involved and that this and other forms of State intervention must avoid damaging the operability and sustainability of businesses. The 2010 Paper on foreign currency indebtedness established that as a matter of indicators the Hungarian system of banking regulation had been performing well, but there is a need to reshape regulatory approaches by protecting consumers better and regulating lenders tighter without overprotecting consumers or overregulating businesses (a pro-active regulatory involvement focusing on the stability of the system as a whole), Margit Molnar, Enhancing Financial Stability through Better Regulation in Hungary, OECD Economics Department Working Paper No. 786, OECD Publishing, 20, 26.

<sup>48</sup> Pina, A. (2014), "Enhancing Competition and the Business Environment in Hungary", OECD Economics Department Working Papers , No. 1123, OECD Publishing.

The 2014 paper identified regulatory volatility and barriers to entry as causes of a reduced growth potential and diminished investment in the Hungarian economy. Under regulatory volatility, it criticised regulatory uncertainty and instability, which followed from

High regulatory volatility and uncertainty

an increased flow of new, often low quality regulation.

a general low quality and low effectiveness of law and regulation.

a lack of cooperation between regulatory agencies, problems with information sharing.

low transparency and reduced access for stakeholders in the regulatory process.

Among barriers to entry hindering economic activity, it identified

Considerable barriers to entry

high administrative burdens.<sup>49</sup>

low trust and transparency in public institutions.

old and new sectoral barriers to entry.<sup>50</sup>

lock-in effects.

distortive price regulation which cause obstacles to competition.<sup>51</sup>

The regulatory environment of energy markets was criticised by the 2014 paper, in particular, for

Damaging regulation in energy markets

the maintaining of a high level of concentration in the wholesale and in the retail market.

<sup>49</sup> For instance, in the retail sector where economic activity is subject to numerous permits and licenses.

<sup>50</sup> Such as the monopolization of tobacco retail, which led to a higher profit guaranteed by law to a much reduced number of vendors and a reduction in public revenues from tobacco sales, the reinstatement of geography and demography-based entry barriers in the pharmacy sector and of ownership constraints, and the low number of medicines that can be sold outside of pharmacies, and restrictive conduct regulations and barriers to entry in professional services (e.g., excessive training requirements), extensive exclusive rights for service provision, anti-competitive price and fee regulations introduced, but not legally enforced, by professional chambers, locking-in effects experienced as SMEs are unable to change their lawyers or accountants.

<sup>51</sup> The specific examples used include limiting the possibility of appeal in procedures before sectoral regulators, the practice of immediate enforcement of regulators' decision despite appeal to courts, the modification of licensing conditions (in tobacco retail) to the benefit of licensed retailers after their selection has taken place, and the new planning regulations on commercial premises which centralize under broad discretionary powers decision-making on licensing. Generally, the reinforcement of checks and balances in economic regulation, and increasing the relevance of reputation and credibility in the appointments to regulators were recommended.

the inability to increase competition in the sector.

the refusal to address the significant interconnection problems and the privileged positions granted in supply (import).

the introduction of excessive sectoral taxation.

the broad use of price regulation in the retail segment (including price-freezes and compulsory price reductions), which may

- lead to price distortions and cross-financing (-subsidising),
- damage profitability, capital formation, and investment in the sector.<sup>52</sup>

The state of competition law and enforcement in Hungary, as an important component of the business environment, was criticised for

**Weakened  
competition  
law**

a much reduced reliance on the Hungarian Competition Authority (HCA) in scrutinising on grounds of competition policy bills laid before Parliament.

the exclusion of the HCA from economic policy-making and regulation at the level of regulators and public authorities.

the curtailing of the scope of competition law by excluding, under conditions determined in the given case under broad discretionary powers by the responsible minister, agricultural products from cartel rules.

the bypassing of the HCA subject to broad discretionary powers at the ministerial level in the authorisation of mergers considered to be in the national interest.

The most recent, 2016 OECD Economic Survey of Hungary,<sup>53</sup> which provided an overall positive assessment of economic developments in Hungary, urged, in particular, pro-competitive reforms and a general lowering of entry barriers in economic regulation. It repeated most of the shortcomings identified in the earlier papers, such as

**Sustained  
criticisms**

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<sup>52</sup> The paper urged the introduction of cost-reflective, market-based pricing, the introduction of price regulation by the regulator and not by government, and a push towards liberalized and competitive markets so that price regulation, having regard to the need to provide social prices in the market, could eventually be phased out

<sup>53</sup> **OECD Economic Surveys: Hungary 2016**, OECD Publishing 2016, Paris [http://www.keepeek.com/Digital-Asset-Management/oecd/economics/oecd-economic-surveys-hungary-2016\\_eco\\_surveys-hun-2016-en#page1](http://www.keepeek.com/Digital-Asset-Management/oecd/economics/oecd-economic-surveys-hungary-2016_eco_surveys-hun-2016-en#page1)

ad hoc and difficult to predict policies.

frequent changes in regulatory policy-making, which

- reduce regulatory predictability and certainty,
- lower risk tolerance,
- increase compliance costs.

inadequately prepared regulation as a result of

- a lack of cross-departmental coordination,
- a weak framework for regulatory impact assessment,
- a low transparency and poorly managed regulatory policy making.

a weak public procurement framework operating with low efficiency and high corruption risks.

weakened competition law as a result of

- the exclusion of the HCA from the legislative process,
- broad exemptions from the scope of competition law (agriculture and mergers).

The survey made it clear that changes in the market (e.g., a State-owned monopoly overtaking the energy retail market) and in regulation (e.g., price regulation and frequently used universal service obligations) reduced the possibilities of entry to the market of network industries. It warned that the distorted price structure in the energy market (i.e., low for households, high for industry) may be unsustainable in a longer term as the State-owned monopoly retailer, which is required to bear the costs of low household prices, may expose the State to direct liabilities. It suggested that energy pricing should be determined by the independent regulator on the basis of competition friendly pricing principles. It also criticized the lack of explicitness and transparency in determining and in compensating the public service obligations of the State-owned energy retailer, and urged its reregulation so that public service provision is based on better considered decisions.

The survey also found reduced market entry possibilities in the retail and in the telecommunications market. In the former, it noted the increased regulatory burden which followed, in particular, from the regulation on the planning of commercial premises, which allowed broad discretionary powers

Regulation  
damaging the  
network  
industries

New barriers  
to entry

and has given rise to discriminatory uses of those powers. It suggested the improvement of the regulatory framework by clarifying the available derogations, reducing the scope of the planning obligation, adopting secure and clear guidelines concerning the application of the rules, and by the decentralization of the decision-making powers. In the telecommunications market, the survey highlighted that regulatory hiatuses, such the lack of rules on local loop unbundling and on non-discriminatory third party (mobile virtual network operator) access to networks, undermine competition and pose significant barriers to entry.

The Europe 2020 country reports<sup>54</sup> identified similar shortcomings in the legal and regulatory environment of economic activity in Hungary. In general, market participants, both foreign and domestic, are hindered by

General  
regulatory  
hiatuses

an unpredictable and volatile regulatory environment and high regulatory and administrative burdens,<sup>55</sup> which was labelled as a 'long-standing challenge' for Hungary.<sup>56</sup>

a low quality of legislative and regulatory processes,<sup>57</sup> including problems such as

- the enactment of measures on a short notice,
- lack of a transitional period for those affected,
- lack of transparency,
- lack of meaningful consultations with stakeholders,
- lack of meaningful impact assessment with publicly available results.<sup>58</sup>

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<sup>54</sup> Country Report Hungary 2016, [http://ec.europa.eu/europe2020/pdf/csr2016/cr2016\\_hungary\\_en.pdf](http://ec.europa.eu/europe2020/pdf/csr2016/cr2016_hungary_en.pdf); Country Report Hungary 2015, [http://ec.europa.eu/europe2020/pdf/csr2015/cr2015\\_hungary\\_en.pdf](http://ec.europa.eu/europe2020/pdf/csr2015/cr2015_hungary_en.pdf); 2014 Assessment of the national reform programme and convergence programme for Hungary, [http://ec.europa.eu/europe2020/pdf/csr2014/swd2014\\_hungary\\_en.pdf](http://ec.europa.eu/europe2020/pdf/csr2014/swd2014_hungary_en.pdf); 2013 Assessment of the national reform programme and convergence programme for Hungary, [http://ec.europa.eu/europe2020/pdf/nd/swd2013\\_hungary\\_en.pdf](http://ec.europa.eu/europe2020/pdf/nd/swd2013_hungary_en.pdf); 2012 Assessment of the national reform programme and convergence programme for Hungary, [http://ec.europa.eu/europe2020/pdf/nd/swd2012\\_hungary\\_en.pdf](http://ec.europa.eu/europe2020/pdf/nd/swd2012_hungary_en.pdf); 2011 2012 Assessment of the national reform programme and convergence programme for Hungary, [http://ec.europa.eu/europe2020/pdf/recommendations\\_2011/swp\\_hungary\\_en.pdf](http://ec.europa.eu/europe2020/pdf/recommendations_2011/swp_hungary_en.pdf)

<sup>55</sup> including complex administrative procedures and e-government services. The step towards administrative burden reduction and simplification were accepted as promising.

<sup>56</sup> The 2013 Assessment spoke openly about the 'distortive effects' of government policies, and about legislation (constitutional and economic) adopted in violation of EU law and the 'principles of the rule of law'. The 2015 report also mentioned 'general sense of policy-induced uncertainty regarding the security of intangible assets'.

<sup>57</sup> A very high number of measures must be amended within one year of their adoption.

<sup>58</sup> Deliberate policy to circumvent impact assessment obligations by introducing bills in Parliament through private members' motions.

low and deteriorating regulatory quality.

low effectiveness and efficiency in public administration.<sup>59</sup>

a high risk of corruption and limited steps taken to fight corruption.

problems with the quality, independence, and the efficiency of the judicial system.<sup>60</sup>

In individual policy areas, the reports identified the following hiatuses.

**Sector-specific  
problems**

Limited competition, low level of transparency, and considerable corruption in public procurement.

Competition law damaged by exemptions (e.g., merger control).<sup>61</sup>

Damaging tax and regulatory burdens in the financial services sector.

Lack of effort to remove barriers to entry in the services economy.

Restrictive economic regulation (increasing entry barriers in previously open sectors) in certain sectors.<sup>62</sup>

The services sector suffers from an instability of the regulatory framework and also from reserved efforts to foster competition, in particular in postal services, where liberalisation efforts were rolled back, and in professional services.<sup>63</sup>

In business services, market entry is hindered by the prevalence of reserved activities, related authorisation requirements, and tariff restrictions.

The retail sector is hindered by a volatile and restrictive regulatory environment which may affect certain economic operators disproportionately.<sup>64</sup>

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<sup>59</sup> Including lack of administrative capacities and lack of preparation to service cross-border economic activity (e.g., through e-administration).

<sup>60</sup> Raised in the 2012 and 2013 assessment.s

<sup>61</sup> Until 2014, 13 mergers (in the energy, financial, textbook publishing, IT and transport sectors) were approved by government without having the Competition Authority to authorize them on the basis of their impact on competition.

<sup>62</sup> Such as tobacco retail, pharmacies, savings bank (cooperative banking) sector, textbook publishing and distribution, waste management, mobile payments, tax-free vouchers. The reports refer to OECD (PMR) indicator putting Hungary as having the highest legal barriers of entry and to survey which indicate the lowest transparency of policy-making in the region.

<sup>63</sup> Increasing doubts regarding to regulated professions as indicated by the increasing Hungarian entries to the Database of Regulated Professions.

<sup>64</sup> Such as the food chain control fee, Sunday and night trading, penalising operation at loss, and the restrictive planning of commercial premises.

The lack of a legal framework for cross-border transfer of seat.

Uncertain regulatory and strategic framework in the network industries,

- in the energy sector:
  - deteriorating business climate because of regulatory intervention,
  - business climate affected by the continuation of direct price regulation, the reduced independence of energy regulator, and by an unfavourable administrative environment,
  - regulated reductions in end-user gas and electricity prices are not cost reflective, and, therefore, together with other regulatory interventions damage the sector, especially economic operators under a universal service obligation,<sup>65</sup>
  - competition was reduced after licences were returned as a result of the unfavourable legal environment and a State monopoly household gas and electricity provider was established,
  - the new State energy utilities holding, because it needs to deliver low prices and meet the costs of those prices,<sup>66</sup> will need to be permanently compensated by the State, which
    - will increase State liabilities in this market,
    - may damage public service delivery.<sup>67</sup>

The annual Council recommendations<sup>68</sup> based on the country reports brought attention to the following critical areas.

**Continued  
criticisms**

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<sup>65</sup> Rates of return were reduced to zero, continuous loss-making in the sector, withheld investments.

<sup>66</sup> It lacks the possibility of cross-financing USOs as it has a limited business portfolio

<sup>67</sup> As indicated in REPORT, lack of transparency and no guarantee that public service delivery will be based on adequately prepared decisions.

<sup>68</sup> Recommendation on the 2011 National Reform Programme of Hungary and delivering a Council opinion on the Convergence Programme of Hungary, 2011-2015 (2011/C 209/03); Council Recommendation on the 2015 National Reform Programme of Hungary and delivering a Council opinion on the 2015 Convergence Programme of Hungary (2015/C 272/20); Council Recommendation on the 2014 National Reform Programme of Hungary and delivering a Council opinion on the Convergence Programme of Hungary, 2014 (2013/C 217/10); Council Recommendation on the 2013 National Reform Programme of Hungary and delivering a Council opinion on the Convergence Programme of Hungary, 2012-2016 (2014/C 247/15); Council Recommendation on the 2012 National Reform Programme of Hungary and delivering a Council opinion on the Convergence Programme of Hungary, 2012-2015 (11257/12).

A changeable institutional and policy environment.

Regulatory volatility and restrictive regulations,

- distortive and volatile corporate taxation (sectoral taxes and surtaxes) framework (unpredictable and selective tax changes: 2015 Recommendation),
- regulatory restrictions (new barriers introduced) affecting disproportionately foreign investors in the service economy and in retail,
- old entry barriers maintained in a number of sectors in the service economy.

High regulatory and administrative burdens.

Limited accountability and transparency in public administration.

Corruption in public administration.

Low-quality public administration

Low-level of competition, lack of transparency, and corruption in public procurement.

Low-level independence of energy regulator.

Direct energy price regulation,

- regulated end-user price regulation diminishes business prospects in the sector

## 2 Market access and level playing-field: key area case studies

The direction pursued in economic policy after 2010 brought about considerable changes and reinforced older trends in the law and regulation of economic activity in Hungary. In order to indicate and analyse these developments more fully, short case study analyses are produced in key areas of change.

### 2.1.1 State ownership

As indicated by the Act on national assets itself, there was a rediscovered interest in increasing, or at least cementing State ownership in diverse segments of the Hungarian national economy. The setting up of new State monopolies owned exclusively or in majority by the State in certain public or quasi-public markets clearly amplified this trend (2.1.2). The continued statutory protection of certain State-owned (public) service providers (e.g., the railways) is another key indicator of this policy direction. The regulation of natural gas emergency storage facilities and their acquisition by the State provides the most salient example of this policy. It must be noted, however, that augmenting and/or protecting State ownership characterises only certain sectors of the national economy, and there is only limited coherence in its execution (i.e., in the electricity market State ownership received much less emphasis than in the market for natural gas). Moreover, in manufacturing and in commercial services State ownership was predominantly the consequence of the State rescuing certain economic operators, or the State aiming to enter the market as an investor, and not of a comprehensive plan of nationalising these industries.

Increased and continued State ownership in public markets

### 2.1.2 State monopolies

After 2010, a number of open markets were replaced by State monopolies eliminating, thereby, competition from those markets. These rejections of market competition were, in general, supported by parallel policy considerations (e.g., social policy, education policy, public service policy) and/or the rediscovered imperative of discharging tasks considered to be in the public interest or public/State tasks and the public service duties or other responsibilities of the State. In some instances, securing the revenue generated by the market for the State could have supported the setting up of State monopolies. In case of such robust interventions in the market, it is difficult to dismiss the doubt that the changes were introduced to expel unwanted economic operators or burdensome competitors from the market and/or replace products and services offered by the market by ones which

Increased State participation through State monopolies

(not only the quality, but also the content of which) could be controlled more closely by the State.

The education textbook market was placed under a State monopoly Act 2013:CXXXII on the supply of textbooks for the national system of public education. It set up the State organisation responsible for textbook development and publication and the not-for profit economic operator responsible for the distribution of those textbooks (Art. 2). In the waste market, the new legal provisions, as show below, provide that the license to carry out public service waste management services may only be issued to economic operators in State or local council ownership, which must also enjoy rights concerning the appointment or dismissal of the majority of executive employees or members of the supervisory board. In the energy retail market, the predominantly foreign-owned incumbents were sold to and replaced by the new State monopoly established in 2015 by Regulation 7/2015 of the Ministry for National Development under the name First National Public Utility Corporation. The market for tax-free remuneration vouchers saw the replacing of the foreign-owned incumbents by the State monopoly entitled to issue the paper-based vouchers (Act 2011:CLV). Under Act 2011:CC on the national system of mobile payments, certain public services (e.g., parking on public roads, the usage of public roads, certain public passenger transport services) were declared under Art. 2 as centralised mobile payment services which must be offered for sale by the service provider through the mobile payment system operated by the national mobile payment organisation held in the exclusive ownership of the State (Art. 3).

### **2.1.3 Regulated professions**

The high entry barriers to regulated professions in Hungary have repeatedly been criticised by the different surveys on the national economy. These followed from the statutory requirements concerning the exercise of the given profession, but also from the professional, ethical and other rules established by the relevant professional bodies. According to the latest, 2015 evaluation of the European Commission,<sup>69</sup> which looked at 8 different factors in evaluating access to the profession (reserved areas of activity, licensing requirements, compulsory membership in professional body, certain requirements laid down in company law, insurance requirements, price regulation, advertising restrictions, and the availability of information on the legal requirements and the availability of online administration), put Hungary at 12<sup>th</sup> position among the 28 Member States as a matter of entry barriers for the professions of accountancy, lawyers, engineers, and

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<sup>69</sup> Business services – Assessment of Barriers and their Economic Impact, <http://ec.europa.eu/DocsRoom/documents/13328/attachments/1/translations/en/renditions/native>.

architects. This relatively decent performance must, however, be assessed in light of the disappointing results achieved in connection with individual indicators. Concerning the most severe restriction, the areas of activity reserved for a profession, Hungary is the 4<sup>th</sup> worst performing Member State for the four professions examined. The price regulation applied to architects and accountants puts Hungary again among the worst performing Member States. At the moment, there is 1 infringement procedure in process against Hungary concerning access to a regulated profession. According to the Commission, the nationality requirement established for public notaries violates the Treaties and is not open for justification under EU law.<sup>70</sup>

The 2014 OECD survey also indicated a high degree of entry barriers and regulatory burdens on the professional services in Hungary. It mentioned three specific problems relating to the exercise of regulated professions. Firstly, the required time spent in higher education and in professional training is excessively long and members of regulated professions enjoy extensive reserved areas of activity. The worst affected were accountants and lawyers. It recommended a review of training requirements and reserved activities, as the current rules go beyond what is necessary for the protection of consumers in these areas. Secondly, the price recommendations of the professional bodies for architects,<sup>71</sup> engineers,<sup>72</sup> and for accountants,<sup>73</sup> prevent the development of effective competition among members of the profession. While these are only recommended prices, in business practice they have often become followed standards. Thirdly, the heavy and diverse entry conditions to the market of pharmacies were regarded as damaging and excessive, and it recommended the application of less restrictive alternative means for the protection of public health.<sup>74</sup> The entry barriers currently in place have also been criticised by the Hungarian Competition Authority.<sup>75</sup>

The Hungarian Competition Authority has been actively monitoring the practices of professional bodies under competition law. In individual cases, it has dealt with

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<sup>70</sup> Case C-392/1, *Commission v Hungary*. See also on this matter Cases C-47/08, C-50/08, C-51/08, C-53/08, C-54/08 and C-61/08 against other Member States.

<sup>71</sup> Art. 11(2)(g) of Act 1996:LVIII.

<sup>72</sup> See the price regulations of the Hungarian Chamber for Engineers, <https://www.mmk.hu/tudastar/dijszabas>

<sup>73</sup> Act 2007:LXXV. See the price recommendation by the professional body, [http://www.mkvk.hu/kamarai/kozlemenyek/dijminimum\\_20160525](http://www.mkvk.hu/kamarai/kozlemenyek/dijminimum_20160525).

<sup>74</sup> Act 2006:XCVIII.

<sup>75</sup> GVH beszámoló az Országgyűlés részére, 2013, 121. oldal [http://www.gvh.hu/data/cms1029344/gvh\\_ogy\\_pb\\_2013.pdf](http://www.gvh.hu/data/cms1029344/gvh_ogy_pb_2013.pdf). See also the opinion on the regulation of the profession of architects, *Az Országgyűlés számára készített GVH jelentés* 117. oldala [http://www.gvh.hu/data/cms1029344/gvh\\_ogy\\_pb\\_2013.pdf](http://www.gvh.hu/data/cms1029344/gvh_ogy_pb_2013.pdf). Concerning the operation of professional bodies in general, *A GVH 2014-es országgyűlési beszámolója*, 28-29. oldal [http://www.gvh.hu/gvh/orszaggyulesi\\_beszamolok](http://www.gvh.hu/gvh/orszaggyulesi_beszamolok).

price recommendations of professional bodies, which were held to violate competition law on account of a lack of an explicit legislative basis for the adoption of such measures.<sup>76</sup>

the impact of regulations of the professional body for architects on prices, which later was given powers in legislation to publish recommended prices.<sup>77</sup>

the registration fee introduced by a county bar association, which declared the excessive increase of the annual registration fee unjustified and restrictive as a matter of entry into the profession.<sup>78</sup>

the discriminatory registration fee introduced by a county bar association.<sup>79</sup>

the regulation of professional webpages and marketing restrictions imposed by the national bar association.<sup>80</sup>

decisions by professional bodies prohibiting the comparing of professional services.<sup>81</sup>

#### 2.1.4 Favouritism in economic regulation

The closure of the market established for the provision of tax-free remunerations (non-salary allowances) in the form of paper and electronic vouchers and the opening of a new market for electronic vouchers in 2011 involved a clear favouring in economic regulation of certain economic operators in the redistribution of market opportunities.<sup>82</sup> The market operated by foreign economic operators was closed without offering a genuine transitional period in 2011 by establishing a State monopoly for the paper voucher market and by means of imposing a 51 per cent tax on the market incumbents whilst reserving the tax-free status previously enjoyed by them for the new market entrant.<sup>83</sup> The new market created for electronic vouchers<sup>84</sup> (the *SZÉP*-card) was regulated in a manner which, in the words

Reserving  
market  
opportunities

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<sup>76</sup> Vj-56/2003/18, Debreceni Ügyvédi Kamara, 2003. szeptember 9. Lásd később a Vj-148/1998-es Magyar Könyvvizsgálói Kamara ellen, a Vj-137/1999-es Magyar Orvosi Kamara ellen, valamint a Vj-98/2004-es Magyar Alkotóművészek Országos Egyesülete és társai, Vj-137/1999/18-as Magyar Orvosi Kamara, Vj-1/1999/25-os határozatban a Magyar Állatorvosi Kamara ellen folytatott versenyfelügyeleti eljárásokban hozott határozatokat

<sup>77</sup> Vj-136/1999/31., Magyar Építész Kamara. Vj-201/2005/21. Magyar Építész Kamara. Hasonló tényállás mellett sújtotta végrehajtási bírsággal is a GVH a Magyar Orvosi Kamarát. Lásd a Vj-137/1999/18. határozatot

<sup>78</sup> Vj-84/2007/74. Békés Megyei Ügyvédi Kamara

<sup>79</sup> Vj-84/2007/74. Békés Megyei Ügyvédi Kamara

<sup>80</sup> Vj-180/2004/32, Magyar Ügyvédi Kamara

<sup>81</sup> Vj-115/1999/20, Szabadalmi Ügyvivői Kamara; Vj-1/1999/25 Magyar Állatorvosi Kamara.

<sup>82</sup> See also the slot machines and casinos market, *infra* note.

<sup>83</sup> Act 2011:CLV.

<sup>84</sup> Act 2011:CLVI, Act 1993:XCVI and Government Regulation 55/2011.

of the Commission, *de facto* reserved entry to the market to the three large banks domiciled in Hungary.<sup>85</sup> The conditions for gaining a licence to issue electronic vouchers included, among others, primary establishment and a primary place of management in Hungary. The infringement case brought by the Commission<sup>86</sup> made it clear that Hungary's intervention in the market constituted under EU law an unacceptable favouring of domestic economic operators. The Grand Chamber of the EU Court of Justice examined the infringement concerning the opening of the new market under the Services Directive,<sup>87</sup> and established the violation of its core provisions.<sup>88</sup> The ECJ also rejected the justifications brought by Hungary either on the ground that Hungary had failed to provide any evidence in support of its claims,<sup>89</sup> or that they had clearly failed to meet the directive's requirement of proportionality.<sup>90</sup>

### 2.1.5 Legal redress

In some instances, regulatory developments aiming at changing market circumstances and/or restructuring markets were introduced by government with a parallel reduction of opportunities for legal redress. The purpose of curtailing legal protection was to exclude the challenges mounted in law regulation adopted, as deemed necessary and appropriate by government, to introduce rapid and far-reaching changes in the market. While the balance between interests of effective market governance and the effective legal protection of individuals, in pressing circumstances, may indeed be reconsidered, the manner in which legal redress opportunities were reduced in individual instances in Hungary suggests a more negative interpretation of the changes.

The most fundamental of the changes was the 2010 suspension of the review powers of the Constitutional Court on matters of fiscal policy. It enabled the government to introduce new, controversial fiscal measures and to engage in an equally controversial restructuring of certain economic sectors without being subject to constitutional the scrutiny by the court.<sup>91</sup>

Avoiding legal challenges

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<sup>85</sup> Action brought on 10 April 2014 in Case C-179/14, *Commission v. Hungary*, O.J. 2014, C 202/12.

<sup>86</sup> Case C-179/14, *Commission v. Hungary*, EU:C:2016:108. There is an ongoing international investment arbitration case before the ICSID (ICSID Case No. ARB/13/35).

<sup>87</sup> Directive 2006/123/EC on services in the internal market, O.J. 2006, L 376/36.

<sup>88</sup> Articles 14 and 15: paras. 46-47, 54-67, 81-88, 89-90, 102-107, Case C-179/14, *Commission v. Hungary*.

<sup>89</sup> Paras. 69, 92-94, 115-116, *ibid*, such as the interest of sufficient integration into the local economy, the availability of sufficient experience and infrastructure, and the availability of sufficient guarantees to satisfy consumers and creditors.

<sup>90</sup> Para. 91, *ibid*.

<sup>91</sup> Act 2010:CXIX. In the Hungarian legal system, the review of the Constitutional Court used to provide the most effective *ex ante* redress against unconstitutional government interferences with the private economic domain. The repeal of *actio popularis* in Act ??? before the Constitutional Court, while it enabled rationalising the workload of the court, also reduced the possibilities of legal protection for individuals against the State. See VENICE COMMISSION,

The modification is said to have been prompted by the decision of the Constitutional Court which established the violation of constitutional provisions by the retroactive and disproportionate tax obligations introduced by the incoming government.<sup>92</sup> The suspension strategically preceded the adoption of the legislation preparing the closure of the private limb of the mandatory pension system and the expelling of private economic operators and their consumers from that market.<sup>93</sup> Condemnation by Strasbourg concerning the partial closure of the private pensions market was avoided by withdrawing, after keeping them in force for the time necessary to enable the restructuring of the market, the most controversial, discriminatory provisions of Act 2010:CLIV.<sup>94</sup>

Another noteworthy development was the exclusion of judicial review against the regulations of the energy regulator following an unfavourable judgment for the government in judicial review by the Budapest Metropolitan Court. The reduction of legal protection was introduced as part of the general regulatory overhaul of the powers and responsibilities of the regulator and the setting up of the new Hungarian Energy and Public Utilities Regulatory Authority.<sup>95</sup> Under the new rules, the Constitutional Court has jurisdiction to review the regulations issued by the new regulator.<sup>96</sup> The EU Court of Justice's ruling in *E.ON Földgáz Trade Zrt*<sup>97</sup> concerning the previous arrangements for judicial review confirmed that national legislation regulating the right of judicial review against the acts of a regulatory authority cannot exclude the operator from having locus standi 'for the purpose of bringing an action against a decision of that authority' regarding the energy market.

#### 2.1.6 State aids

State aid has an ambivalent nature. It can be considered as a tool to attract (foreign) investment to Hungary, trigger market entry and increase welfare, but on the other hand, it can serve as protectionist tool to defend national industry and champions exposed to European and international competition.

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<sup>92</sup> Decision 184/2010 of the Constitutional Court

<sup>93</sup> Acts 2010:C and CI, and Act 2010:CLIV. The Constitutional Court lacking the necessary competences rejected all applications contesting the constitutionality of the government intervention as inadmissible, Decisions 3291/2012, 3292/2012, 3293/2012, 3294/2012, 3295/2012, 3296/2012 and 3243/2012.

<sup>94</sup> ECtHR, *E.B. (No. 2) v. Hungary*, Appl. No. 34929/11, judgment of 15 January 2013, which rejected the application but made the criticism that there was no choice involved for individuals as promised by legislation.

<sup>95</sup> It is suspected that the new act (Act 2013:XXII) was enacted as a reaction of the judgment of the Budapest Metropolitan Court allowing the action for judicial review launched by energy companies against regulation of the energy authority amending the network code concerning long-term capacity allocation, therefore, contradicting this particular aspect of the declared government policy on RESZICÖKKENTÉS:

<sup>96</sup> This is an indication that the policy aims of excluding the Constitutional Court from matters of fiscal and economic regulation were never particularly convincing.

<sup>97</sup> C-510/13,

According to the State Aid Scoreboard 2015 (latest figures stem from 2014), Hungary is among those Member States that grant the highest percentage of their GDP to support undertakings. According to the national expenditure report, in 2014 Hungary spent 1.63% of its GDP for state aid,<sup>98</sup> while the EU average is considerably lower, 0.72%. In the last years, Hungary has increased aid significantly for regional development purposes and to support SME's and spent aid to a lesser extent to sectoral development. A welcome development is the extensive use of the new Block Exemption Regulation,<sup>99</sup> under which horizontal goals are given preference compared to more damaging sectoral aid.

A negative trend deterring potential market entry into Hungary is the use of tax legislation to favour domestic companies and to apply selective higher taxes to bigger (presumably international) undertakings.

In this vein, the European Commission ordered the suspension of three tax measures in 2015. In the first case<sup>100</sup> the Hungarian Advertisement Tax<sup>101</sup> was struck down by the European Commission as giving selective unjustified advantage to smaller undertakings not having a high turnover in Hungary from advertisement. The tax introduced was a special tax on turnover derived from the publication of advertisements (in the media spaces). The tax base is the turnover of the publisher derived from the advertising services provided by it, without deduction of any costs and determined by the advertising turnover by the entire group. The European Commission decided that by applying the progressive tax, undertakings with lower turnover are taxed at a substantially lower average rate than undertakings with a high turnover. Since the amount of turnover correlates with the size of the undertaking, the Act appeared by its very design to differentiate between undertakings based on their size. The progressive rates for taxes on turnover were not justified by the specific objectives. The Act resulted in a very substantial differential treatment.<sup>102</sup> The highest tax rates have affectively only applied to one undertaking and this undertaking has paid approximately 80% of the total revenue of the tax advances.<sup>103</sup>

Later the European Commission challenged two similar progressive taxes and adopted injunction decisions. The health contribution of the tobacco industry business<sup>104</sup> and the food chain inspection fee<sup>105</sup> were considered selective advantages not justified by the logic or objective of the tax. The

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<sup>98</sup> All data is available in the State Aid Scoreboard 2015 prepared by the European Commission. Available at [http://ec.europa.eu/competition/state\\_aid/scoreboard/index\\_en.html](http://ec.europa.eu/competition/state_aid/scoreboard/index_en.html).

<sup>99</sup> Mainly the GBER: Commission Regulation (EU) N°651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty

<sup>100</sup> SA. 39235 (2015/C), 12.03.2015. C (2015) 1520 final

<sup>101</sup> Act XXII of 2014 on the Advertisement Tax

<sup>102</sup> Para 29.

<sup>103</sup> Para 30.

<sup>104</sup> Act XCIV of 2014, SA.41187 (2016/NN)17.07.2015.

<sup>105</sup> Act XLVI of 2008 on the food chain, SA. 40018 (2015/NN), 17.07.2015.

Commission noted that the average level of food chain fee is exceptionally high and only seven food chain operators (mainly multinational supermarket chains) contribute to the fee at higher rate, thus resulting in differential treatment of undertakings.<sup>106</sup> After the publication of all three injunction decisions, Hungary modified the Acts and adopted a flat rate tax based on turnover.

### 2.1.7 Licensing and planning

As emphasised repeatedly in the OECD and EU country reports, in the services sector, including retail, several new barriers to entry, mainly relating to licensing and planning, were introduced, and the old barriers to entry were kept in place. These were criticised for hindering competition in the affected sectors, and in specific instances, they were assessed to have been introduced and/or applied with a view to disadvantaging particular, often foreign-owned economic operators to the benefit of their, predominantly domestic competitors. In the tobacco sector, both the retail and the wholesale supply segments of the market received new rules on entry when the previously open market was reregulated after 2010. Act 2012:CXXXIV subjected entry to the retail market to the condition of obtaining from the public authority the right to sell tobacco products by means of a concession and a license (Art. 2).<sup>107</sup> The act also recognised certain territorial restrictions on retail (Art. 6) and introduced common rules concerning the commercial premises used (Arts. 11 and 12). Entry to the wholesale (retail supply) market is now, as a general rule,<sup>108</sup> subject to the granting of a concession (Art. 4/A). The concession may be granted to a 'trustworthy tobacco retailer', or to a company owned in majority by such a person. The act holds that retailers may purchase tobacco products only from the lawful retail supplier (Art. 15) and that the retail supplier is under an obligation to contract with retailers (Art. 15/A). Arts. 15/C-E contain restrictions as regards the marketing practices (selling arrangements) pursued by retailers, predominantly in cooperation with tobacco suppliers.

The regulation of the establishment and operation of pharmacies maintained the old entry barriers of the sector and introduced some new ones. Act 2006:XCVIII on pharmaceutical retail requires both an establishment and an operating license for the establishment of a new pharmacy (Art. 48). The establishment of new public pharmacies, as a rule, takes place on the basis of an open call for tender (Art. 49), and the act imposes geographical limitations linked to population numbers and to the distance between

Entry barriers  
and other  
restrictions:  
tobacco retail

Entry barriers  
and other  
restrictions:  
pharmacies

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<sup>106</sup>106 para 33.

<sup>107</sup> Under Art. 4(2), a non-profit public corporation owned exclusively by the State is created for fostering the organisation of the retail market and executing and overseeing the retail concessions system.

<sup>108</sup> Under Art. 4/A, the State may itself decide to carry out this task in the form of a public corporation owned exclusively by the State.

pharmacies (Art. 49/A). Besides obtaining both the establishment and the operating license,<sup>109</sup> the operation of public pharmacies is subject to the requirements that they must be covered by a suitable insurance policy, the planning, equipment, and personnel requirements laid down in law are met, and that they are operated by a pharmacist that has a 'personal right'<sup>110</sup> to carry out that activity (Art. 53). Although off the counter sales outside of pharmacies are regulated in Art. 67, in effect, that market does not exist in Hungary.

The operation of public pharmacies by economic operators is subjected to the specific requirement that the ownership of the managing pharmacist having a 'personal right', or of the pharmacist having a 'personal right', the employed pharmacists, the pharmacist having an ownership in that economic operator, or of the pharmacy student obtaining ownership through succession must be higher than 50 per cent in that business undertaking (Art. 74(1)).<sup>111</sup> Furthermore, an economic operator which is licensed to produce or sell pharmaceuticals on the wholesale market, or which has direct or indirect ownership in an economic operator which operates a minimum of 4 pharmacies, or which has a seat in a State in which it does not carry out economic activities and it is not obliged to pay corporate tax, or the rate of the corporate tax levied in that tax year is lower than 2/3s of the rate imposed under Hungarian law may not obtain, neither directly, nor indirectly, ownership in an economic operator operating a pharmacy contracted to sell pharmaceuticals financed from the Hungarian State budget (Art. 74(3)). The act also prohibits mergers which would lead to the direct or indirect control by an economic operator, group of economic operators, or by a natural person of more than 4 pharmacies, or of 2 or more pharmacies in a locality having less than 20.000 residents (Art. 75).

The gambling and betting market experienced a mixed set of changes as a matter of regulating barriers to entry. On the one hand, after years of struggles between the State monopoly provider, the State and third State online providers, during which the State monopoly was able to enter the market, the online gambling and betting market was liberalized.<sup>112</sup> Service provision in this market is now subject to an authorization obtained from the

Entry barriers  
and other  
restrictions:  
gambling and  
betting

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<sup>109</sup> The rights guaranteed under the operating license are non-transferable.

<sup>110</sup> The personal right is granted, on application by the pharmacist, by the public health authority (Art. 56)

<sup>111</sup> The ownership of the pharmacist having a personal rights, the employed pharmacist and the pharmacist having an ownership in the economic operator may only be taken into account in relation to 4 public pharmacies.

<sup>112</sup> Act 2013:CXXVI. Art. 1(4) of Act 1991:XXXIV on gambling and betting states that online gambling and betting organised from Hungary is subject to compliance with Hungarian legislation. Art. 1(5) holds, with a view to identifying service providers for tax and regulatory purposes, that for the publication of calls to participate in online gambling and betting services the authorisation of the tax authority must be obtained. In the local Hungarian market, the exclusive right to organise online betting is reserved to the State monopoly provider, and the exclusive right to organise online gambling (casino activities) is reserved to the holder of a casino concession (Art. 3).

tax authority (Art. 2(2) Act 1991:XXXIV).<sup>113</sup> In the new market, as stated in Art. 2(2a), activities fall under Hungarian legislation in case they are organised from Hungary, the service recipient takes part from the territory of Hungary, or when the provision of service is directed towards recipients located in the territory of Hungary, especially when the service is available in Hungary or when it is advertised in Hungary.

On the other, entry into the casinos market and market opportunities in the slot machines market were reregulated in a manner which reduced competition in those markets to the benefit of certain economic operators. In the casinos market, the new notion of a 'trustworthy gambling service provider' was introduced in the regulation of market entry through the granting of gambling concessions. Such economic operators enjoy the advantage of being granted the concession without an open call for tender.<sup>114</sup> In the slot machines market, incumbents were squeezed out from the market by the introduction, without providing a genuine transitional period, of a quintupled rate for the tax on slot machines operated in amusement arcades, but not in casinos, and by the imposition of a new flat-rate tax.<sup>115</sup> This was followed by the legal measure, which without granting a transitional period and offering compensation, prohibited the operation of slot machines outside of licensed casinos.<sup>116</sup> This regulation-initiated takeover of the slot machines market benefiting the participants of the newly restructured casino market was found by the EU Court of Justice to violate the EU fundamental economic freedoms.<sup>117</sup>

As repeatedly highlighted in the OECD and EU reports, the commercial retail market, especially food retail was subjected to a series of distortive, sometimes discriminatory regulatory interventions which increased the burden on economic operators in this sector. Selective or discriminatory, sector-specific fiscal burdens were part of the regulatory package.<sup>118</sup> The latest, the progressive food-chain supervision fee is now under investigation by the Commission under State aid law and its application was ordered to be suspended.<sup>119</sup> Hungary reacted to this by moderating the progressive nature of the fee by repealing its 0 per cent rate which had favoured predominantly local retail chains.<sup>120</sup> The modification of the Act on commerce by Act 2014:CXII, which now penalizes undertakings in the retail

Entry barriers  
and other  
restrictions:  
commercial  
retail

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<sup>113</sup> Art. 2(7) excludes marketing, organisation and intermediary activities for unauthorised gambling and betting services.

<sup>114</sup> Act 2013:CLXXXV.

<sup>115</sup> Act 2011:CXXV.

<sup>116</sup> Act 2012:CXLIV. The measure was upheld as constitutional by the Constitutional Court which decided to defer to the policy discretion enjoyed by government in this area, Decision IV/03576/2012.

<sup>117</sup> Paras. 50-63, Case C-98/14, *Berlington*, EU:C:2015:386

<sup>118</sup> Paras. 37-41, Case C-385/12, *Hervis*, EU:C:2014:47. progressive food-chain supervision fee imposed on the food retail sector in 2014 Act 2014:LXXIV.

<sup>119</sup> SA.40018.

<sup>120</sup> Act 2015:XLVI.

sector with an annual net income of 15 billion HUF with a compulsory suspension of their commercial activities if they fail to report profits in two successive years, is also investigated by the Commission (letter requesting information sent in February 2016). In planning law, new, stricter rules were introduced for the planning of commercial premises,<sup>121</sup> which were then applied under broad ministerial powers in procedures lacking transparency predominantly to the benefit of local food retail chains.<sup>122</sup>

### 2.1.8 Sectoral taxes and surtaxes

Sector-specific taxes and surtaxes, introduced primarily to maintain the balance of the new tax structure introduced after 2010 by burdening non-exporting sectors mainly in the services economy,<sup>123</sup> are now standard components of the business environment in Hungary. Despite the repeated appeals to withdraw them, on account of their distortive effect on investment and productivity,<sup>124</sup> and despite the legal challenges under EU law against discriminatory and/or selective components of these taxes,<sup>125</sup> the government, apart from modifications arising from the successful legal challenges and apart from gradual decreases in the tax burden when negotiated successfully remains reluctant to phase out these taxes. The following sectors are burdened by sectoral taxes or surtaxes: finance (levy on financial institutions, extra tax on selected financial institutions, financial transactions tax, and insurance tax), energy (income tax on energy providers, tax on wires and pipelines), telecommunications, marketing and advertisement, tobacco manufacturing and distribution, and food retail.<sup>126</sup>

Selective or discriminatory sector-specific taxes

### 2.1.9 Openness, transparency, and State-owned undertakings

In the first half of 2016, the government introduced a number of measures which, as declared, aim at the more accurate implementation of freedom of information obligations in connection with State-owned economic operators active in different markets in the Hungarian economy. As a broader objective, the measures were envisaged to provide an enhanced protection of business information and secrets relating to the operation of these companies and, thus, to secure their competitiveness. The measures proposed raised considerable controversies mainly as result of the broad scope of their provisions and the burdens imposed on the exercise of the

Protecting business information held by State-owned companies

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<sup>121</sup> Act 2012:CLVII. The Commission closed the infringement procedure initiated in this matter on 25 February 2016 (Infringement number 20132086).

<sup>122</sup> <<http://tldr.444.hu/2015/11/30/az-elelmiszerpiacot-akartak-atrendezni-a-plazastoppal>> (last visited 22 Feb. 2016). The decisions taken by the minister were only made public following a FOI request by investigative journalists.

<sup>123</sup> Fiscal consolidation and lowering the tax burden on labour, OECD 2014, 25

<sup>124</sup> OECD 2014, 25

<sup>125</sup> hervis, berlington, SAs. Commission Country Report, 2016, 35.

<sup>126</sup> OECD 2014, 25. Commission Country Report, 2016, 35.

right to information. Also, in liberalized sectors, or in sectors waiting to be liberalized, there is always the doubt that business secrecy protection is used to entrench the market position of the incumbent economic operator, or it is introduced to hide from scrutiny business transactions which aim to enhance the position of incumbents before market opening.

In 2016, Act 2012:CLIX on postal services was amended<sup>127</sup> by expanding its freedom of information clause in Art. 53(4) which requires, as a general rule, postal service providers to make information determined in legislation publicly available. The aim of the modification was to protect the financial, economic or market interests of the State-owned incumbent. The second sentence of Art. 53(4) now reads that

With the exception of information relating universal postal services, information concerning the universal postal service provider or economic operators under the direct or indirect control of the universal postal service provider, the disclosure of which amounts to a disproportionate harm of the business activities of these undertakings, is not available for public disclosure. The harm is disproportionate, especially when the disclosure, communication, use or the obtaining by others of the information would secure for the competitors of these undertakings an unjustified advantage.

The Constitutional Court examined this modification in light of the constitutional prohibition on retroactive legislation.<sup>128</sup> The issue of substantive compliance with the freedom of information provisions of the Fundamental Law was not raised. It found that the new provision reinforced the main principle of the public availability of information relating to universal public services, and that its new restrictive rule merely clarified a restriction which had previously existed in another statute. Introducing a disproportionate harm clause was held to be permitted under the Act on freedom of information, which in Art. 27(3) uses the same clause in relation, among others, to State economic activities. The decision concluded that the modification of the Act on postal services had not changed the legal environment relating to freedom of information. The responsibility for the lawful application of the clause was deferred to ordinary courts in prospective individual litigation. It is only hoped that national courts will read the new provisions in light of the final sentence of Art. 27(3) of the Act on freedom of information which maintains that the exemption provided under the disproportionate harm clause must not jeopardize entirely the right of access to information.

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<sup>127</sup> Bill T/8829

<sup>128</sup> Decision 7/2016.

As part of the 2017 budget, Act 2016:LXVII modified Act 2009: CXXII on the more efficient operation of business undertakings in public ownership.<sup>129</sup> Its Art. 90 introducing a new Art. 7/I(1)-(3) to that act provides that

The public disclosure, for the duration determined in Annex 1, of business, financial, technical information included in contracts concluded in connection with the activities of certain business undertakings in public ownership and of economic operators under the direct or indirect control of these undertakings, shall be prohibited.

The public disclosure, for the duration determined in Annex 1, of business, financial, technical information used in connection with the preparation and the conclusion of these contracts and in connection with the preparation of the related business decisions, in case it is justified by the protection of interests relating to national security, public finances, or external relations, shall be prohibited.

The new provisions continue that information relating to the business activities of business undertakings in public ownership and of economic operators controlled by them must not be available for public disclosure, when disclosure or the obtaining by others of that information would cause, from the perspective of the business activities of these undertakings, disproportionate harm. The harm is disproportionate, especially when the disclosure, the communication, the use, or the obtaining by others of the information would secure for the competitors of these undertakings an unjustified advantage. These latter two provisions, according to the new Art. 8(8) of Act 2009:CXXII, are applicable to information, contracts, and applications relating to information dated before the entry into force of the modifications, and to procedures in progress at the same date.

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<sup>129</sup> The business undertakings involve as listed in Art. 7/I(1): electricity production, electricity trading, electricity distribution, natural gas trading, natural gas distribution, natural gas storage, transmission system operation, district heat production, central data collection and management system operation, registered telecommunications companies, or companies carrying out management activities in support of these activities.

## 3 Market access and level playing-field: sectoral legal mapping and review

### 3.1 The general rules on providing services in the Hungarian market

Act 2009:LXXVI on the general rules of commencing and continuing activities in the service economy provides the foundations of market access and equal treatment for EEA economic operators in the Hungarian market for services. Its main objective is to implement the Services Directive<sup>130</sup> and to introduce provisions for the enforcement of Regulation 1024/2012/EU.<sup>131</sup> In fulfilling its tasks, it not only guarantees the rights enjoyed under the free movement of services by individuals and undertakings established in Hungary or in another EEA Member State, but also ensures the incorporation and the detailed regulation of the exemptions provided under EU law (Art. 1(1)). Some of the exemptions concretised in the act are rather general and their generous interpretation by public authorities or courts may lead to conflicts with EU law. The act's provisions are subsidiary to the rules on the mutual recognition of degrees and qualifications, the regulation of electronic infocommunications services, and to the general, directly applicable provisions of EU legislation governing a particular service activity (Art. 1(3)-(5)).

#### 3.1.1 Access and equal treatment in Hungarian market

The act guarantees

the right of commencing and continuing the provision of services without subjecting that activity and the using of those services in the form of establishment in Hungary to an obligation to obtain a license/authorization, or to an obligation to notify the relevant public authority (Art. 3),

- unless regulated otherwise in Hungarian legislation on the basis of mandatory requirements in the general interest.

the equal treatment of service providers established in other EEA Member States in terms of the conditions of commencing and continuing the provision of services and of the requirements imposed on them, when services are provide in the form of establishment in Hungary (Art. 4(1)),

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<sup>130</sup> Directive 2006/123/EC on services in the internal market.

<sup>131</sup> Regulation 1024/2012/EU

- this means that restrictions on commencing and continuing the provision of services cannot be imposed on the grounds that (Art. 4(2)),
  - the person concerned is not Hungarian citizen,
  - the seat of the organization is not in Hungary,
  - any of its members, employees, senior officials, or the members of its supervisory board does not have Hungarian nationality, or their place of residence is not in Hungary,
  - the main place of business operation is not in Hungary,
  - it selected a certain form of establishment in Hungary,
  - it is also established to provide services in another EEA Member State, or is registered for this purpose in another EEA Member State, or is member of a professional body in another EEA Member State,
  - previous periods of providing services in Hungary, and the length of that period, or previous registration for this purpose in Hungary, and the length of that registration,

that requirements of reciprocity laid down in legislation are not applied to service providers established in another EEA Member State (Art. 5).

The act also guarantees

the freedom to choose the service activities provided (Art. 6(1)),

- provided that legislation does not provide otherwise for the purposes of realising the following general interest considerations,
  - the protection of the independence and dignity of a profession, ensuring respect for a profession, and the protection of professional secrecy,
  - ensuring fair practices with regards other individuals working in the profession,
  - ensuring the independence and impartiality of service activities laid down in legislation in accreditation, or technical controlling, examination and testing.

The act also guarantees

the freedom of the cross-border provision of services by a service provider established in another EEA Member State and providing services lawfully in that State, without subjecting that activity to an obligation to obtain a license/authorization, and without subjecting the commencing of that activity to an obligation to notify the relevant public authority, or to obtain any certificate or similar documents from a public authority (Art. 7(1)),

- unless regulated otherwise in Hungarian legislation on the basis of requirements relating to the protection of public order and security, national security and military interests, or of the enforcement of public health or environmental requirements.

the freedom of providers of cross-border services from restrictions and from the application of the requirements laid down in legislation regarding the commencing and continuing of service activities (Art. 7(2)),

- with the exception of legislative provisions concerning (Art. 7(3)),
  - the protection of public order and security, national security and military interests, or the enforcement of public health or environmental requirements,
  - the requirements laid down in legislation on the mutual recognition of diplomas and qualifications, and other requirements regulating entry to a regulated profession,
  - the protection of personal data and freedom of information,
  - the law of obligations,
  - representation in judicial procedures, compulsory legal representation, or the compulsory use of public notaries,
  - the law on intellectual property rights,
  - the entry and residence of foreign citizens,
  - the requirements laid down in the EU regulations on the coordination of social security systems,
  - the rules in the labour law on the posting and secondment of workers, and on their temporary employment,
  - the rules on the use of foreign-registered motor vehicles in Hungary.

The act guarantees

the freedom to receive services offered lawfully by a service provider established in another EEA Member State, in the relevant case on the basis of the same requirements applicable to Hungarian-established service providers (Art. 8(1)).

the right to receive services offered lawfully by a service provider established in another EEA Member State under the same conditions relating to access to the State subsidy as those applicable to services provided by a Hungarian-established service provider, in case of services offered under a subsidy provided by legislation (Art. 8(2)).

### **3.1.2 Specific requirements ensuring access and equal treatment**

#### *3.1.2.1 Non-discrimination*

In connection with the reception of services, it is prohibited to implement any form of discrimination relating to the nationality, residence or seat of operation of the service recipient, not including the establishing of objective and justifiable conditions which have direct connection with the nature of the service activity or with the circumstances of service reception (Art. 11(1)). General contractual clauses relating to the reception of services which lead to discrimination defined in Art. 11(1) are void (Art. 11(2)).

#### *3.1.2.2 Lowered administrative burdens*

As a matter of the general procedural environment relating to the registration, notification, supervision, and the sanctioning of cross-border service provision, special rules were introduced by the act (Art. 12). These include

the notification of the applicant of the opening of the necessary licensing procedure (Art. 13).

the general principle that the silence of the relevant public authority constitutes as an approval by that authority enabling the provision of the service in question (Art. 14).

the prohibition of double-licensing

#### *3.1.2.3 The prohibition of double scrutiny*

In case a service provider established in an EEA Member State, is required to meet a condition concerning the commencing or the continuing of the provision of services, or an equivalent requirement laid down in legislation in that Member States, in domestic licensing processes compliance with that condition or requirement must be presumed (Art. 15(1)).

In case the Hungarian authority proceeding in the case has no official knowledge of the substance of the condition or requirement provided in the

law of another EEA Member State, and the service provider concerned fails to provide evidence of the substance of that condition or requirement and of compliance with it, the authority contacts the responsible authority in the EEA Member State concerned, or the central contact point, if that is more adequate, to provide information on the conditions applied and their supervision (Art. 15(2)).

#### *3.1.2.4 The recognition of documentation issued by the authorities of another EEA Member State*

Hungarian authorities must recognise and accept documents, as providing evidence of a condition laid down in legislation concerning the commencing or the continuing of the provision of services, issued by the responsible authority of another Member State for the purpose of providing evidence of that condition or for equivalent purposes, and any other document capable of providing evidence of compliance with the condition in question (Art. 16(1))

Unless there is a mandatory requirement in the general interest laid down in legislation regulating the commencing or the continuing of the provision of a given service, in the above mentioned circumstances, it cannot be demanded from the applicant to provide original documents, the certified copies of documents, or documents certified by the responsible Hungarian consular office, or to obtain a certified Hungarian translation of the document concerned (Art. 16(2)).

In case of a substantiated doubt concerning the validity of the document issued by the authority of another EEA Member State, the Hungarian authority proceeding contacts the responsible authority of the EEA Member State concerned with the purpose of providing evidence of the validity of that document (Art. 16(3)).

These provisions are not applicable to (Art. 16(4))

documents required to be produced under the applicable legislation to attest the entitlement to practice a regulated profession, including the notification of a cross-border provision of services and the document supplied therein.

procedures under the legislation regulating the registration and the winding up of companies.

documents attesting compliance with the relevant rules of public procurement law.

attesting entitlement to practise law in the Member State of origin by a European Community lawyer.

### *3.1.2.5 The mutual recognition of insurance taken out in another EEA Member State*

Professional insurance taken out in another Member State must be accepted in Hungary, and in case of partial equivalence with the Hungarian regulations, the taking out of a supplementary insurance can be ordered by the responsible authority. The certificates issued by financial service providers established and lawfully operating in another EEA Member State must be accepted as adequate evidence. (Art. 17).

### *3.1.2.6 The prohibition to examine economic justifiability*

In licensing procedures concerning the commencing or continuing of the provision of services, the responsible domestic authority is prevented from examining the economic justifiability of that activity, or the relevant demands in the market or the actual or potential economic impact of the service provision, and the applicant cannot be requested to provide information in this regard (Art. 18).

## **3.1.3 The exemptions regulated separately**

### *3.1.3.1 The public service and public function/power exemption*

Articles 7 and 8 are not applicable (Art. 9)

to services necessary to cover the basic needs of individuals provided by a service provider under a statutory obligation, and to the requirements concerning the sustaining of that service provision.

to representation in judicial or in administrative procedures by a 'European Community lawyer' as defined in legislation.

to auditing services provided under specific statutory obligations.

### *3.1.3.2 The case-by-case restriction of cross border provision of services*

Service provision in Hungary, in the framework of a cross-border provision of services offered lawfully by a service provider established in another EEA Member State, may be suspended by the supervising administrative authority or by a court, and the necessary actions can be taken against the service provider, in case (Art 10(1))

the service provider violates the relevant mandatory requirements laid down in legislation, and, thus, violates or puts into jeopardy the life, bodily integrity, or the assets of the recipient of the services, or of another person.

or as a result of the extraordinary nature of the circumstances of service delivery, the violation of the life, bodily integrity, or the assets of the recipient of the services, or of another person, in the absence of appropriate action, could not be avoided by resorting to other

means, and legislation enables such actions.

The actions against the service provider may only be applicable in case (Art. 10(2))

the legislative basis of this action does not serve the execution of a general, binding EU legal measure regulating the safety of the service in question.

the action taken will enable a degree of protection as a matter of the safety of the service in question higher than that available under the action available to be taken by the authorities of the EEA Member State of the establishment.

the action is proportionate.

and the authorities of the EEA Member State of the establishment of the service provider have not taken the necessary actions, or they are unsuitable to address the violation or the risk.

## 3.2 The transport market

### 3.2.1 Transport by rail

The Hungarian railway transport market is regulated by Act 2005: CLXXXIII on railways and Act 2012:LXI on passenger transport services. In principle, the measures, which implement the EU railway transport directives, establish an open and liberalized transport market where competition and public service obligations both prevail. Only the most important legal provisions are included in this legal mapping report.

#### 3.2.1.1 Overview of the legal and regulatory environment

In general, at the level of statutory provisions the Hungarian market for railway services operates as an open market which provides equal access and equal opportunities to EEA economic operators. The legal framework contains numerous restrictions concerning the carrying out of railways related economic activities, but these, on a general level, are supported either by public interests considerations or by considerations relating to the nature of economic activities in the railway sector.

As a norm, carrying out economic activities in the Hungarian market for railway services (market entry) is subject to the obtaining of a license (here, operating, technical, and safety) and/or concluding a contract for the provision of the relevant service, the substantive and the procedural rules relating to which, and the rules governing the payment of the related fees, as regulated in law, are transparent and reasonable. They do not involve directly discriminatory provisions and provisions which would unduly hinder the access of EEA economic operators to the Hungarian market. The same applies, in general, to the rules on network access, including the rules on access fees, and on capacity allocation.

The regulatory framework operates consciously with compliance clauses (Arts. 29/B(1)-(5), 30(1)-(4), 59(1), 65c, 67/I(4))(Art. 89, 2005:CLXXXIII and Art. 52, 2012:LXI: general EU compliance clause), which include EEA clauses (Arts. 6(3), 9/C(4)), rules on public service contracts (Art. 25(1), 2012:LXI), tendering rules (Arts. 24(3)-(4) and 24(6), and with State aid/public service compensation clauses which declare and aim to ensure that the relevant EU rules are observed (Arts. 45(3), 21(4), 25(3), 29/A, 29/C(2)). In case of passenger transport services, the legal framework contains a general clause ordering the co-application of the relevant EU regulations (Art. 1, 2012:LXI) and specific provisions requiring the application or the co-application of specific provisions of the relevant EU regulation (Arts. 30(4), 45(2), 47(3), 2012:LXI).

The legal framework expresses a clear intention to reserve, in the public interest, certain activities for the State or for State-owned or controlled undertakings, and to preserve, and potentially to augment, again in the

An adequate  
regulatory  
framework

Market access  
ensured

EU compliance

Public interest  
and State  
involvement  
clauses and  
rules

public interest, State ownership. This finds its most general basis in the public interest clause laid down in Art. 3(2) of Act 2005:CLXXXIII which declares railway construction, regeneration and development as public tasks and tasks carried out in the public interest. A special public interest clause applies to public utilities affected by railway construction work (Art. 45(1)) and to the asset management of the railway network (Art. 26(2)). The detailed rules on railway network ownership give clear evidence of this policy direction (Arts. 38(1), 41(1), 41(2)). The same follows from the rules on railway construction, regeneration and development activities. They include provisions on obtaining and augmenting State-ownership (Arts. 45(3), 44/A(5)), and the 'NIF clause and rules' (Arts. 44, 44/A, 46), which latter make it clear that in this domain of activities relating to the creation and the preservation of critical national infrastructure competitive markets have only a limited role to play. The single development framework clause relating to passenger transport services indicates the State's dominant role in passenger transport infrastructure development (Art. 6, 2012:LXI).

The rules governing the right of operation of the railway network include similar provisions cementing, in the public interest, direct or indirect State involvement. The operation of national core network railway lines and Annex 4 railway lines is not part of the railway market (exclusive State activity) (Arts. 11(1)-(2)). The impact of the rules on the ownership and control of the State in railway undertakings on the market is mitigated by the principles, which require that these undertakings are operated as commercial undertakings independent from the State, especially as a matter of their assets, business plans and accounting, and which, in case of network operators lay down their responsibility for their operation (Arts. 11(7), 19(1)). Legislation also places them under an obligation to operate according annual plans, which are put up for public consultation, and to ensure their effective operation (Arts. 11(6), 12, 13). The principle of commercial operation is also laid down for State-owned or State-controlled providers of railway services (Art. 20(2)). The rules governing the participation of non-network operator asset management bodies in the management of railway assets (Art. 27(1)) ensures State involvement in this market and reduces the scope for competition.

While at the level of general policy directions expressed in regulation the protection of public interests considerations may be unproblematic, in case of individual provisions or regulatory constructions the Hungarian approach raises some suspicions under EU law. The general compensation clause under Art. 3/B(4) empowering the responsible minister without regulating the discretionary powers available to him to subsidize from the State budget network operators holds the risk of enabling arbitrary State intervention in the already limited market for infrastructure operation. While subjecting economic activities related to railway transport services to obtaining a

**Problematic provisions**

license, on the basis of the legal provisions available it is difficult to establish that an appropriate balance was struck in determining which activities fall under licensing and which are subject to the less burdening obligation of notification. The substantive and procedural rules of licensing, however, do not raise issues which would suggest that economic operators, especially those from the EEA, would benefit from their planned activities falling instead under a notification regime. In the railway services market, the 'golden share' clause for State-owned or State-controlled railway undertakings (Art. 20(6)) enabling an *a priori* approval of major business decisions may be difficult to defend under EU law. The rules concerning the obligation of network operators owned at least in majority by the State to allow the uses by public authorities of premises at railway stations as administrative offices (Art. 27(3)) can, in principle, enable the State to provide advantages to these undertakings which are not available in normal market circumstances.

There are a number of limited markets regulated under the Hungarian legal framework. In case of railway safety services and railway services requiring a technical license (certification services), the limitations are imposed in the public interest and are reasonable (Arts. 32/A, 36/I). The rules on the market of related services and connected service premises contain more potentially problematic provisions. While it is, in principle, an open market, a number of legal opportunities are provided to prevent competition and the opening of the market. In general, these are based on reasonable grounds, nevertheless, they may open the possibility for arbitrary restrictions on market access. For instance, network operators in the circumstance that they provide basic services on a particular premise are reserved the right to provide the related services and also the complementary and ancillary services (Art. 14(2)). The rules governing dominant position recognize a rather general exception which may close a considerable segment of this market from competition (Art. 14(5)). The exceptions attached to the tendering clause among the rules governing dominant position in Art. 15(4)-(6) relating to the operation of service premises make it unsure whether the market creation intentions are genuine and whether new participants have a real opportunity to enter the market. The limitations in the market which may arise from the operation of integrated railway undertakings seem to be duly compensated by the rules on financial unbundling, the prohibition of cross-financing, financial monitoring and on the internal allocation of capacities (Arts. 21(1)-(3), 21(5), 67/T(1)-(2)).

The Hungarian legal framework contains the possibility of concluding long-term framework agreements concerning the allocation of railway network capacity. Since these, in principle, entail the possibility of violating core provisions of EU economic law, these framework agreements are regulated in a manner so that their compliance with EU obligations is ensured. The

Limited  
markets

Long-term  
agreements in  
the market

legal provisions include a compliance clause with Arts. 101, 102 and 106 TFEU (Art. 59(1)), the requirement that framework agreements cannot negate the rights of third party users of accessing the railway network (Art.59(1)), the necessity to obtain the approval of the railway authority (Art. 59(2)), and the requirement of transparency (Art. 60(5)). The duration of framework agreements is also regulated. There is a 5 year general rule, and the conclusion of agreements for a longer period, with a general 15 year limitation, is subject to conditions (e.g., supported by reasons, adequate planning, purpose-bound agreements: securing investment projects or consolidating risks) (Art. 60(1)-(2)).

The character of the market for passenger transport services is defined by the legal framework treating, in general, these services as public services subject to a public service contract which may involve an imposition of a public service obligation. The public service nature of passenger transport services raises the possibility of offering a public service compensation. The relevant provisions, which restrict competition in the market and enable the financing of transport service providers from public resources, make a concentrated effort to ensure that the relevant principles of EU law are observed, especially that interferences with the market are introduced only to the extent necessary. The nature of the public service activity is defined indirectly in the provision on public service transport timetables which requires that timetabled public service transport services must be operated at the lowest costs and the highest quality of service (Art. 26, 2012:LXI). In principle, this objective is achieved under the general obligations on awarding concessions and on competitive and transparent tendering (Arts. 23(2) and 23(3), 2012:LXI). The different public service financing clauses should, in principle, ensure that competition and market opportunities are not damaged by State intervention (Arts. 30(2), 25(6), 2012:LXI).

The administrative environment of the Hungarian market for railway services, in general, serves the needs of an open competitive market where equal access and equal treatment is offered to market participants. Matters of policy and administration are separated, as it follows from the provisions governing policy-making and administration, and there are rules in place to delimit direct government interference with the market when a market participant is owned or controlled by the State. The rules on network-capacity allocation include the requirement of a one-stop-shop administration (Art. 56). The relevant administrative procedures are subject to objective deadlines (Arts. 76(2), 80/A(3), 80/E). Appeals and judicial redress are provided subject to clauses which, on the one hand, expand (Arts. 78(1)-(3)) and, other, restrict the protection offered (Arts. 80/A(4), 80/C(2), 80/C(6), Art. 79/B(6) on the exclusion of judicial redress in case a dispute settlement procedure is launched, and Arts. 80/C(1), 80/C(5) on immediate execution). These latter seem to be justifiable on grounds of

Public service provision

An overall adequate administrative environment

procedural efficiency and are not vitiated by a violation of the rights of the defence. The Hungarian language requirement for applications for safety certificates and licenses, and for the related file (Art. 80/A(6)), even though it is supported by considerations of administrative efficiency, may be difficult to justify. The restrictive clauses on electronic administration and correspondence (Art. 80/C(3)) may raise similar issues in an integrated services market. The different monitoring and supervision procedures seem adequately regulated as a matter of their purpose, the powers involved, and of the remedies and penalties involved (Arts. 79, 79/, 79/F, 81). The use of the discretionary powers available is only regulated in connection with the monitoring and supervision procedure on railways safety and technical adequacy, which indicates a number of considerations which needs to be taken into account in formulating the final decision (Art. 81(4)).

#### *3.2.1.2 The markets*

The market for railway infrastructure (network) operation.

The market for railway traction services.

The market for freight transport services.

The market for passenger transport services.

The market for related services and connected service premises.

The Act, in its provisions on railway safety, regulates a limited market for railway safety services (Art. 32/A) and for railway services requiring a technical license (Art. 36/I).

#### *3.2.1.3 The activities carried out in the different markets*

State activities.

Regulatory activities.

Licensed activities (operating and technical).

Notified activities.

Activities subject to a safety certificate or a safety license

##### *3.2.1.3.1 The general public interest clause*

The construction, regeneration and the development of railway lines of national importance and of railway lines covered by Act 2006:LIII on

investment projects of special relevance for the national economy are public tasks and tasks carried out in the public interest (Art. 3(2)).

#### 3.2.1.3.2 State activities

State activities include, foremost, the planning of railway lines of national importance (Art. 3(1)). The government, among others, determines which railway sub-lines of national importance are available for use (Art. 3/A(d)). The government decides on the use of railway infrastructure for defence, civil protection, and for disaster management purposes (Art. 3/A(e)).

#### 3.2.1.3.3 Regulatory activities

Regulatory activities include, foremost, the regulation by the State of the availability of the national railway network for use (Art. 3(1)). The responsible minister sets up undertakings or contracts with undertakings for the maintenance and operation of railway lines of national importance, ensures the operation of the undertaking responsible for the operation of the railway network (both independent and non-independent railway network operators), and contracts for the operation of the railway network (Art. 3/B(1)-(2)). The responsible minister ensures railway safety, and establishes and enforces a transparent and non-discriminatory regulatory system for railway safety (Art. 3/B(3)). The responsible minister determines network access fees for the railway network including railway lines of national importance (Art. 3/B(4)).

Compensation clause: the responsible minister provides subsidies from the State budget on the basis of the contracts concluded for the operation of the railway network in order to reimburse justified costs not covered by the fees charged or by the income generated by economic activity connected to the operation of the railway network (Art. 3/B(4)).

#### 3.2.1.3.4 Licensed activities

The provision of the core services which may be provided by railway undertakings, such as traction, freight transport and passenger transport services, but not railway network operation services, is subject to obtaining an operating license (Art. 6(1)).

According to Regulation 45/2006 of the Ministry for Economy and Transport the following activities fall under an operating license (Art. 1).

The operation of (national, regional, suburban, communal, and local) railway undertakings.

Certain technical activities, such as technical activities relating to maintenance of railway lines and their components, or of railway vehicles and railway vehicle equipment, may only be carried out subject to obtaining a technical license (Art. 10(1)(a)-(e)).

Access clause: the operating license issued to railway undertakings does not entail the right of access to the open railway network (Art. 6(1)).

Right to use clause: a national operating license issued to railway undertakings – subject to meeting the conditions laid down in Chapter XII – entails a right to use every open access railway network in the country (Art. 24/A(1)).

#### 3.2.1.3.5 Notified activities

Notified activities can be carried out without obtaining a license (Art. 9/F(1)). They cover network operation and railway services not subject to obtaining a license. The activities carried out under a notification are registered by the railway authority (Art. 5/B Regulation 45/2006).

According to Regulation 45/2006 of the Ministry for Economy and Transport these include (Art. 5/A)

the operation of (national, regional, suburban, communal, and local) railway networks.

the operation of own-purpose railway networks and own-purpose freight transport services.

the operation of industrial railway lines.

the operation of narrow gauge railways.

the operation of heritage railways.

#### 3.2.1.3.6 Activities subject to a railway safety certificate or safety license

Railways undertakings registered in Hungary may only use the railway network having obtained a railway safety certificate (Art. 33(1)).

The management and operation of the railway network is subject to obtaining a railway safety license (Art. 34(1)).

The railway safety certification of a railway undertaking which carries out its activities under a national license is valid to equivalent railway

services in every EEA State (Art. 33(4)).

Safety certificates obtained in Hungary or in another EEA State may be supplemented to cover further domestic railway networks in the form of a supplementary safety certificate (Art. 33(5)).

The detailed rules on railway safety certificates and licenses are laid down in legislation (Art. 35(8)).

#### *3.2.1.4 Rules on ownership*

The dispensation, asset management, use, usage and sale of railway lines and their components which form part of the national core railway network – with the exception of Annex 4 railway lines – are regulated by Act 2011:CXCVI on national assets (Art. 38(1)) (State ownership).

The railway network containing railway sub-lines of national relevance may be owned by an undertaking in which the State holds a majority ownership (Art. 41(1)) (State ownership).

Other railway lines, with the exception of own-purpose railway lines used by the military, may be owned by any natural or legal person (Art. 41(2)).

#### *3.2.1.5 Railway construction and the NIF clause*

The construction, regeneration, and development of railway lines and their components may be carried out by network operators or by a development partner (Art. 44(1)). In case a development partner carries out these activities, the affected network operator – on the basis of a contract regulating the distribution of tasks – must be involved (involvement clause)(Art. 44(2)).

The NIF clause: the NIF National Infrastructure Development Corporation is a prioritized development partner which carries out construction, regeneration and development activities in the name of the State, and to the benefit of the State when its activities affect State-owned assets, on railway lines of national importance and on the related railway premises, financed from the State budget or from EU funds, which activities are important public tasks and carried out in the public interest (Art. 44(3)).

The NIF GSM-R clause: the NIF National Infrastructure Development Corporation and the NISZ National Info-communications Service

Corporation are prioritized development partners which carry out – alongside the commercial development partner – GSM-R network construction activities to the benefit of the State, financed from the State budget or from EU funds, which activities are important public tasks and carried out in the public interest (Art. 46(1)).

The NIF rules: specific provisions relating to State ownership and the management of State-owned assets apply to the involvement of the NIF in railway construction, regeneration, and development activities (Art. 44/A).

### 3.2.1.6 *Entry conditions in the Hungarian market for railway transport services*

#### 3.2.1.6.1 *Activities subject to an operating license*

Licensed activities can be carried out under an operating license granted by the Railway Authority and upon the payment of a fee (Art. 6(1)).

Railway undertakings operating under a license issued in an EEA-Member State, must notify the railway authority of their intention to use the open access railway network 30 days before applying for network-capacity. The notification must contain the operating license issued and a certificate that its insurance contract covers Hungary. (Art. 10 Regulation 45/2006).

As a general rule, operating licenses are issued

without a limitation on their duration (unlimited duration) (Art. 6(5))

and they can be issued either for the entire Hungarian market providing access to the entire open railway network (national) (Art. 7(1)),

or for a geographically confined part of the Hungarian market providing access to the railway network defined in the license (geographically limited) (Art. 7(2)).

Licenses are issued subject to the following conditions.

The railway undertaking is established in Hungary (*belföldön bejegyzett gazdálkodó szervezet*), or licensed in another EEA Member State (Art. 6(2)-(3)).

The railway undertaking provides all the necessary information in the licensing process (Art. 8(2)).

the railway undertaking has the necessary business goodwill (Art. 8(1)(a)), which means that

- the railway undertaking is not subject to insolvency or liquidation

procedures (Art. 2 Regulation 45/2006),

- its CEO is a trustworthy person in the meaning of the Civil Code (Art. 2 Regulation 45/2006).

The railway undertaking applying for a national license is in sound financial status (has sound financial capabilities) (Art. 8(1)(b)),

- in case of license application for passenger transport by rail financial status must be confirmed for the activities not covered by public service contracts (Art. 8(3)),
- according to Art. 3 of Regulation 45/2006 a sound financial status means that
  - the undertaking is able to finance for at least 12 months after the issuing of the license the safety and maintenance obligations prescribed by the relevant public authority,
  - the undertaking has the financial resources to finance its operations, and it is able to meet its financial obligations for at least 12 months after the issuing of the license,
  - the undertaking is free from outstanding financial obligations older than 6 months towards the State budget, or such financial obligations are subject to a repayment agreement,
  - the undertaking is free from outstanding financial obligations older than 6 months towards the Railway Capacity Allocation Office or towards network operators, or such financial obligations are subject to a repayment agreement.

The railway undertaking meets the requirements of professional suitability (Art. 8(1)(c)).

The railway undertaking is able to meet the statutory conditions laid down in connection with the compensation for damages caused by accidents which took place during activities under its duty of care (Art. 8(1)(d)).

#### 3.2.1.6.2 Activities subject to notification

Notified activities can be carried out subject to the conditions that

The railway undertaking is able to meet the statutory conditions laid down in connection with the compensation for damages caused by accidents which took place during activities under its duty of care (Art. 9/F(2)).

The notification is made using the required template, contains the required information, and is submitted in the appropriate manner

(Art. 5/B Regulation 45/2006).

The administrative service fee is paid (Art. 5/B Regulation 45/2006).

#### 3.2.1.6.3 Activities subject to a safety certificate or a safety license

Safety certificates and licenses are issued for a 5 year period, in case the technical and operational conditions laid down in legislation and the safety requirements regarding railway personnel, railway vehicles, and the internal organization of the railway company are met (Art. 35(1)-(2)).

#### 3.2.1.6.4 Activities related to railway safety

Activities related to railway safety are carried out either by a unit established within the railway undertaking or by another railway undertaking on the basis of a contract (Art. 32/A(1)). In case of railway undertakings operating the national railway network activities related to railway safety are carried out by a railway safety unit established within that undertaking (Art. 32/A(2)). Activities related to railway safety are carried out under a railway safety license, railways safety certificate, or under an approved railways safety regulation produced by the railway undertaking concerned (Art. 34/A(4)-(5)).

#### 3.2.1.6.5 Activities subject to a technical license

Persons or organizations under a technical license may participate as a certification organization in activities relating to the use and maintenance of railway vehicles. These organizations must meet the conditions laid down in legislation for carrying out such activities, and are registered in a public registry (Art. 36/I(3)). Their operation is subject to annual supervision carried out upon a payment of a fee (Art. 36/I(6)-(7)).

#### 3.2.1.7 *The conditions of providing services in the Hungarian railway transport market*

Railway undertakings in direct or indirect State ownership, or under direct or indirect control by the State, as a matter of management, administration, and internal controls covering operations, economic decisions and accounting, are operated as commercial undertakings, and on this basis, they enjoy an independent status from the State which entails, in particular the independence of their assets from the State and of their business plans and accounting from the State budget (Art. 19(1)).

Network operators, subject to the rules laid down in legislation, especially regarding their fees and the allocation of their capacities, are responsible for their own system of operation, securing the conditions of their operation, their administration, and for their internal controls (Art. 19(2)).

### 3.2.1.7.1 The operation of railway infrastructure (networks)

#### The right of operation of national core network railway lines

is available to be exercised as stated in the Act on National Assets (2011:CXCVI (Art. 11)) with the exception of Annex 4 railway lines (Art. 11(1)) (State ownership, exclusive State activity, activity reserved for State owned undertaking (sole or majority owner)).

Annex 4 railway lines can be operated by an economic operator in which the State has at least a controlling shareholding (Art. 11(2)).

#### The right of operation of the network of national sub-lines (not including national core network railway lines)

is available to be exercised by economic operators designated by the government (Art. 11(3)).

#### The right of operation of other railway lines

is available to be exercised by any economic operator (Art. 11(4)).

The relevant railway network operator receives the network access fee paid by users, which is obliged to use those fees for the operation of the railway lines operated by him under a license (Art. 11(5)) (fees clause).

State-owned or State-controlled operators of railway infrastructure are responsible for their own operation, administration and internal controls (Art. 11(7)).

### 3.2.1.7.2 The operation of related services and the connected service premises

Related services may be provided by network operators, railway undertakings, other undertakings, natural persons, or self-employed persons (Art. 14(1)).

The services carried out from service premises are defined in points 2 to 4 in Annex 2 (Art. 14(3)).

Economic operators must notify the commencement of their operations within 5 days (Art. 14(6)) (notification clause).

The fees collected for the use of service premises must be paid to the operator of those premises, which must be used to finance the operation of the service premises (Art. 14(7)) (fees clause).

Clause on network operators (reserved activities): on service premises on which network operators provide basic services (a minimal service package) the related services can and must be

provided by that undertaking, and the complementary and ancillary services may be provided by that undertaking (Art. 14(2)).

Rules on dominant position (of railway undertakings): the activities of railway undertakings as an operator of service premises enjoying, in the meaning of the Act on competition, a dominant position in at least one passenger or freight transport market, when the participants of that market obtain the services provided from those service premises (Art. 15(1)), are subject to the rules that

in case Annex 2 Point 2 (a)-(d), (g) and (i) services are provided from a service premise operated by an undertaking controlled directly or indirectly by a railway undertaking a dominant position, the railway undertaking must establish a separate undertaking or a separate unit for the operation of the service premise, which must be operated independently from the undertaking in dominant position (Art. 15(2)) (rules on independent operation Art. 15(2)(a)-(b)).

in case Annex 2 Point 2 services are provided from a service premise operated by an undertaking controlled directly or indirectly by a railway undertaking a dominant position, their accounting must be separated (unbundling) (Art. 15(3)).

in case Annex 2 Point 2 services, the operation of service premises must be tendered for letting or lease (tendering obligation) (Art. 15(4)) provided that

- the premises have not been used for 2 consecutive years, and
- a minimum of two railway undertakings have made offers for obtaining services from those premises,
  - however, there is no obligation to conclude contracts with or to release premises for the use of the undertakings concerned, (Art. 15(5)) and
  - the obligation of compulsory letting or leasing is not applicable when the use of premises is impossible because of ongoing reconstruction work (Art. 15(6)).

Exceptions from the rules on dominant position (for network operators): in case the operator of connected service premises is the network operator, or is under the direct or indirect control of the network operator the rules of dominant position are not applicable (Art. 14(5)).

### 3.2.1.7.3 The operation of railway services

The principle of commercial operation: railway services must be provided efficiently, in adequate quality and at appropriate prices (the lowest possible price commensurate with the desired quality of services) in (competitive) market circumstances and in harmony with the general rules applicable to commercial undertakings (Art. 20(1)-(2)). The activities covered by this principle can be carried out by the management of railway undertakings in their own competence (Art. 20(1)). The principle that the management of railway undertakings must be based on the general rules applicable to commercial undertakings applies irrespective of the ownership of the relevant undertakings (Art. 20(2)). This principle also applies to the delivery of services of general interest, the fulfilment of public service obligations, and the fulfilment of public service contracts (Art. 20(2)).

Railway undertakings are free

to determine their business, financial and investment plans (Art. 20(3)),

- which, however, in case railway undertakings owned or controlled directly or indirectly by the State, the owners must have the right – akin to the rights secured by priority shares under the Civil Code – to approve *a priori* major business decision ('golden share' clause) (Art. 20(6)),
  - this right has no impact on the rights exercised in relation to the appointment of the supervisory board (Art. 20(6)).

to determine their internal structure without violating the other applicable legal provisions (Art. 20(4)(a)).

to determine the provision and the sale of their services (Art. 20(4)(b)).

to determine the prices of their services (Art. 20(4)(b)).

to decide on human resources, equipment and procurement issues (Art. 20(4)(c)).

to increase their market share, develop new technologies and services, and to implement new management techniques (Art. 20(4)(d)).

to introduce new activities in railway service provision (Art. 20(4)(e)).

The principle of separate accounting (financial unbundling): based on the regulation on financial unbundling (Regulation 50/2007 of the Ministry for Economy and Transport and the Ministry of Finance), an integrated railway undertaking carrying out its activities under a national license separates its

accounting, balance-sheet, and profit and loss statement in relation to the activities of operating the railway network, passenger transport services, freight services and traction (Art. 21(1)).

The prohibition of cross-financing: cross-financing is prohibited between the activity of network operation and the other activities of the integrated railway undertaking (Art. 21(2)).

Public service compensation clause: transparency and separate treatment of financial instruments and public service compensation received from the State, which may not be used to finance the provision of other transport services or other business activities (Art. 21(4)).

Financial monitoring clause: the accounting for business activities must be carried out in a manner so that the railway undertaking meeting the prohibition of cross-financing, and the use of network access fees and the incomes resulting from other business activities can be monitored (Art. 21(5)).

#### 3.2.1.7.3.1 Freight transport services

As regulated in Government Regulation 32/2009 on railway freight transport contracts.

#### 3.2.1.7.3.2 Railway traction services

Traction services are provided subject to a traction license using own equipment, or through contracts, to other railway undertakings (Art. 24).

#### 3.2.1.7.3.3 Passenger transport services

Passenger transport services by rail are regulated in Act 2012:XLI on passenger transport, which needs to be co-applied with Regulations 1370/2007/EC and 1371/2007/EC (Art. 1).

##### 3.2.1.7.3.3.1 *The general cooperation obligation of market participants (Art. 3(1))*

Public passenger transport service providers and operators passenger transport premises are obliged, in order to ensure the effective delivery of services, to cooperate. This entails, in particular, that the operators of passenger transport premises, in absence of statutory provisions to the contrary, must

on the basis of a contract,

taking the requirements of transport safety into account,

in compliance with the principle of equal treatment,

and demanding that at maximum its costs including maintenance and operation, amortisation and the profits calculated on the basis of the expected returns are covered,

provide access for other providers of passenger transport services to

premises available to service passengers, especially those for boarding and alighting, purchasing travel passes, accessing passenger information systems, and waiting facilities,

and to stations, stops and similar premises.

#### *3.2.1.7.3.3.2 The single development framework clause (Art. 6)*

The State develops a single framework for the operation and the development of the passenger transport infrastructure, which provides a binding framework for the financing and execution of development concerning passenger transport services delivered by an undertaking owned, directly or indirectly, by the State or by local councils, or in case of development financed from State or EU resources. In case such development is carried out outside of the single development framework, the surplus costs arising from this cannot be taken into account when compensating the public service delivery.

#### *3.2.1.7.3.3.3 Regular public passenger transport services by rail*

The provision of regular public passenger transport services is subject to an operating license (Art. 19(1)).

The operation of public passenger transport services must be carried out as determined in the public timetable (Art. 19(3)).

The operation of public passenger transport services must be carried out on the basis of a publicly available general conditions of carriage approved by the railway authority (Art. 19(4), (6)).

#### *3.2.1.7.3.3.4 Timetabled and other international public passenger transport services by rail*

The right to deliver timetabled international public passenger transport services by rail on the open access railway network is available to railway undertakings issued in Hungary with an operating license for this purpose, railway undertakings established in an EEA Member State for the purpose of international passenger transport services and issued with an operating license, and railway undertakings established in a third State on the basis of an international agreement or of reciprocity (Art. 40(1)).

Cross-border passenger transport services may be provided by a railway undertaking operating under a national license subject to the provisions of the applicable international agreements (Art. 40 (2)).

In case of international passenger transport services by train, the railway undertaking is entitled to ensure the alighting and the getting on of

passengers at any railway station on the railway line, including railway stations in the same EEA Member State (Art. 45(1)).

The licensing of new international passenger transport services by rail must take place according to Regulation 869/2014/EU (Art. 45(2)).

In case of international passenger transport services by rail by a service provider established in another EEA Member State, the responsible minister, in order to protect the interests of the national railway transport services sector, may restrict in a regulation open access to the network when the international passenger transport service affects services which are provided on the basis of one or more railway passenger transport service public service contracts (Art. 47(1)). The alighting and getting on of passengers may only be restricted by such a regulation in case the railway authority establishes in a decision that the railway undertaking concerned is likely to suffer economic disadvantages in its public service activity (Art. 47(2)). In determining this economic disadvantage, the railway authority proceeds under Regulation 869/2014/EU (Art. 47(3)).

#### *3.2.1.7.3.3.5 Rules on public service passenger transport services by rail*

Public service obligations in connection with regular local, suburban, regional or national passenger transport services, which on public interest grounds may involve cross-border passenger transport services, may be laid down in a public service contract (Art. 20(1)(5)).

The preparation of public service transport timetables: timetabled public service transport services must be operated at the lowest costs and the highest quality of service (Art. 26).

##### *3.2.1.7.3.3.5.1 The public service contract*

The domestic passenger transport services – with exceptions (replacement bus services and cabotage) must be provided on the basis of a public service contract (Art. 23(1)).

**Concessions clause:** In case the public service contract qualifies as a service concession, with the exception of public service contracts on national, regional and suburban railway passenger services where the tendering process can be omitted, the relevant public procurement rules must be observed (Art. 23(2)).

**Competitive and transparent tendering clause:** the tendering process must be executed in compliance with the principles of fair competition and transparency (Art. 23(3)).

**Non-EEA equal treatment clause:** service providers from outside the EEA may participate in the tendering process only when in their State of establishment national treatment is available to foreign service providers (Art. 23(3)).

### 3.2.1.7.3.3.5.2 The public service obligation

A public service obligation may be ordered or maintained when (Art. 29(1))

the interests of the population requires that the passenger transport public service is provided,

the economically sustainable provision of the public service cannot be achieved by alternative means, and

the service provider receives compensation for the justified costs not covered by its incomes.

The preliminary assessment clause: the imposition of the public service obligation must be preceded by an examination whether the public service task could be discharged using other means of transport, by other service providers, or under other conditions of operation, and the overall more suitable option must be selected. The decision must be taken within a year. The service provider must provide the public services under the original condition until the decision is taken, or for a maximum period of 1 year. (Art. 29(2)).

Alternative means in railway public services clause: the responsible minister may permit that the railway passenger transport public service provider provides the timetabled public services by using road transport vehicles, in case this results in savings for the railway undertaking in question, the passengers are not subjected to less favourable conditions, and the public service is provided with similar or better technical specifications as a matter of the environmental impact of the public service in question (Art. 29(4))

Clause on passenger transport public services provided under a contract: local councils may contract for the delivery of non-timetabled passenger transport public services under the conditions (1)-(6) listed above (Art. 29(7)).

### 3.2.1.7.3.3.5.3 The public service compensation

The public service passenger transport service provider, except when excluded, is entitled to public service compensation (Art. 30(1)).

The public service compensation must be determined in the public service contract following the provisions of Regulation 1370/2007 in the following way (Art. 30(4))

the tasks of the public service provider are defined in an unambiguous manner,

the calculation of the public service compensation is defined in advance and it is based on objective and transparent conditions,

the amount of the public service compensation does not exceed the sum of the costs incurred in the delivery of the public service and the reasonable profit of the public service provider not covered by the fees income, the social transport fee subsidies, and by other incomes and subsidies.

Transparent financing clause: the organization responsible for the delivery of public services, having regard to the economic monitoring of public service delivery and to the justified interest of the service provider to maintain its operability, must establish a financing system for the compensation of public services which ensures the clear and obvious separation of the costs of using the transport infrastructure available, the justified costs of the service providers not covered by incomes, and the State subsidies provided to compensate the fee discounts available in passenger transport public services under legislation (Art. 30(2)).

Compliance clause: the public service compensation must be paid following Regulation 1370/2007/EC (Art. 30(3)).

Comparable costs clause: in case the public service provider was not selected in an open tendering process, the costs taken into account in determining the amount of compensation must be based on the average costs of a well-run undertaking offering the same public services (Art. 25(6)).

In case of a public service provider selected in an open tendering process, the amount of the public service compensation is determined in that process and is laid down in the public service contract. Such public service providers, in case they are offered exclusive rights, may only request additional public service compensation if they establish using specific amounts a significant alteration following the conclusion of the public service contract in the circumstances. Such changes include changes in the demand for passenger transport services or in the business environment which at the time of concluding the contract could not be accounted for the duration of the contract as the usual risks of economic activity. (Art. 25(6)).

Financial unbundling clause: in case of public service compensation provided in a public service contract, or of public service obligations imposed, the public service provider must in its accounting separate in a clear and obvious manner the assets, resources, incomes, and expenditures related to the delivery of the public service in question (Art. 26(7)-(8)).

#### 3.2.1.7.3.3.5.4 The public service compensation obligation imposed on other service providers

The railway authority in a public service contract may establish an obligation of public service compensation – which is paid to the organisation responsible for the delivery of the public service in question – on railway

undertakings for obligations established in that contract, which undertakings provide passenger transport services, which do not qualify as public services, between two domestic railways stations, on which railway line another railway undertakings provides public service passenger transport services on the basis of a public service contract (Art. 48(1)).

The railway undertakings affected must pay an equal amount of public service compensation (Art. 48(2)).

The income from the public service compensation and the amount paid out as compensation must not exceed the total or partial costs arising from the delivery of the public service passenger transport service, taking into account the relevant incomes and a reasonable profit expected in the sector for the fulfilment of the said public service obligations (Art. 48(2)).

The amount of the public service compensation must be determined having regard to the principles of fairness, transparency, equal treatment and proportionality (Art. 48(3)).

The public service compensation obligation must not threaten the economic viability of the railway undertaking concerned (Art. 48(4)).

The Commission must be provided information on such compensation arrangements (Art. 48(5)).

#### 3.2.1.7.3.3.5.5 The rules on public service contracts

Public service contracts may be concluded by the responsible minister having obtained the consent from the minister responsible for the public finances, the mayor on the basis of an authorisation from the local council, or by the transport organiser appointed in legislation (Art. 25(1)).

The length of the public service contract: as stated in Art. 4(3)-(4) Regulation 1370/2007/EC (Art. 25(1)).

The modification of the public service contract: as stated in Art. 4(3)-(4) Regulation 1370/2007/EC (Art. 25(1)).

The financial guarantee for public service compensation: in case the public service contract includes an obligation which causes an economic disadvantage to the service provider, as regards the public service compensation payable it must contain a financial guarantee which is valid at least for 3 years (for contracts valid for less than 3 years the financial guarantee must be valid for the duration of the contract) (Art. 25(1)).

The public service contract may only be terminated in the cases and under the circumstances regulated by the contract (Art. 25(7)).

The obligation to contract with passengers: in connection with passenger transport services included in the public service timetable

determined in the public service contract, the service provider is subject to an obligation to contract with the passengers willing to use those services (Art. 25(6)).

The restriction of exclusive rights: in case the public service contract provides exclusive rights to the service provider, that right may only be restricted without its consent on the basis of Art. 29(3) or as stated explicitly in the public service contract (Art. 25(7)).

The restrictions on transferring the public service task to a third party: the right to carry out the public service tasks regulated in the public service contract may only be transferred in exceptional circumstances to a third person which meets the conditions laid down in statute and only after obtaining the consent of the organization responsible for the delivery of the public service in question (Art. 25(7)).

Sub-contracting clause: the service provider may subcontract the provision of the public service to the extent specified in the public service contract, but not to an extent higher than 49 per cent (Art. 25(8)). the sub-contractor must be a service provider which qualifies as a transparent organisation in the meaning of Act 2011:CXCVI on national assets (Art. 25(8)).

#### 3.2.1.7.3.3.5.6 Public service fees

The system of public service fees, including the fee discounts, must be determined in the public service contract (Art. 31(1)).

In case the revenues are collected by a transport organiser, the system of public service fees is determined in the contract for the discharging of tasks (Art. 31(2)).

The system public service fees must be determined, on the basis of the principle that the competitiveness of passenger transport public services must be ensured over individual modes of transport, by the organisation responsible for the delivery of the public service in question in a manner that it covers the justified costs and the profit necessary for continuing operation, , taking into account deductions and subsidies, (Art. 31(5)).

The fee structure regulated in the public service contract must ensure (Art. 31(1))

that the fees charged are proportionate to the service provided.

that additional fees are justified by the characteristics of the service provided.

the competitiveness of passenger transport public services over individual modes of transport is ensured.

that national, regional and suburban public service passenger

transport services are duly differentiated in the applicable fees.

that in case of local and suburban transport services, time based access is provided alongside other forms of access.

that the interoperability of different transport service providers is ensured.

#### 3.2.1.7.3.3.5.7 The compensation of fee discounts and social transport fee subsidies

It is determined in a government decree, and it may be available in case of public service passenger transport services provided on the basis of a public service contract (Art. 33(1)-(2)).

It is provided on application by the service provider, or by the transport organiser in case it is entrusted with the task of collecting passenger transport service revenues (Art. 33(3)).

This form of compensation is excluded when (Art. 33(4))

the fee discount is compensated from other resources as defined in legislation.

the fee discount is provided on the basis of the corporate strategy of the service provider.

legal persons or other organisations purchase tickets and passes for children and students in educational facilities or in child protection institutions.

#### 3.2.1.8 *Network access*

Equal and non-discriminatory access to network services defined in Annex 2 Point 1 on the basis of transparent conditions and upon the payment of a fee (Art. 49(1)). The same applies to the access to the related services defined in Annex 2 Point 2 (Art. 49(3)) and to complementary services defined in Annex 2 Point 3 (Art. 49(4)). Ancillary services defined in Annex 2 Point 4 may be provided to a single market participant; in case it is provided to other market participants, the general rules apply (Art. 49(5)).

Distinction between open access railway networks and reserved railway networks (Art. 51).

Detailed regulation: in Regulation 55/2015 of the Ministry of National Development on the rules of open access to the railway network.

##### 3.2.1.8.1 *Rules on capacity distribution*

In the absence of directly applicable EU measures, the capacity of open access railway networks is allocated by the network operator (Art. 52(1)).

The network operator must be able to provide information on the network-capacity already allocated, allocate the capacity available, and to ensure the most effective use of network-capacities (Art. 52(5)-(6)).

The network-capacity allocated cannot be transferred to a third person and cannot be traded (Art. 52(2)). The violation of this rule leads to an objective 3 year ban on obtaining network-capacity (Art. 52(3)).

The capacity in open access railway networks must be allocated (Art. 53(1))

in observance of the principles of transparency and equal treatment,  
having regard to the different nature and purpose of different railway lines.

Every potential user has a right to apply, in exchange for a fee, for capacity to use the railway network and have access to the services defined in Annex 2 (Art. 54(1)-(2)).

The allocation of network-capacity is based on a framework-contract concluded between the user and the network operator, which serves as a condition for an application for network-capacity (Art. 54(4)).

#### 3.2.1.8.1.1 Rules on contracting

The network operator must conclude a contract concerning the allocation of capacities with the user (Art. 57(1)). The terms of the contract must be transparent and without discrimination (Art. 57(2)).

#### 3.2.1.8.1.2 The long-term framework-agreement

These must be concluded in compliance with Arts. 101, 102 and 106 TFEU to determine the conditions of future applications for network-capacity, which, however, cannot exclude the rights of third party users of accessing the railway network (Art. 59(1)).

The framework agreement must be approved by the railway authority, which approval cannot be denied if the agreement meets the conditions laid down in legislation (Art. 59(2)).

The capacities affected by the framework agreement, without violating business secrets, must be published in the network statement (*hálózati üzletszabályzat*) of the network operator (Art. 60(5)).

Framework agreements are concluded for a 5 year period, which can be renewed for another 5 years. When justified, such agreements can be concluded for periods shorter or longer than 5 years. Longer framework agreements may be concluded in case the carrying out of special investment projects or risks justify that extension. (Art. 60(1)).

As a special rule, in case the reasons are adequately stated, the framework agreement can be concluded for a period of 15 years provided that the

service included necessitates significant and long-term investments. Agreements for a period longer than 15 years may only be concluded in special circumstances, for instance, in case of large-scale, long-term, investments where the obligations concerning the investment project in question, together with an amortization plan, are included in the agreement. In such instances, detailed information on the capacity provided may be included in the agreement. (Art. 60(2)).

#### 3.2.1.8.2 Access (network usage) fees

The network operator establishes and collects the fees for network usage (Art. 67/A).

The fees must be charged for the entire railway network on the basis of uniform principles.

The fees must affect railway undertakings in similar railway services market providing similar railway services equally and without discrimination.

The fees must comply with the detailed rules established for the given time period.

##### 3.2.1.8.2.1 Increasing the fees

In case the market of railway services makes it possible and the access fees collected are expected not to cover the justified expenses and investments of the operator of an open access railway network, the fees payable after Annex 2 services may be increased by a general sum up to the level of covering the above mentioned expenditure and input (Art. 67/E(1)), with the following taken into account.

Increase in the productivity of railway undertakings.

The requirement of effective use of the railway network.

The requirement of optimal competitiveness of railway markets.

The requirements of transparency and equal treatment.

##### 3.2.1.8.2.2 The comparability of fees

In order to prevent discriminatory practices, the median and limit values of the fees charged by individual network operators for similar uses of the railway network must be comparable (Art. 67/F(1)). The fees charged within a single market segment for the same services must be determined on the

basis of the same rules (Art. 67/F(1)). The fees charged must be published in the network statement of the network operator (Art. 67/F(2)).

#### 3.2.1.8.2.3 Justified higher fees

In order to cover expenses, network operators may charge higher fees for services concerning freight transport to and from non-EEA States operating a railway network of different railway gauge (Art. 67/G (1)).

In case of the development of existing railway lines, or the construction of new railway lines, on the basis of a long-term cost plan a higher fee may be charged provided that

the investment leads to a more efficient usage of the railway line,  
or it leads to an increase in income at least to the network operator or one of the users,  
and the investment could not be realized without the fee increase (Art. 67/G(2)).

#### 3.2.1.8.2.4 Rebates

General and individual rebates may be offered in compliance with the equal treatment principle and without distorting competition between railway undertakings (Art 67/H(1)). Rebates may only be offered to individual segments of the open access railway network subject to the condition that similar services must receive similar rebates (Art. 67/H(2)). General rebates must not exceed the amount of the actual administrative cost reduction achieved by the network operator, and the administrative cost reduction included in the fees charged cannot be taken into account when determining rebates (Art. 67/H(3)). Individual rebates can be offered on under-used railway lines with the purpose of increasing railway traffic or of developing new railways services on individual railway lines on a temporary basis (Art. 67/H(4)).

#### 3.2.1.8.2.5 Compensation for sunk costs

Provided that the costs of competing transport modes exceed the equivalent railway transport costs, on a temporary basis compensation can be provided to network operators to account for the sunk environmental, accidental, and infrastructural costs arising from other modes of transport (Art. 67/I(1)). The compensation provided must comply with Arts. 101, 102 and 106 TFEU (Art. 67/I(4)). The access fees charged by the network operator affected must be decreased with an amount reflecting the amount of the compensation provided (Art. 67/I(2)). Railway undertakings operating under exclusive rights, in case they pay lower access fees as a result of the compensation,

must decrease its service fees with an amount reflecting the amount of the compensation provided (Art. 67/H(3))

### 3.2.1.9 *The rules of contracting for the provision of services in the Hungarian railway transport market*

State aid clause: in harmony with the EU rules, aid can be provided in a contract to railway infrastructure (network) operators and railway undertakings for the purpose of developing combined railway traffic, or for purposes of employment, training, and of implementing structural changes (Art. 25(3)).

#### 3.2.1.9.1 Asset management

Contracts for asset management are concluded by the State with network operators operating the railway network (Art. 25(1)).

Contracts for the asset management of the railway network owned by the State can be concluded with network operators, integrated railway undertakings, central public bodies financed from the State budget, and with other non-network operator asset management undertakings owned fully by the State (Art. 26(1)).

Public interest task clause: the asset management of networks is a public interest task (Art. 26(2)).

#### 3.2.1.9.1.1 Rules on non-network operator asset management bodies

Non-network operator asset manager bodies (*nem pályaműködtető vagyonkezelő*) (central public bodies financed from the State budget and on other non-network operator asset management undertakings), acting on the basis of an asset management contract with the State, may without a charge cede to a network operator, in a contract on network development, modernization or maintenance, the right of usage of the relevant railway network, and they may also transfer their justified costs and expenses to the railway network operator in question (Art. 27(1)),

#### 3.2.1.9.1.2 Rules on access to premises

National railway network operators owned at least in majority by the State may be obliged by a government decision, or on request from a public authority to provide at railway stations premises for the administrative offices of public authorities, provide unimpeded access to those premises, and to enable to the use and operation of railway stations and their info-communications network. The rules and costs of such uses are determined in a contract (Art. 27(3)).

### 3.2.1.9.1.3 Rules of State ownership (asset management)

In case of the State gaining ownership over assets necessary for the operation of the railway network, in contracts relating to the operation of those assets the State will act as the successor in law of the previous owner, and the contracts remain valid in their original form without a declaration for this purpose of the new parties (Art. 26(5)).

### 3.2.1.10 Railway network operation

Contracts for the operation of railway lines (national, regional, or suburban) are concluded by the State (Art. 25(2)).

A minimum 5 year contract can be concluded for the operation of the railway network which contains railway lines of national relevance whereby

the parties agree for the entire duration of the contract on its conditions and on the payment construction enabling the financing of the network operator (Art. 28(4)).

the legal grounds and amount of other financing of railway lines of national relevance from the State budget (Art. 28(5)).

the exact amount of financing from the State budget, its legal basis, the aims of financing, the method and timing of financing, the method of defining justified costs eligible for reimbursement, the legal consequences of violating the contractual conditions, the rules on reporting and on monitoring concerning the use of State financing, and Annex 3 conditions are defined (Art. 28(6)(a)-(h)).

an obligation is established to cover the justified costs of the network operator not covered by the network access fee and by incomes from other business activities (Art. 28(1)).

The conditions of the contract must be established so as to ensure that

under normal business circumstances, within the 5 year period, the incomes (all business and State incomes) and the expenses of the network operator are as a minimum balanced (Art. 28(2)(a)).

the network operator, subject to meeting the relevant quality and safety standards, is committed to decrease operation costs and network access fees (Art. 28(2)(b)).

Transparency clause: an inventory of equipment owned or operated by the network operator must be established so that the amount of financing necessary for maintaining that equipment can be established. The same applies to the financing of railway network regeneration and modernization (Art. 29(5)).

State aid clause: State aid (direct or indirect) may be available to finance, in harmony with EU rules, new infrastructure investment projects, the amount of which must be commensurate with the operation tasks, the size of the network and with the financial needs (Art. 29/A).

#### *3.2.1.11 Agreements on cross-border traffic*

Agreements on cross-border traffic (between Member States) may not include discriminatory provisions affecting railway undertakings and may not restrict their freedom to provide services across borders (Art. 29/B(1)). Rules are available to respect EU competences concerning agreements with third States (Art. 29/B(2)-(5)).

#### *3.2.1.12 Financing through EUROFIMA*

In an publicly available government decree, for EUROFIMA financing obtained the development or refurbishing of railway carriages, or for the purchase of new railway carriages by railway undertakings in which the State is directly or indirectly the majority owner, or for railway undertakings under the majority control of such railway undertakings (Art. 29/C(1)).

The guarantee fee must not qualify as State aid, or it must be determined in a manner that it constitutes State aid compatible with EU rules (Art. 29/C(2)).

The annual resources available for State guarantee must be determined in the State budget (Art. 29/C(4)).

#### *3.2.1.13 Railway safety*

Railway safety rules must be determined in legislation, must comply with the relevant common rules established by the EU, and must enable the creation of the common European railway transport system, (Art. 30(1)-(2)).

#### *3.2.1.14 The administrative environment*

##### *3.2.1.14.1 The administrative service fee*

The procedures initiated on the basis of individual applications before the railway authority and before the transport authority (concerning technical licenses, and safety certificates and licenses) incur an administrative service fee (Arts. 67(1) and 80(3)).

##### *3.2.1.14.2 Administrative deadlines*

Objective deadlines are laid down for administrative procedures before the railway authority (Arts. 76(2), 80/A(3), 80/E)).

#### 3.2.1.14.3 Appeals and judicial redress

The administrative decisions taken by the railway authority can be changed in judicial review (Art. 78(1)).

The decisions taken by the railway authority, with the exception of those relating to the general review of the railway market and to monitoring and supervising the implementation of the provisions on passengers' rights, are subject to review (*újrafelvétele*) (Art. 78(2)).

The decisions taken by the railway authority concerning, among others, licensing, market supervision, dispute settlement, and monitoring reservation fees are made public (Art. 78(3)).

In procedures before the transport authority concerning the issuing of safety certificates or licenses, there is no right of appeal for a party which, despite due notification, did not participate in the administrative process (Art. 80/C(2)).

Elements of decisions on safety licensing not challenged in appeal become final (Art. 80/C(6)).

There is no right of review (*újrafelvétele*) against final decisions concerning the licensing of railway lines and their components which form part of the national, regional, suburban or local railway network, and of railway operating premises (80/A(4)).

The application for railway safety certificates and licenses, and the file must be submitted in Hungarian (Art. 80/A(6)).

The majority of the administrative procedures cannot be initiated electronically (Art. 80/C(3)).

There is no right of electronic correspondence for the party initiating the procedure (Art. 80/C(3)).

#### 3.2.1.14.4 Monitoring and supervisory procedures and powers

Monitoring and supervising (to ensure compliance with financial unbundling rules and with State aid rules) (Art. 79)

Monitoring and supervising (to ensure compliance with passenger rights) (Art. 17(1)-(2) Act 2012:LXI)

Monitoring and supervising (to ensure compliance with the rules on market) (Art. 79/E-F)

Monitoring and supervising (to ensure compliance with safety and technical rules) (Art. 81)

#### 3.2.1.14.5 Fines

The fining powers are limited temporally (imposed up to 3 years from the violation (Art. 81(5))), and in the amounts charged (in connection with the railway network (up to 50000 kHUF), with railway vehicles (up to 15000 kHUF), railway safety certificate or license (up to 15000 kHUF), training of safety personnel (up to 3000 kHUF), with health of safety personnel (up to 3000 kHUF)).

### 3.2.2 Transport by road

The Hungarian road transport market is regulated by Act 1988:I on transport by road 2005: CLXXXIII on railways and Act 2012:LXI on passenger transport services. In principle, the measures, which ensure the local application of the EU road transport regulations, establish an open and liberalized transport market where competition and public service obligations both prevail. Only the most important legal provisions are included in this legal mapping report.

#### 3.2.2.1 Overview of the legal and regulatory environment

In general, at the level of statutory provisions the Hungarian market for road transport services operates as an open market which provides equal access and equal opportunities to EEA economic operators. The legal framework contains numerous restrictions concerning the carrying out of road transport economic activities, but these, on a general level, are supported either by public interests considerations or by considerations relating to the nature of economic activities in the sector.

As a norm, carrying out economic activities in the Hungarian market for road transport services (market entry) is subject to the obtaining of a license (here, operating, technical, and route), the substantive and the procedural rules relating to which, and the rules governing the payment of the related fees, as regulated in law, are transparent and reasonable. They do not involve directly discriminatory provisions and provisions which would unduly hinder the access of EEA economic operators to the Hungarian market. The mutual recognition clause of vehicles licensed in another EEA Member State (Art. 24(2), Act. 1988:I) ensure a quick access to the Hungarian market.

The regulatory framework operates consciously with compliance clauses (Article 49, 1988:I and Art. 52, 2012:LXI: general EU compliance clause), rules on public service contracts (Art. 25(1), 2012:LXI), tendering rules (Arts. 24(3)-(4) and 24(6), 2012:LXI) and with State aid/public service compensation clauses which declare and aim to ensure that the relevant EU rules are observed (Art. 21(3) concerning the transport organiser). The road usage fee compliance clause prohibits direct and indirect discrimination concerning the determination of the fees (Art. 33/B(3), 1988:I). In case of passenger transport services, the legal framework contains a general clause ordering the co-application of the relevant EU regulations (Art. 1, 2012:LXI) and specific provisions requiring the application or the co-application of specific provisions of the relevant EU regulation (Arts. 30(4), 44(1), 45(2), 47(3), 2012:LXI and Art. 19(1) Act 1988:I).

As opposed to the railway market, the legal framework reveals lesser State involvement in the sector. Nevertheless, there are a number of key provisions which reserve certain activities for the State or preserve State

An adequate regulatory framework

Market access ensured

EU compliance

State involvement clauses and rules

ownership and similar rights. State or public ownership is the main principle for the ownership of public roads (Art. 32(1), 1988:I). The asset management of national public roads is the near exclusive task of a State body (Arts. 32(6) and 33(1), 1988:I). State or other public ownership and State or other public involvement in public service parking services indicates limited commercial opportunities in this segment of the market (Art. 9/D(8), 1988:I). The collection of road usage fee is regulated as a State task (Art. 33/A(6), 1988:I). Another important indication is the limited regulation of road construction and operation under a concession (Arts. 9/B and 9/C, 1988:I). The rules on the transport organiser exclude private involvement from that segment of the market (Art. 21(1)). Similar conclusions can be drawn from the rules on road transport infrastructure development. They include provisions, such as the State interest clause for contractors (Art. 29(1a), 1988:I) and the 'NIF clause' (Art. 29(1), 1988:I), which latter makes it clear that in this domain of activities relating to the creation and the preservation of critical national infrastructure competitive markets have only a limited role to play. The single development framework clause relating to passenger transport services indicates the State's dominant role in passenger transport infrastructure development (Art. 6, 2012:LXI).

The character of the market for passenger transport services is defined by the legal framework treating, in general, these services as public services subject to a public service contract which may involve an imposition of a public service obligation. The public service nature of passenger transport services raises the possibility of offering a public service compensation. The relevant provisions, which restrict competition in the market and enable the financing of transport service providers from public resources, make a concentrated effort to ensure that the relevant principles of EU law are observed, especially that interferences with the market are introduced only to the extent necessary. The nature of the public service activity is defined indirectly in the provision on public service transport timetables which requires that timetabled public service transport services must be operated at the lowest costs and the highest quality of service (Art. 26, 2012:LXI). In principle, this objective is achieved under the general obligations on awarding concessions and on competitive and transparent tendering (Arts. 23(2) and 23(3), 2012:LXI). The different public service financing clauses should, in principle, ensure that competition and market opportunities are not damaged by State intervention (Arts. 30(2), 25(6), 2012:LXI).

The administrative environment of the Hungarian market for road transport services, in general, serves the needs of an open competitive market where equal access and equal treatment is offered to market participants. It may be problematic, however, that the electronic administration of licensing is not provided as a general rule (Art. 19(1)(4), 1988:I) and that tachograph card applications must be submitted in person (Art. 44/A(9), 1988:I). The

Public service provision

An overall adequate administrative environment

right of appeal is excluded against decision taken in procedures monitoring compliance with market rules, and their annulment or revision under administrative review powers is not permitted (Art. 16(3)).

### 3.2.2.2 *The markets*

The market for road haulage services.

The market for passenger transport services.

- the market for passenger transport services by bus.
- the market for passenger transport services by car.

The market for the operation of public roads.

### 3.2.2.3 *The activities carried out in the different markets*

State activities.

Regulatory activities.

Licensed activities (operating and technical).

#### 3.2.2.3.1 *The general principle cooperation obligation of market participants (Art. 3(1))*

Public passenger transport service providers and operators passenger transport premises are obliged, in order to ensure the effective delivery of services, to cooperate. This entails, in particular, that the operators of passenger transport premises, in absence of statutory provisions to the contrary, must

on the basis of a contract,

taking the requirements of transport safety into account,

in compliance with the principle of equal treatment,

and demanding that at maximum its costs including maintenance and operation, amortisation and the profits calculated on the basis of the expected returns are covered,

provide access for other providers of passenger transport services to

premises available to service passengers, especially those for boarding and alighting, purchasing travel passes, accessing

passenger information systems, and waiting facilities,  
and to stations, stops and similar premises.

#### 3.2.2.3.2 The single development framework clause (Art. 6)

The State develops a single framework for the operation and the development of the passenger transport infrastructure, which provides a binding framework for the financing and execution of development concerning passenger transport services delivered by an undertaking owned, directly or indirectly, by the State or by local councils, or in case of development financed from State or EU resources. In case such development is carried out outside of the single development framework, the surplus costs arising from this cannot be taken into account when compensating the public service delivery.

#### 3.2.2.3.3 Rules on access to premises

Operators of stations, stops and similar transport premises owned at least in majority by the State may be obliged by a government decision, or on request from a public authority to provide premises for the administrative offices of public authorities, provide unimpeded access to those premises, and to enable to the use and operation of stations and their info-communications network. The rules and costs of such uses are determined in a contract (Art. 3(2)).

#### 3.2.2.3.4 The transport organiser

The transport organiser is an undertaking operated in the form of a limited liability company (*korlátolt felelősségű társaság*) or a public company (*részvénytársaság*) in the sole ownership of the local council or the State, or jointly of the local council and the State, or a public body financed from the State budget directed by the local council or the State, or jointly by the local council and the State, which may be given, together with the necessary resources, the transport organisation tasks of the local council. The sole ownership of the local council or the State, or of the local council and the State must be ensured during the operation of the transport organiser (State ownership, reserved activities). (Art. 21(1)).

Compliance clause: in case a public service activity carried out by the transport organiser qualifies as an economic activity under EU law, it may only be carried out under a public service contract with complies with the legal measures issued under Article 106(2) TFEU and Regulation 1370/2007/EC (Art. 21(3)).

#### 3.2.2.3.5 State activities

State activities include, foremost, the development of passenger transport policy, the development of passenger transport public services, and the financing of public service obligations in the sector (Art. 4(1)-(2)).

#### 3.2.2.3.6 Regulatory activities

Regulatory activities include the regulation of the licensing, operation and development of national, regional and suburban transport services, the determination of public service compensation, the determination of public service fee discounts, the organisation of public service passenger transport services, the selection of public service providers, contracting for the delivery of public service passenger transport services, the payment of public service compensation, and establishing the fees of public service passenger transport services (Art. 4(1)-(3)).

#### 3.2.2.3.7 Licensed activities

##### 3.2.2.3.7.1 Technical license (Art. 22, Act 1988:I)

Only licensed types of vehicles may be operated. Custom-made vehicles may operate on the basis of individual technical licenses.

##### 3.2.2.3.7.2 Operating license (Art. 23, Act 1988:I)

Vehicles may only be operated on the basis of an operating license issued following a technical (technical, safety, environmental, roadworthiness) examination of the vehicle, and after the ownership of the vehicle is certified, the tax for the registration of the vehicle is paid, and the vehicle is insured. The licensed vehicle is registered in the national vehicle registry.

The registered keeper is responsible for ensuring that the vehicle meets the conditions of issuing of the operating license and that it is insured (Art. 24(1), Act 1988:I).

Vehicles operated under a license issued by another EEA Member State may receive a domestic operating license without undergoing a technical examination and on the basis of the original documents and registration justifying its operability (Art. 24(2), Act. 1988:I)

Special licensing rules on vehicles operated under an operating license and registration obtained in another State (Art. 25/B, Act 1988:I).

#### 3.2.2.4 Rules on the ownership of public roads

National public roads are in State-ownership, local public roads are in the ownership of the local council (Art. 32(1) Act 1988:I).

The asset manager of national public roads, with the exception of public roads under concession, is the Center for Transport Development Coordination (CTDC)(*KKK: Közlekedésfejlesztési Koordinációs Központ*) (Art. 32(6) Act 1988:I).

### 3.2.2.5 Road construction and the NIF clause

The contractor for the construction of national public roads, with the exception of roads constructed under a concession, is the NIF National Infrastructure Development Corporation, a commercial corporation established as a public corporation in the sole ownership of the State (Art. 29(1), Act 1988:I).

The local council acts as the contractor for certain locally relevant construction works carried out on public roads Art. 29(11), Act 1988:I).

The asset manager of the public road acts as the contractor in connection with the regeneration, maintenance, and development works carried out under a contract as required by legislation (Art. 29(1), Act 1988:I).

The contractor, with the exception of local councils and of public roads under concession, proceeds to the benefit and in the name of the State (Art. 29(1a), Act 1988:I).

### 3.2.2.6 Rules on the asset management of public roads

The asset manager of public roads is (Art. 33(1), Act 1988:I)

the undertaking holding a concession on a national or local public road, or

the public body or the undertaking in the sole ownership of the State established for the maintenance, development and operation of national public roads, or

the public body or the commercial operator (*gazdálkodó szervezet*) in the sole ownership of local council established for the maintenance, development and operation of local public roads.

A public body is set to coordinate the operation of the asset manager, to finance asset management activities on public roads, and to monitor the quality of services as laid down in the contract concluded for the operation of the public road in question (Art. 33(5) Act 1988:I).

### 3.2.2.7 Entry conditions in the Hungarian market for passenger transport services

#### 3.2.2.7.1 The market for passenger transport services by bus

The provision of passenger transport services by bus – regular, contracted and occasional – is subject to a passenger transport operating license which is issued on application by the transport authority following the substantive and procedural conditions laid down in law (Art. 10(1)).

International passenger transport services, including cabotage, are subject to a community license (Art. 10(1)).

The provision of the following passenger transport services by bus (Art. 10(3))

regular international passenger services (by transport authority),

special regular passenger services not based on a passenger service contract (by local council),

replacement passenger services (of track-based public transport services) (by local council),

regular and special regular cabotage transport services by a service provider established outside of the EU (by responsible minister)

are subject to a route license. The route license is issued on application for a maximum of 5 years, which can be renewed on application.

#### 3.2.2.7.1.1 Regular public passenger transport services by road

The provision of regular public passenger transport services by road is subject to an operating license (Art. 19(1)). They must be provided as determined in the public timetable (Art. 19(3)) and on the basis of a publicly available general conditions of carriage approved by the transport authority (Art. 19(4), (6)).

#### 3.2.2.7.1.2 Regular international public passenger transport services by bus

The license for international passenger transport services by bus, in case the application as submitted in Hungary, is issued by the transport authority (Art. 41(1)).

In case of international passenger services to third States, the license is issued in compliance with the provisions of the applicable international agreements (Art. 41(2)).

#### 3.2.2.7.1.3 Special regular passenger transport services by bus

For domestic special regular passenger transport services by bus, the route license may only be issued in case it does not violate the rights of other transport service providers laid down in a public service contract, and it does not violate its operability (Art. 42(1)).

For special regular passenger transport services by bus between Hungary and another EU Member State, the route license is issued under the general rules (Art. 42(2)).

Special regular passenger transport services by bus, unless an international agreement provides differently, cannot be provided to a third State (Art. 42(2)).

The local council may subject the issuing of the route license for a special regular timetabled passenger transport services by bus carried out on its territory – also including the operation of the related transport service

intermediary or transport service organiser – to specific conditions covering (Art. 42(3)-(4))

the environmental classification of the vehicle,  
the external appearance of the vehicle,  
the technical specifications of the vehicle,  
its operation on the public road network of the locality,  
the use of stops available for timetabled passenger transport public services.

#### 3.2.2.7.1.4 Replacement passenger transport services of track-based public transport services by bus

The route license is issued by the mayor of the local council or the responsible minister in case the duration of the provision of such services exceeds two months (Art. 43(1)).

The issuing of the license cannot be declined on technical grounds (Art. 43(2)).

The license may only be issued in case it does not violate the rights of other transport service providers laid down in a public service contract, and it does not violate its operability (Art. 43(2)).

The railway undertaking may operate such services in its own competence, in case the duration of the service provision does not exceed 2 months (Art. 43(2)).

The license for the replacement of national public passenger transport services, when it is requested by the railway undertaking on the basis of its economic interests, may only be issued subject to the additional requirement of a preliminary consultation with the local councils affected (Art. 43(3)).

#### 3.2.2.7.1.5 Cabotage

Transport services defined in Regulation 1073/2009/EC provided in Hungary by a transport service operator registered in the EU can be carried out on the basis of Regulation 1073/2009/EC (Art. 44(1)).

Transport service operators registered outside the EU, provided that international agreement does not regulate otherwise, may carry out domestic timetabled passenger transport services on the basis of a route license issued by the responsible minister (Art. 44(2)).

#### 3.2.2.7.1.6 Demand responsive passenger transport services by bus

The provision of demand responsive passenger transport services by bus is subject to a route license or a public service contract (Art. 10(7)).

#### 3.2.2.7.1.7 Own-account passenger transport services by bus

The provision of own-account passenger transport services by bus is subject to a permit issued by the transport authority (Art. 11)

#### 3.2.2.7.2 The market for passenger transport services by car

Passenger transport services by car can be provided either as passenger taxi services or as passenger transport services by car (Art. 12(1)).

##### 3.2.2.7.2.1 Passenger taxi services

Access to taxi stations is regulated by local councils (Art. 13(3)).

The local council – taking into account local circumstances – may subject the operation of passenger taxi services and of passenger transport service intermediaries and organisers, beyond the conditions laid down in law, to the following conditions (Art. 13(4)-(6))

the environmental classification of the vehicle,

the external appearance of the vehicle,

the size of vehicles,

the technical specifications of the info-communications equipment used (intermediaries and organisers),

the requirement of being free from public law liabilities (intermediaries and organisers),

a capital requirement commensurate with the economic activity pursued (intermediaries and organisers).

##### 3.2.2.7.2.2 Contracted and occasional passenger transport services by car

The provision of contracted and occasional passenger transport services is subject to a passenger transport operating license (Art. 13(1)).

##### 3.2.2.7.2.3 Demand responsive passenger transport services by car

The provision of demand responsive passenger transport services by car is subject to the license applicable to the service (taxi services, passenger services by car), and to meeting the conditions laid down in law for the provision of passenger taxi services (Art. 14(1)).

In case it is provided under a public service obligation, the rules on public service delivery must be applied (Art. 14(2)).

### *3.2.2.8 The conditions of providing services in the Hungarian market for transport services by road*

#### *3.2.2.8.1 The operation of passenger transport services by road*

##### *3.2.2.8.1.1 Rules on public service passenger transport services by road*

The provision of public service passenger transport services by bus is subject to a public service contract (Art. 10(6)).

Public service obligations in connection with regular local, suburban, regional or national passenger transport services, which on public interest grounds may involve cross-border passenger transport services, may be laid down in a public service contract (Art. 20(1)(5)).

The preparation of public service transport timetables: timetabled public service transport services must be operated at the lowest costs and the highest quality of service (Art. 26).

##### *3.2.2.8.1.2 The public service contract*

The domestic passenger transport services – with exceptions (replacement bus services and cabotage) must be provided on the basis of a public service contract (Art. 23(1)).

Concessions clause: In case the public service contract qualifies as a service concession, with the exception of public service contracts on national, regional and suburban railway passenger services where the tendering process can be omitted, the relevant public procurement rules must be observed (Art. 23(2)).

Competitive and transparent tendering clause: the tendering process must be executed in compliance with the principles of fair competition and transparency (Art. 23(3)).

Non-EEA equal treatment clause: service providers from outside the EEA may participate in the tendering process only when in their State of establishment national treatment is available to foreign service providers (Art. 23(3)).

##### *3.2.2.8.1.3 The public service obligation*

A public service obligation may be ordered or maintained when (Art. 29(1))

the interests of the population requires that the passenger transport public service is provided,

the economically sustainable provision of the public service cannot be achieved by alternative means, and

the service provider receives compensation for the justified costs not

covered by its incomes.

The preliminary assessment clause: the imposition of the public service obligation must be preceded by an examination whether the public service task could be discharged using other means of transport, by other service providers, or under other conditions of operation, and the overall more suitable option must be selected. The decision must be taken within a year. The service provider must provide the public services under the original condition until the decision is taken, or for a maximum period of 1 year. (Art. 29(2)).

Alternative means in railway public services clause: the responsible minister may permit that the railway passenger transport public service provider provides the timetabled public services by using road transport vehicles, in case this results in savings for the railway undertaking in question, the passengers are not subjected to less favourable conditions, and the public service is provided with similar or better technical specifications as a matter of the environmental impact of the public service in question (Art. 29(4))

Clause on passenger transport public services provided under a contract: local councils may contract for the delivery of non-timetabled passenger transport public services under the conditions (1)-(6) listed above (Art. 29(7)).

#### 3.2.2.8.1.4 The public service compensation

The public service passenger transport service provider, except when excluded, is entitled to public service compensation (Art. 30(1)).

The public service compensation must be determined in the public service contract following the provisions of Regulation 1370/2007 in the following way (Art. 30(4))

the tasks of the public service provider are defined in an unambiguous manner,

the calculation of the public service compensation is defined in advance and it is based on objective and transparent conditions,

the amount of the public service compensation does not exceed the sum of the costs incurred in the delivery of the public service and the reasonable profit of the public service provider not covered by the fees income, the social transport fee subsidies, and by other incomes and subsidies.

Transparent financing clause: the organization responsible for the delivery of public services, having regard to the economic monitoring of public service delivery and to the justified interest of the service provider to

maintain its operability, must establish a financing system for the compensation of public services which ensures the clear and obvious separation of the costs of using the transport infrastructure available, the justified costs of the service providers not covered by incomes, and the State subsidies provided to compensate the fee discounts available in passenger transport public services under legislation (Art. 30(2)).

Compliance clause: the public service compensation must be paid following Regulation 1370/2007/EC (Art. 30(3)).

Comparable costs clause: in case the public service provider was not selected in an open tendering process, the costs taken into account in determining the amount of compensation must be based on the average costs of a well-run undertaking offering the same public services (Art. 25(6)).

In case of a public service provider selected in an open tendering process, the amount of the public service compensation is determined in that process and is laid down in the public service contract. Such public service providers, in case they are offered exclusive rights, may only request additional public service compensation if they establish using specific amounts a significant alteration following the conclusion of the public service contract in the circumstances. Such changes include changes in the demand for passenger transport services or in the business environment which at the time of concluding the contract could not be accounted for the duration of the contract as the usual risks of economic activity. (Art. 25(6)).

Financial unbundling clause: in case of public service compensation provided in a public service contract, or of public service obligations imposed, the public service provider must in its accounting separate in a clear and obvious manner the assets, resources, incomes, and expenditures related to the delivery of the public service in question (Art. 26(7)-(8)).

#### 3.2.2.8.1.5 The rules on public service contracts

Public service contracts may be concluded by the responsible minister having obtained the consent from the minister responsible for the public finances, the mayor on the basis of an authorisation from the local council, or by the transport organiser appointed in legislation (Art. 25(1)).

The length of the public service contract: as stated in Art. 4(3)-(4) Regulation 1370/2007/EC (Art. 25(1)).

The modification of the public service contract: as stated in Art. 4(3)-(4) Regulation 1370/2007/EC (Art. 25(1)).

The financial guarantee for public service compensation: in case the public service contract includes an obligation which causes an economic disadvantage to the service provider, as regards the public service compensation payable it must contain a financial guarantee which is valid at

least for 3 years (for contracts valid for less than 3 years the financial guarantee must be valid for the duration of the contract) (Art. 25(1)).

The public service contract may only be terminated in the cases and under the circumstances regulated by the contract (Art. 25(7)).

The obligation to contract with passengers: in connection with passenger transport services included in the public service timetable determined in the public service contract, the service provider is subject to an obligation to contract with the passengers willing to use those services (Art. 25(6)).

The restriction of exclusive rights: in case the public service contract provides exclusive rights to the service provider, that right may only be restricted without its consent on the basis of Art. 29(3) or as stated explicitly in the public service contract (Art. 25(7)).

The restrictions on transferring the public service task to a third party: the right to carry out the public service tasks regulated in the public service contract may only be transferred in exceptional circumstances to a third person which meets the conditions laid down in statute and only after obtaining the consent of the organization responsible for the delivery of the public service in question (Art. 25(7)).

Sub-contracting clause: the service provider may subcontract the provision of the public service to the extent specified in the public service contract, but not to an extent higher than 49 per cent (Art. 25(8)). the sub-contractor must be a service provider which qualifies as a transparent organisation in the meaning of Act 2011:CXCVI on national assets (Art. 25(8)).

#### 3.2.2.8.1.6 The public service fee

The system of public service fees, including the fee discounts, must be determined in the public service contract (Art. 31(1)).

In case the revenues are collected by a transport organiser, the system of public service fees is determined in the contract for the discharging of tasks (Art. 31(2)).

The system public service fees must be determined, on the basis of the principle that the competitiveness of passenger transport public services must be ensured over individual modes of transport, by the organisation responsible for the delivery of the public service in question in a manner that it covers the justified costs and the profit necessary for continuing operation, , taking into account deductions and subsidies, (Art. 31(5)).

The fee structure regulated in the public service contract must ensure (Art. 31(1))

that the fees charged are proportionate to the service provided.

that additional fees are justified by the characteristics of the service provided.

the competitiveness of passenger transport public services over individual modes of transport is ensured.

that national, regional and suburban public service passenger transport services are duly differentiated in the applicable fees.

that in case of local and suburban transport services, time based access is provided alongside other forms of access.

that the interoperability of different transport service providers is ensured.

#### 3.2.2.8.1.7 The compensation of fee discounts and social transport fee subsidies

It is determined in a government decree, and it may be available in case of public service passenger transport services provided on the basis of a public service contract (Art. 33(1)-(2)).

It is provided on application by the service provider, or by the transport organiser in case it is entrusted with the task of collecting passenger transport service revenues (Art. 33(3)).

This form of compensation is excluded when (Art. 33(4))

the fee discount is compensated from other resources as defined in legislation.

the fee discount is provided on the basis of the corporate strategy of the service provider.

legal persons or other organisations purchase tickets and passes for children and students in educational facilities or in child protection institutions.

#### 3.2.2.8.2 The operation of public roads

##### 3.2.2.8.2.1 Concessions for the operation of public roads (Art. 9/B Act 1988:I)

Concessions may be granted, either by the responsible minister or by the local council, for the operation of public roads subject to meeting the Act on concessions. Roads under concession must be operated in the form of a public company, which will be entitled to construct and operate petrol and service stations, rest stations, health and sports facilities, catering facilities, and parking facilities directly linked to the public roads under concession.

The concession holder is entitled for the duration of the concession and under the concession contract to collect usage or road fees for the use of

the roads constructed, developed, maintained or operated (Art. 9/C(1) Act 1988:I).

The concession contract can be renewed on one occasion for a duration of half of its original duration (Art. 9/C(2) Act 1988:I).

#### 3.2.2.8.2.2 Parking services on public roads

##### 3.2.2.8.2.2.1 *Distinction between different usages of public roads (Art. 9/D Act 1988:I)*

Parking on national public roads qualifies as a usage of public roads for transport purposes.

Parking on local public roads may qualify as a usage of a public service offered by the local council or by a public service operator entrusted by the local council.

Parking on local public roads constitutes a private law relationship between the user and the local council or the public service operator.

##### 3.2.2.8.2.2.2 *Public service parking services on local public roads (Art. 9/D(4) Act 1988:I)*

The local council may conclude a public service contract – which must be published on line – for the delivery of parking services on local public roads. The fees and surplus fees collected by the public service provider on the basis of the private law relationship created between the user and the service provider are paid to the local council. The public service provider is entitled to incomes which cover at least the costs of the provision of its services. (Art. 9/D(6) Act 1988:I).

##### 3.2.2.8.2.2.3 *Public service parking services on national public roads (Art. 9/D(8) Act 1988:I)*

Parking services on national public roads are provided either by the asset manager of State-owned road, or by a public service provider commercial undertaking

under sole State-ownership, or a commercial undertaking entrusted with the operation of public roads owned solely by this commercial undertaking, or

under the sole ownership of the local council, or a commercial undertaking owned solely by this commercial undertaking.

Parking on public roads on the basis of public service public services constitutes a private law relationship between the user and the service provider (Art. 9/D(9) Act 1988:I).

The asset manager of State-owned public roads may conclude a public service contract – which must be published on line – with the undertakings mentioned above (Art. 9/D(10) Act 1988:I).

The fees and surplus fees collected by the public service provider on the basis of the private law relationship created between the user and the service provider are paid to the asset manager. The public service provider is entitled to incomes which cover at least the costs of the provision of its services. (Art. 9/D(12) Act 1988:I).

#### 3.2.2.9 Access to the road network

Everyone has a right to participate in transport by road, either as a pedestrian or – subject to meeting further conditions – as a driver; transport on certain public roads can be limited or excluded by legislation (Art. 3(1) Act 1988:I).

##### 3.2.2.9.1 Conditions of access and use

Participants in transport by road must observe the legislation applicable to road transport and to the protection of public roads and their environment, observe road signs and the directions of those entitled to direct road traffic, and must participate in road transport without posing a risk to road safety and disturbing or impeding others in their participation in transport by road (Art. 5(1) Act 1988:I).

##### 3.2.2.9.2 Conditions of participating in road transport as a driver

Drivers must be in a state suitable for driving and must hold a license for driving (Art. 5(2) Act 1988:I).

The responsibility of registered keepers of vehicles: registered keepers must not allow the use of the vehicle to persons not meeting the above conditions (Art. 5(3) Act 1988:I).

##### 3.2.2.9.3 Road usage fees

On the basis of a legislative instrument, fees may be charged for the usage in certain time intervals of public roads (Art. 33/A(1) Act 1988:I). The road usage fees collected must be used for purposes of road regeneration and development (Art. 33/A(5) Act 1988:I). The fees are collected by the National Toll Payment Service (NTPS) (*NÚSZ: Nemzeti Útdíjfizetési Szolgáltató Zrt.*), which contract for this purpose with the CTDC ) Art. 33/A(6) Act 1988:I).

Compliance clause: the fees must not involve direct or indirect discrimination on the basis of the nationality of the vehicles, the nationality or place of residence of their owners, the place of registration of the vehicle, or the point of origin or point of destination of the transport activity (Art. 33/B(3) Act 1988:I).

### 3.2.2.10 *The administrative environment*

#### 3.2.2.10.1 General matters

Applications for issuing, modifying or withdrawing operating licenses for transport services by road cannot be submitted electronically, unless provided otherwise by law (Art. 19(1)(4) Act 1988:I).

The application for a tachograph card may only be submitted in person before the transport authority (Art. 44/A(9)).

#### 3.2.2.10.2 Appeals and judicial redress

There is no right of appeal against decisions taken in procedures monitoring compliance with market rules, and their annulment or revision under administrative review powers is not permitted (Art. 16(3)).

#### 3.2.2.10.3 Monitoring and supervisory procedures and powers

Monitoring and supervision (compliance with market rules) (Art. 15).

Monitoring and supervision (compliance with passenger rights in passenger transport services by bus) Monitoring and supervision (compliance with passenger rights in passenger transport services by bus) (Art. 17).

Monitoring and supervision (compliance with the applicable rules on road transport) (Art. 44, Act 1988:I).

Monitoring and supervision (working time of drivers) (Art. 44/A, Act 1988:I) (implementing clauses)

### 3.2.3 Transport on waterways

The Hungarian market for transport on waterways is regulated by Act 2000: XLII on transport on waterways and Act 2012:LXI on passenger transport services. In principle, the measures establish an open and liberalized transport market where competition prevails. Only the most important legal provisions are included in this legal mapping report.

#### 3.2.3.1 Overview of the legal and regulatory environment

In general, at the level of statutory provisions the Hungarian market for transport services on waterways operates as an open market which provides equal access and equal opportunities for EEA economic operators. The legal framework contains numerous restrictions concerning the carrying out of economic activities, but these, on a general level, are supported either by public interests considerations or by considerations relating to the nature of economic activities in the sector. As a norm, carrying out economic activities in the Hungarian market for transport services on waterways (market entry) is subject to a registration and the obtaining of a license (here, operating (shipping) and usage licenses) and a certificate (for technical suitability), the substantive and the procedural rules relating to which, and the rules governing the payment of the related fees, as regulated in law, are transparent and reasonable. They do not involve directly discriminatory provisions and provisions which would unduly hinder the access of EEA economic operators to the Hungarian market.

There are, however, a number of provisions which may raise issues under EU law. Concerning the registration obligation laid down in Arts. 7(1) and 8(1), Art. 12(1) contains the clause that Hungarian registration may only be given when the vessel is in Hungarian or Community ownership to an extent more than 50 per cent. Operating (shipping) licenses are only issued to the registered keeper of an EEA Member State registered vessel when it has as a legal person or an economic operator its seat in Hungary (Art. 52(1)).

The regulatory framework operates consciously with a compliance clause (Art. 90, 2000:XLII general compliance clause).

There is considerable State involvement in the Hungarian market for transport on waterways. Most of the waters are owned by the State and the State declares the available waterways on these waters (Art. 69). Concerning infrastructure development activities, the act contains a NIF clause which reserves certain activities for the NIF in this market and declares that the NIF proceeds as the representative of the State, acts in the interests of the State, and its activity constitutes an important public activity in the public interest (Art. 78/A(1)). The rules concerning the ownership and operation of public ports also enable direct State involvement in this segment of the market (Arts. 80 and 81). The clause

Market access  
ensured

Hungarian  
ownership and  
Hungarian  
seat  
requirements

State  
involvement  
clauses and  
rules

under Art. 58/A enables the State to intervene in the operation in the market in pursuance of certain public interest, including economic policy objectives. The electronic submission of applications in procedures before the waterways transport authority is not allowed (Art. 4(5)).

#### 3.2.3.2 *The markets*

The market for freight transport services on waterways.

The market for passenger transport services on waterways.

The market for the operation of waterways and the related transport facilities.

#### 3.2.3.3 *The activities carried out in the different markets*

State activities.

Regulatory activities.

Licensed activities (operating).

#### 3.2.3.3.1 *State intervention in the market under the Inland Waterways Shipping Programme (Art. 58/A)*

The State is entitled to intervene with the operation of the market

for the purpose of maintaining the balance of the inland shipping market, regulating shipping capacities, the technical modernisation of ships, the environmental and safety modernisation of inland waterways ships and the promotion of the related social instruments, the development of the training system, and of acceding to the EU's inland shipping capacity programme.

under the direction of the responsible minister and as managed by the waterways transport authority.

under the decisions of a board representing government and shipping license holders.

In case of severe market disturbances (*súlyos piaci zavar időszakára*) announced by the responsible minister following the decision of the Commission, the Programme can set up an intervention instrument. Payments from the instrument may only be made during the state of severe market disturbances and on legal bases determined by the Commission.

#### 3.2.3.3.2 *State activities*

State activities include, foremost, the production and the execution of development plans, the administration of transport on waterways, ports, and

of waterways, regulating transport on waterways, the maintenance and development of waterways on State-owned waters, developing transport links to national public ports, and determining the system of subsidies for the development of public ports (Art. 2(1)).

#### 3.2.3.3.3 Regulatory activities

Regulatory activities include, foremost, (Art. 2(1)) regulating the training and professional requirements of shipping personnel, health and safety regulation, environmental protection regulation, an accident prevention regulation (Art. 2(1)).

#### 3.2.3.3.4 Licensed activities

The carrying out of shipping activity is subject to obtaining an operating (shipping) license (Art. 51), which determines the shipping activity and area, and the conditions of carrying out the shipping activity.

The licensing obligation does not apply to (Art. 51)

vessels not subject to an obligation of registration.

the discharging of own tasks by central public bodies using their own equipment.

the use of vessels for leisure, not including the use of vessels for training purposes.

the use of vessels for accommodation purposes, or as part of a port or other shipping establishment, with the exception of such uses for commercial purposes.

shipping activity carried out under a shipping license issued by the authorities of EEA States.

#### 3.2.3.4 Entry conditions in the Hungarian market for transport on waterways

##### 3.2.3.4.1 The registration obligation of vessels

The registration obligation is laid down in Arts. 7(1) and 8(1).

The registration process must be initiated by the person who following registration will be able to obtain ownership rights (Art. 8(4)).

The ownership of vessels, which are subject to an obligation of registration, is established upon registration (Art. 11(1)).

The registration by the waterways transport authority establishes the ownership and the contractual and non-contractual rights of the registered keeper (Art. 11(5)).

Inland waterways vessels, sea vessels, and floating machines, the operation of which subject to an operating license, may only be registered in the Hungarian registry when it is in Hungarian or Community ownership to an extent of more than 50 per cent, and the

it is not registered in other registries (Art. 12(1)).

In case the Hungarian or Community ownership of such a vessel falls below the above threshold, it must be deleted from the Hungarian registry unless its operation is not subject to an operating license (Art. 12(3)).

A vessel subject to an obligation of registration, which is in Hungarian ownership to the extent of more than 50 per cent, must be registered in the registry of the Member State of the European Union (Art. 12(2)).

Hungarian and Community ownership, which must be proved using sufficient documentation, means that the vessel is (Art. 13)

owned by a Hungarian, EU, or EEA citizen, or a third State person on the basis of an international agreement which provides the same legal status as of an EEA citizen.

owned by a legal person registered in the above States.

A commercial undertaking may only be regarded as being in Hungarian or Community ownership when the ownership or the voting rights of a third State national is less than 50 per cent in that undertaking (Art. 13(3)).

#### 3.2.3.4.2 The operating (shipping) license

The general conditions for issuing a shipping license include

the license may only be issued to the registered keeper of an EEA State registered vessel, which must be a legal person or economic operator with its seat in Hungary (Art. 52(1)).

the license may only be issued when the CEO of the Hungarian established registered keeper is able to certify his personal trustworthiness and professional capability (Art. 52(6)).

- personal trustworthiness means, in particular (Art. 52(7))
  - the person concerned has no previous criminal record,
  - not excluded under criminal jurisdiction from driving vessel,
  - not subjected to a shipping fine in the five years before making the license application.

Shipping licences are issued for 5 years, which can be extended on application in case it is not excluded and the conditions for issuing licenses are satisfied (Art. 52/A(1)).

The personal trustworthiness of the license holder is subject to continuous controls and supervision (Art. 52/A(3)).

#### 3.2.3.4.3 The license for public shipping activity

Upon obtaining such a license, the services offered must be available to anyone to use and they must be publicly advertised (Art. 53).

#### 3.2.3.4.4 The usage license

National waterways, in absence of a contrary provision of an international treaty, may only be used by vessels registered in a different State, with the exception of small boats used for leisure purposes, subject to a usage license issued for a fee by the waterways transport authority (Art 73).

#### 3.2.3.5 The conditions of providing services in the Hungarian market for transport on waterways

##### 3.2.3.5.1 The technical suitability of the vessel

Vessels may only be operated when they are technically suitable for operation (*hajózásra alkalmas állapot*) (Art. 17(1)).

Technical suitability is certified in the shipping document issued for registered vessels by the waterways transport authority (Art. 17(2)-(4)).

Technical suitability means, in particular that the vessel is equipped with

the necessary and suitable personnel and equipment (Art. 26-41),

- the driver and the first officer of Hungarian inland and sea vessels participating in international transport must be citizens of an EEA Member State (Art. 34(3)).

the provisions necessary for the journey.

valid shipping and other licenses.

a valid classification certificate.

an insurance certificate for shipping carried out at sea with a vessel larger than 300 BRT.

Health and safety, public health and environmental protection (Art. 21): must meet these requirements, and the obligation to keep a passenger record (in case of shipping at sea for longer than 20 miles and cross-border operation of inland passenger transport vessels).

Classification certificate (Arts. 22-23): must be obtained from a recognised classification company for large sea vessels, rapid inland passenger vessels with the exception of small boats, and for inland tanker vessels used for the shipping of dangerous materials.

The obligation to obtain the necessary insurance.

A valid insurance covering non-contractual liabilities must be obtained by the registered keeper for inland transport by passenger and freight vessels, ferries, and other vessels operated for commercial purposes. Foreign-registered vessels must have an international insurance certificate or must obtain insurance for their operation in Hungary. (Art. 24).

A valid insurance covering non-contractual liabilities must be obtained by the registered keeper for Hungarian registered, or foreign-registered vessels arriving to Hungarian waters, vessels operated on the seas for commercial purposes, or for vessels larger than 300 BRT (Art. 25/A).

The obligation to keep a shipping log, which is a public document (Art. 45).

The obligation to keep a personnel registry on Hungarian registered vessels sailing across the Hungarian borders, which is a public document (Art. 47).

The obligation to issue a service booklet. Service on Hungarian registered vessels may only be undertaken in case the service booklet is obtained from the waterways transport authority. (Art. 48).

#### 3.2.3.5.2 *The rules on cabotage*

Cabotage between domestic ports by non-EEA registered vessels, covering passenger transport, freight transport and the connected forwarding of vessels, and work with floating machines, may be undertaken subject to a cabotage license, which is issued on the basis of reciprocity and only when EEA-registered vessels are not available to carry out the shipping task (Art. 54).

#### 3.2.3.5.3 *The rules on regular local public service passenger transport services*

The rules cover the selection of the service provider, public service rights and obligations, and public service compensation (Art. 3(2)). The detailed rules are laid down in the Act 2012:LXI on passenger transport services.

#### 3.2.3.6 *Ownership and access concerning waterways and shipping routes*

##### 3.2.3.6.1 *The use of waterways*

Waters owned by the State may be declared as available to be used as waterways by the responsible minister (Art. 69(1)).

Waters owned by the State which may be reconstructed to serve as waterways are identified by the responsible minister (Art. 69(4)).

Waters in private ownership may be declared upon application by the owner by the responsible ministers as available to be used as waterways (Art. 69(3)).

Waterways may be classified as international waterways by an international treaty (Art. 69(2)).

#### 3.2.3.6.2 *The classification of waterways*

Waterways are classified by the responsible minister on the basis of their availability for transport, the shipping zones determined, the available emergency ports, and their standard size (Art. 70(1)).

Waterways must be kept continuously in a state by the waterways manager or the operator (port operator) that they ensure the use of the vessels indicated in their classification (Art. 71(1)).

On waterways suitable for regular transport by large ships, a shipping route must be determined by the waterways transport authority (Art. 71(2)).

#### 3.2.3.6.3 *The development of waterways and the NIF clause*

In the development of waterways, on-shore establishments, national ports and floating establishments, the NIF National Infrastructure Development Corporation, a commercial corporation established as a public corporation in the sole ownership of the State is a prioritized development partner (the contractor). It proceeds as the representative of the State, acts in the interests of the State, and its activity constitutes an important public activity in the public interest (Art. 78/A(1)).

#### 3.2.3.6.4 *Rules on shipping ports*

Shipping ports are either public ports available to use, subject to the conditions established by the port operator, to any users, or own-use ports available to the port operator to carry out passenger or freight transport services (Art. 79(1)).

Public ports, the land of which is in State-ownership or in the asset management of an asset management undertaking established with the majority ownership, and which is suitable as a matter of its infrastructure to interconnect different modalities of transport, may be declared by a government decision to operate as a national public port (Art. 80(1)).

National ports are operated by a commercial undertaking established for this purpose by the State or with the participation of the State (Art. 80(3)).

Public ports situated on international waterways are available for use by any vessel registered in any State (Art. 81).

The establishment, extension, operation, and closure of ports are subject to a license issued by the shipping authority (Art. 85(1)).

#### 3.2.3.7 *The administrative environment*

##### 3.2.3.7.1 *General issues*

Administrative service fee is chargeable by the waterways transport authority (Art. 4(3)).

In procedures before the waterways transport authority, the forms determined in government regulation cannot be submitted electronically (Art. 4(5)).



### 3.2.4 Air transport

The Hungarian market for air transport is regulated by Act 1995:XCVII on air transport. In principle, the measure establishes an open and liberalized transport market where competition prevails. Only the most important legal provisions are included in this legal mapping report.

#### 3.2.4.1 *Overview of the legal and regulatory environment*

In general, at the level of statutory provisions the Hungarian market for air transport services operates as an open market which provides equal access and equal opportunities for EEA economic operators. The legal framework contains numerous restrictions concerning the carrying out of economic activities, but these, on a general level, are supported either by public interests considerations or by considerations relating to the nature of economic activities in the sector. As a norm, carrying out economic activities in the Hungarian market for air transport (market entry) is subject to a registration and the obtaining of a license (here, operating (aviation) license) and a certificate (for aviation suitability), the substantive and the procedural rules relating to which, and the rules governing the payment of the related fees, as regulated in law, are transparent and reasonable. They do not involve directly discriminatory provisions and provisions which would unduly hinder the access of EEA economic operators to the Hungarian market.

Market access  
ensured

The Hungarian regulatory regime operates with a strong licensing system which may raise some issues under EU law. Aviation licenses are issued only to economic operators established in Hungary or, in case of a cross-border provision of services, in an EEA Member State (Art. 23(1)). Aviation licenses for commercial aviation activities are issued to economic operators that have the location of their central administration in Hungary (Art. 23(5)). The act also requires licenses for carrying out other commercial activities to be obtained cross-border services carried out on the basis of the free movement of services (Art. 20/B(1)), and holds that the free movement of services does not apply to certain types of aviation activities, including non-commercial passenger and freight transport services, including the transport of postal consignment, civil protection and emergency aviation activities, healthcare emergency aviation, and to aviation with State aircrafts (Art. 20/B(3)).

Robust  
licensing  
regime

There are a few areas within the Hungarian air transport market which are reserved for the Hungarian State. Under Art. 61(2), air traffic control services and other air transport supporting services in the Hungarian airspace are provided exclusively by a State-owned public corporation. State-owned airports, with the exception of Budapest Liszt Ferenc International Airport, may only be sold with the consent of the government (Art. 41).

Limited state  
involvement

Electronic correspondence is excluded in a broad range of administrative procedures (the requirement of paper-based administration) (Art. 3/D(1)).

The regulatory framework operates consciously with compliance clauses (Art. 74/A general compliance clause) concerning civil aviation incidents (Art. 65/A(3) and 66), concerning consumer protection (Art. 26/A), concerning the airport supervision fee (Art. 66/C), and concerning quality assurance programmes (Art. 68/A). There are provisions which explicitly regulate areas which are not covered by the applicable EU rules (Arts. 29, 46, 47, 48). The regulation of mutual recognition obligations in Art. 46 in the case of foreign aircrafts not covered by Regulation 216/2008/EC also ensures compliance with EU law. There are also explicit provisions governing cooperation with EEA aviation authorities, the Commission, or the European Aviation Agency (Arts. 3/B). The legal framework contains a general clause ordering the co-application of the relevant EU regulation (Art. 1(3)) and specific provisions requiring the application or the co-application of specific provisions of the relevant EU regulation (Arts. 23(5)).

#### 3.2.4.2 *The markets*

Civil (commercial) aviation for passenger transport

Civil (commercial) aviation for freight transport

The operation of other aviation services

#### 3.2.4.3 *The activities carried out in the different markets*

State activities.

Regulatory activities.

Licensed activities (operating).

##### 3.2.4.3.1 *State activities*

State activities include, foremost, the adoption and the realisation of air transport strategies, coordinate State-tasks concerning air transport and administer air transport, maintain services for air-traffic control airport coordination, information, emergency, navigations and communications, meteorology, and for search and rescue, and organising the training of air-traffic control personnel (Art. 2).

Aviation navigation, communications, and air-space control services in the Hungarian airspace are State activities (Art. 4).

#### 3.2.4.3.2 Regulatory activities

Regulatory activities include, foremost licensing aviation activities, licensing State-owned commercial and other airports, the supervision of foreign-registered aircraft, and the issuing of technical suitability, operating, aviation navigation-safety, and national aviation-protection decisions (licenses) (Art. 3).

#### 3.2.4.3.3 Licensed activities

An operating license must be obtained from the aviation authority for the operation of commercial aircraft subject to a registration obligation (aircraft used for commercial aviation purposes), airports, and aviation ground equipment (Art. 19).

Special operating licenses must be obtained, among others, for radio equipment used in aircraft, the transportation of dangerous material or military equipment or material on civil aircraft, the carrying out of other commercial activities with aircraft, aircraft leasing activities, and for non-commercial company-purpose or association-based aviation or aviation-related activities (Arts. 20, 34, 35).

Licenses for carrying out other commercial activities must also be obtained for cross-border services carried out on the basis of the free movement of services (Art. 20/B(1)).

The free movement of services does not apply (these activities cannot be carried out as a cross-border provision of services) to non-commercial passenger and freight transport services, including the transport of postal consignment, civil protection and emergency aviation activities, healthcare emergency aviation, and to aviation with State aircrafts (Art. 20/B(3)).

#### 3.2.4.4 Entry conditions in the Hungarian market for air transport

The principle of freedom of aviation (*légi szabadságjog*) (Art. 1/A): the air transport operator is entitled to transport by air passengers, luggage, freight or postal consignments.

##### 3.2.4.4.1 The registration obligation (Arts. 12-16)

Civil aircraft must be registered by the aviation authority and must obtain a registration certification and a registration mark.

Aircrafts registered in Hungary are Hungarian (Hungarian-registered) aircrafts.

Registered aircraft must be identified by a nationality mark and the registration mark;

Hungarian aircrafts must be based at a Hungarian airport where the keeping and operation of the aircraft takes place or where these activities are organised from.

Registration is granted when

the aircraft is suitable for safe aviation activities.

the aircraft is not registered in the aviation registry of another State.

the aircraft has an aviation suitability certificate.

aircrafts imported from third States have a customs certificate issued by an EEA customs authority

#### 3.2.4.4.2 The operating (aviation) license

Aviation activities, activities connected to aviation are subject to obtaining an operating license from the aviation authority (Art. 22).

The license obligation also applies to cross-border services carried out on the basis of the free movement of services (Art. 20/B(2)).

An aviation license may only be issued to economic operators established in Hungary or, in case of a cross-border provision of services, in an EEA Member State, in case (Art. 23(1))

the conditions laid down in legislation are met.

in case of a self-employed person, no prior criminal record or not subject to criminal proceedings or not subject to a criminal judgment prohibiting the exercise of aviation or aviation-related activities.

the sufficient, as stated in legislation, organisation, personnel, and owned or permanently leased equipment are available for safe and lawful operation.

the aviation authority has approved the operating regulations of the economic operator concerned regarding the aviation and the aviation-related activity in question, the training of aviation personnel, and regarding the methods, management and internal controls of aircraft maintenance.

the person concerned is not subject to administrative decision restricting or prohibiting the carrying out of the aviation or aviation-related activity.

The aviation license for commercial aviation activities is issued on the basis Regulation 1008/2008/EC, the above Art. 23(1) conditions, and the legislation on commercial aviation activities, subject to the specific

conditions that the economic operator must have the location of its central administration in Hungary (Art. 23(5)).

This also applies to commercial aviation activities carried out with Hungarian-registered aircraft in third States (non-EEA Member States), unless international treaty orders otherwise (Art. 23(6)).

Aviation licenses for commercial aviation activities may only be issued in case the economic operator concerned has sufficient business goodwill and the CEO of the economic operator qualifies as a trustworthy person (Art. 23/B).

Third State economic operator may obtain an aviation license on the basis of an international treaty or reciprocity (Art. 23(2)).

In case of freight transport aviation services, the customs authority must examine the aviation license, and when the economic operator is not licensed to carry out the aviation activity, it must notify the aviation authority and deny the entry or exit of goods until a license is obtained (Art. 23/A).

#### 3.2.4.4.3 Safety and technical rules

The aircraft type suitability certificate must be obtained for aircraft not covered by Regulation 216/2008/EC testifying compliance with aviation safety rules, or a single aviation permit must be obtained from the aviation authority. For aircraft manufactured abroad, the aviation authority may accept the certification issued by the aviation authority of another State that the aircraft type complies with international standards and is suitable for safe aviation or normal use. (Art. 46).

The aviation suitability certificate must be obtained for aircraft not covered by Regulation 216/2008/EC testifying compliance with aviation safety rules, or a single aviation permit must be obtained from the aviation authority (Art. 48).

The special service permit must be obtained from the aviation authority for the driving of registered aircraft, and for testifying their operability, and for other activities determined in legislation, which testifies testifying the professional suitability of the permit holder (Art. 52).

#### 3.2.4.4.4 The compulsory insurance

The operation of public airports, registered civil aircraft, and of civil aircraft not subject to registration, and the provision civil air traffic control services are subject to producing an insurance cover (Art. 69(1)). Licenses for the operation of public airports and for the provision of air traffic control services may only be issued in case the insurance cover is provided (Art. 69(2)).

### 3.2.4.5 *The conditions of providing services in the Hungarian market for air transport*

#### 3.2.4.5.1 *The use of Hungarian airspace*

According to its availability for use, the Hungarian airspace is classified to include the following parts (Art 5): available for civil aviation, limitedly available for civil aviation, civil aviation is prohibited, dangerous airspace, airspace available for supersonic aviation, and air-traffic control is provided by neighbouring States or by an international aviation organisation.

The Hungarian airspace can be used subject to the following conditions (Art. 6)

The aircraft has the nationality mark, registration mark, or other identification marks laid down in legislation.

Foreign-registered aircraft must obtain a prior authorization from the aviation authority, or its use Hungarian airspace is based on an international treaty.

The driver holds the special service permit obtained from the aviation authority, in case of aircraft not subject to registration obligations the driver meets the conditions laid down in legislation.

Controlled airspace (subject to air traffic control) may only be used under an air traffic control permit.

The use of Hungarian airspace is subject to the payment of an airspace usage fee (Art. 9).

The authorisation for foreign-registered aircraft to enter the Hungarian airspace must be obtained from the minister responsible for foreign affairs; no redress under law is available against the decision of the minister. This rule does not apply to NATO or EU Member State State-aircraft (Art. 7).

#### 3.2.4.5.2 *Passenger air transport services*

Passenger air transport services are subject to a license issued by the aviation authority which determines the nature of the activity, the routes licensed, and the geographical area of the license (Art. 24(1)).

Regular transport services, provided that the conditions laid down in legislation are met, are available to all recipients (Art. 25(1)).

Compliance provisions with the consumer protection requirements of Regulation 1008/2008/EC (Art. 26/A).

#### 3.2.4.5.3 *Freight air transport services*

Freight air transport services are subject to a license issued by the aviation authority which determines the nature of the activity, the routes licensed, and the geographical area of the license (Art. 24(1)).

Regular transport services, provided that the conditions laid down in legislation are met, are available to all recipients (Art. 25(1)).

Compliance provisions with the consumer protection requirements of Regulation 1008/2008/EC (Art. 26/A).

#### 3.2.4.5.4 Air traffic control services

Air traffic control services and other air transport supporting services are provided in the Hungarian airspace by the organisation appointed by the responsible minister (Art. 61(2)).

This organisation is the closed sole-ownership public corporation established by the State: HungaroControl Zrt. (Art. 61/A(1)).

#### 3.2.4.5.5 Aviation safety services

Aviation safety services must be maintained by the keeper of aircrafts, operator of airports, or by the air traffic control service provider, or the must be contracted with a safety service provider (Art. 65/A(1)).

The operation is aviation safety services is subject to an operating license issued by the aviation authority (Art. 65/A(2)).

Compliance clause: the obligations laid down in EU legislation concerning civil aviation incidents (Art. 65/A(3)).

Compliance clause: concerning the evaluation of civil aviation incidents and the identification of aviation safety risks as laid down in EU legislation (Art. 66).

#### 3.2.4.5.6 Aviation security services

Aviation security services are carried out by the body or organisation appointed by the government, and by the operator of the public airport, which establishes a security service to carry out certain security-related tasks (Art. 67(2)). Their operation is subject to supervision and controls by the police (Art. 67(7)).

In case the operator of the public airport fails to meet its aviation security obligations, the tasks of the security service established by the operator are taken over by the police (Art. 67(3)). The takeover of tasks is initiated by a decision of police, against which there is no right of appeal and they enter into force and are enforceable upon communication (Art. 67(5)-(6)).

The costs of aviation security are borne together as determined by legislation by the State, the airport and the keeper of carrier aircrafts. The costs can be transferred onto the users of the airport and to passengers. (Art. 67(8)).

A supervision fee must be paid to the aviation authority by the operator of an international commercial airport with over 250.000 passengers per year, which is determined at a per person rate and which is maximised at an annual rate of 500.000 kHUF.

#### 3.2.4.5.7 The rules on airports

The establishment, development and closure of international public commercial airport are subject to authorisation by the responsible minister having obtained the opinion of the affected local council (Art. 37).

State-owned airports, with the exception of Budapest Liszt Ferenc International Airport, may only be sold with the consent of the government (Art. 41).

##### 3.2.4.5.7.1 The use of airports

The use of public airports by aircraft is subject to the payment of a fee determined by the airport operator. The fee must be published. (Art. 41(1)).

the principles and method of calculating the fee for larger airports (over 250.000 passengers per year) are determined by the responsible minister in legislation subject to meeting the requirements of equal treatment and transparency, and taking into account the costs incurred with the services provided (Art. 41(2)).

The use non-public airports may be authorised by the airport operator. The operator of civil non-public airports may a charge usage fees as determined by itself. The fees must be published. (Art. 41(8)).

##### 3.2.4.5.7.2 The operation of airports

Airport operators are obliged to (Arts. 50-51)

to operate the necessary services and equipment determined in legislation.

to operate the airport as required by legislation.

to prepare an airport operation order and have it approved by the aviation authority.

##### 3.2.4.5.7.3 The operation of Budapest Liszt Ferenc International Airport (Art. 45)

The operation of Budapest Liszt Ferenc Airport is based on an asset management contract between the Hungarian State and the asset manager of the airport.

The transfer of asset management rights is subject to the agreement of the minister responsible for public expenditures.

The operating activities cannot be transferred by the asset manager to a third party.

Other activities not covered under this act by the asset management contract, when they do not involve the development, refurbishment, maintenance of the related premises, can be carried out outside the asset management contract.

The airport operator is under an obligation to contract with the economic operator licensed to carry out ground service operations with regard to the use of the ground service premises and equipment operated by the airport operator.

#### 3.2.4.5.8 Certificates, decisions and powers

Aviation suitability certificates (Art. 3/C(1)): for certain types of aircraft, aviation products, parts and equipment, by the aviation authority.

Operating decisions (Art. 3/C(2)): operating decisions, in case of a risk to aviation safety, may prohibit or restrict the operation of aircrafts, or subject their operation to certain conditions.

Aviation navigation-safety decisions (Art. 3/C(3)): in case of an incident affecting aviation safety affecting aviation navigation service providers and notified organisations under Regulation 552/2004/EC.

National aviation-protection decisions (Art. 3/C(4)): to give effect to civil aviation protection objectives in respect of persons and organisations determined in Art. 67(1).

The right of the aviation authority to overtake administrative supervision over foreign-registered aircraft (Art. 3/E(1)): in case the registered keeper of the foreign-registered aircraft has obtained its license from the aviation authority and an agreement is reached between the aviation authority and the aviation authority of the place of registration.

The right of the aviation authority to hand over administrative supervision over Hungarian-registered aircraft (Art. 3/E(2)): in case the license of the registered keeper was issued by the foreign aviation authority and the aviation authorities involved have concluded an agreement on this matter.

#### 3.2.4.6 The administrative environment

##### 3.2.4.6.1 General issues

Objective administrative deadlines (Art. 3(20)-(2d)).

The administrative service fee: procedures before the aviation authorities are subject to an administrative service fee (Art. 2(3)).

There is not appeal in the administrative procedure against specific decisions of the aviation authority (aviation suitability, operating, aviation navigation-safety, national civil aviation protection), and in judicial review they cannot be reformed or annulled (Art. 3/C(7)). The decisions may, however, be modified or withdrawn by the aviation authority on grounds of substantive law, or may be repealed by the aviation authority as a result of a decision in judicial review; in such instances the aviation authority is obliged to modify or withdraw its other decisions delivered in different cases on the basis of the same factual circumstances even after a year from the delivery of those decisions (Art. 3/C(8)).

The exclusion of appeal in the administrative procedure in case of decisions delivered under Regulation 847/2004/EC concerning the exercise of limited aviation rights (Art. 3/D(2)).

The exclusion of electronic correspondence in a broad range of administrative procedures (the requirement of paper-based administration) (Art. 3/D(1)).

#### 3.2.4.6.2 The supervision of foreign-registered civil aircraft (Art. 3/B)

The aviation authority is entitled to supervise foreign-registered civil aircrafts and their personnel, it prepares a report on its activity, submits the report to the European Commission and, on request, to EEA aviation authorities and the European Aviation Agency (in case of irregularities, to every EEA aviation authority and the European Commission), informs other national aviation authorities and international aviation organisations, in case a damage or a failure affecting air safety is detected, it prohibits the participation of the aircraft in air transport, until the damage or failure is repaired.

## 3.3 The energy market

### 3.3.1 The market for natural gas

The Hungarian market for natural gas is regulated Act 2008: XL on natural gas supply. In principle, the measure establishes an open and liberalized market for natural gas where competition and public service provision both prevail. There is considerable State involvement in certain segments of the market and direct price regulation by the State has a strong basis in legislation. Only the most important legal provisions are included in this legal mapping report.

#### 3.3.1.1 Overview of the legal and regulatory environment

In general, at the level of statutory provisions the Hungarian market for natural gas operates as an open market which provides equal access and equal opportunities to EEA economic operators. The aim of the act is to provide for the objective, transparent and non-discriminatory regulation of competitive markets for natural gas and of access to the supply system. The legal framework contains numerous restrictions concerning the carrying out of economic activities the sector, but these, on a general level, are supported either by public interests considerations or by considerations relating to the nature of economic activities in the sector.

The promotion of new market entries and of their effective presence in the market are key objectives of the act. As a norm, carrying out economic activities in the Hungarian market for natural gas (market entry) is subject to the obtaining of a license (here, operating license), the substantive and the procedural rules relating to which, and the rules governing the payment of the related fees, as regulated in law, are transparent and reasonable. They do not involve directly discriminatory provisions and provisions which would unduly hinder the access of EEA economic operators to the Hungarian market. The requirement of being established as a public undertaking for the issuing of certain licenses (Arts. 114(13) and 117(1)), may raise issues under EU law. The same applies to the conditions imposed – mainly in the public interest – as regards the licensing of Hungarian subsidiaries (Art. 114(6)). The rules on natural gas trading (Art. 28) may also raise suspicions. The regulatory framework operates consciously with compliance clauses (Art. 159, general EU compliance clause; Art. 1, harmonisation with EU obligations is a regulatory aim). The general clause that the licensing procedure must comply with the requirements of objectivity and equal treatment (Art. 115(5)) ensures compliance with EU obligations. The same holds true for the general principles of price regulation (Art. 105 and Art. 107 for universal services). The indirect coapplication provision in Art. 119(1) concerning infrastructure development ensures that EU requirements are taken into account in the application of the act. The act in Chapter XVI

An adequate  
regulatory  
framework

Market access  
ensured

EU compliance

contains detailed cooperation obligations for the Hungarian regulator with the European Commission and other European regulators.

The Hungarian natural gas market, as it stands, is characterised by robust State involvement delimiting market mechanisms and competition. The State is the exclusive owner of natural gas emergency reserve storage facilities (Art. 124/B). The State was also given prioritised pre-emption rights overall natural gas storage facilities, including emergency reserve storage facilities (Art. 124/A). In terms of direct interventions with the market, the act provides extensive powers to the State to deliver parallel policy objectives. Market participants are subjected to obligations to offer for sale subject to price and quantity regulation their non-contracted natural gas resources (Arts. 141, 141/C, 141/G, and 141/J). The State enjoys extensive powers of price regulation (Arts. 103 and 106). While they are subject to an extensive list of requirements aiming to ensure that they are exercised in harmony with EU requirements (Arts. 105 and 107), they severely delimit the choices of economic operators (Art. 104). Economic operators are also prevented explicitly from passing on to consumers the burdens imposed on them in the form of sector-specific taxes and surtaxes (Art. 104), and they have been subjected to statutory price freezes (e.g., Art. 108/A).

#### 3.3.1.2 *The markets*

Natural gas transmission.

Transmission system operation.

Natural gas distribution.

Natural gas storage.

Natural gas trading.

Universal service provision.

The operation of the organised natural gas market.

One-stop-shop capacity trading

#### 3.3.1.3 *The activities carried out in the different markets*

State activities.

Regulatory activities.

Licensed activities.

#### 3.3.1.4 *State-ownership*

Exclusive State-ownership (Art. 124/B): natural gas emergency reserve storage facilities may only be in the exclusive direct or indirect majority ownership of the Hungarian State. This also follows from the provisions of the act on national assets.<sup>132</sup>

#### 3.3.1.5 *Rules on infrastructure development*

It must be carried out based on the infrastructure development proposal of the system operator, which is subject to approval as an infrastructure development plan by the regulator (Arts. 81-82).

In case the infrastructure development proposal fails to meet the security of supply objectives of national and EU energy policy, or it affects disadvantageously the national economy, is unlawful, or it obstructs effective competition, the regulator in parallel to the notification of the government and after identifying its reasons obliges the system operator to modify its proposal (Art. 83(1)).

In case the infrastructure development proposal fails to meet the 10 year infrastructure development plan of the EU, is unlawful, or it obstructs effective competition, the regulator after identifying its reasons obliges the system operator to modify its proposal (Art. 83(2)).

The regulator is entitled to publish an open call for carrying out the justified infrastructure development and for constructing natural gas storage facilities, in case the infrastructure development plan is not implemented in due course. The system operator is obliged to allow the development activities carried out according to the call and it must cooperate with the developer. The system operator, following a successful application, may choose from the options that the development is financed by a third party, the development is realised by a third party, or the development is realised by the system operator (Art. 83/A)

Exemptions from the price regulations, access obligations and separation obligations may be awarded in case of developing new infrastructure (the construction of new cross-border pipeline, storage facility for PNG, or natural gas storage facility by a foreign or domestic economic operator)(which also includes the capacity extension of existing transmission pipelines, and the development of existing transmission pipelines and storage capacities which enable the extension of supply sources (Art. 85(7))) (Art. 85(1)), on the condition that

the new infrastructure will increase competition in supply, enhance security of supply, and increase the effective operation of the natural gas system.

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<sup>132</sup> Supra n.

the financial risks of developing new infrastructure would jeopardise its realisation without the granting of the exemption.

the owner of the new infrastructure is an economic operator which is not licensed to operate the network to which the new infrastructure is connected.

the use of the new infrastructure is subject to a fee.

the exemption does not undermine competition and the effective operation of the natural gas system, or of the transmission pipeline or storage facility to which the new infrastructure is connected.

The regulator when granting in its decision the exemption must also take into account the impact of the exemption on natural gas prices, the validity of the information provided in support of the exemption, the potential impact of the exemption on competition and the effectiveness of the market, and its impact on the extension of the sources of supply (Art. 85(2)). The decision is notified to the European Commission which can request the modification of the decision or express its disagreement with the decision (Art. 85(4)).

#### *3.3.1.6 The pre-emption rights of the Hungarian State (natural gas storage)*

The Hungarian State has rights of pre-emption over (At. 124/A)

natural gas storage facilities, including emergency reserve storage facilities.

the land and premises connected to the operation of the storage facility.

the direct ownership rights in the storage license holder.

The pre-emption rights of the State enjoy priority over other pre-emption rights, both statutory and contractual (Art. 124/A(2)).

#### *3.3.1.7 Restrictions on transactions involving natural gas storage facilities*

Restrictions on transactions involving such storage facilities, real estate and ownership rights (Art. 124/A(5)): only in the form of a sale or an exchange, the exchange of storage facilities and real estate may only involve another holder of a license for natural gas storage, the exchange of ownership rights may only involve a person with direct ownership in a holder of a license for natural gas storage

Prior approval of the regulator for transactions involving such storage facilities, real estate and ownership rights (Art. 124/A(6)).

Transactions violating these provisions are void (Art. 124/A(7)).

### 3.3.1.8 *The obligation to offer for sale natural gas resources*

#### 3.3.1.8.1 *Natural gas traders*

The obligation of natural gas traders to offer for sale to universal service providers their non-contracted natural gas resources (for future time periods after 2011) (Art 141)

under the same contractual conditions used for previously contracted gas resources,

subject to the price and quantity determined in regulation by the responsible minister,

- the price must be determined on the basis of the requirement of cost-effective supply, but
- the price must not be determined having regard to the sector-specific surtax imposed under Act 2010:XCIV.

Universal service providers are at liberty to decide on whether to conclude such contracts.

#### 3.3.1.8.2 *Public service wholesalers*

The obligation of public service wholesalers without a universal service license to offer for sale to natural gas traders to supply universal service provider their non-contracted natural gas resources (for future time periods after 2014) (Art. 141/C)

at a price which meets the regulated price, but it is lower than that price in at least one component,

- this lower price may also be secured by providing price reductions,

in general, subject to the price and quantity determined in regulation by the responsible minister.

#### 3.3.1.8.3 *Natural gas storage license holders*

The obligation of the natural gas storage license holder is obliged to offer for sale for the purpose of supplying universal service providers the 120 million m<sup>3</sup> reclassified cushion gas in its ownership. In case the offer is not accepted, the natural gas in question can be sold in compliance with the provisions of the conditions of business (at a time determined by the responsible minister) (Art. 141/G)).

#### 3.3.1.8.4 Former public service wholesale trader

The obligation of the former public service wholesale trader, which does not have a universal service provision license, to offer for sale for the purpose of supplying universal service provider its non-contracted natural gas resources (for a future time period) (Art. 141/J))

subject to non-discriminatory contractual terms,

subject to the price and quantity determined in regulation by the responsible minister,

- the price must be determined on the basis of the requirement of cost-effective supply.

Universal service providers are at liberty to decide on whether to conclude such contracts. The wholesale trader is obliged to contract with buyers.

#### 3.3.1.9 *The rules of negotiated access to natural gas storage facilities*

The negotiated access to natural gas storage facilities must be ensured (Art. 74(2)). Its introduction is, however, decided by regulator provided that actual competition in the storage market has developed (Art. 146/A).

#### 3.3.1.10 *Entry conditions in the Hungarian market for natural gas*

##### 3.3.1.10.1 The license

The following actives are subject to a license issued by the regulator (Art. 114(1))

restricted trade with natural gas.

transmission system operation.

natural gas distribution.

natural gas storage.

natural gas trading.

universal service provision.

operating the organised natural gas market.

one-stop-shop capacity trading.

the construction of pipelines by pipeline constructor.

The licensing procedure must comply with the requirements of objectivity and equal treatment (Art. 115(5)).

The refusal of license applications is notified to the Commission (Art. 114(9)).

Licenses, with the exception of pipeline construction, are issued without a temporal restriction (Art. 114(2)).

The conditions for granting the license include (Art. 114)

meeting the conditions laid down in legislation.

meeting the financial and economic conditions laid down in legislation.

meeting the unbundling requirements for transmission system operators, in case of a license for transmission system operation.

have the financial, economic, technical, environmental, IT, telecommunications conditions and equipment required by law for the continuous, long-term performance of activities, and the necessary personnel, and the conditions necessary to carry out activities in the natural gas industry.

not being subject to an insolvency or a winding up procedure.

operating licenses were not withdrawn in the previous 10 years by the regulator for causes in the duty of care of the economic operator.

#### 3.3.1.10.1.1 The license for operating the organised natural gas market

The license for operating an organised natural gas market may be issued to a public undertaking or to a subsidiary registered in Hungary of an economic operator which has its seat in an EU or an EEA Member State (Art. 114(13)).

The license for operating an organised natural gas market secures an exclusive right for the operation of that market and entails an obligation to operate that market (Art. 114(14)).

Issuing the license for operating an organised natural gas market in the form of a subsidiary is subject to the conditions (Art. 114(16))

there is a valid international cooperation agreement, based on the mutual recognition of the regulators, in force between the regulators involved.

the applicant declares to bear unlimited responsibility for the obligations undertaken by the subsidiary.

the license, supporting declaration or acknowledgement of the home regulator concerning the establishment of subsidiary is submitted

with the application.

the place of management of the applicant is in the State where its seat is registered.

#### 3.3.1.10.1.2 Rules on individual licenses

The license for natural gas distribution secures an exclusive right for carrying out that activity in the given geographical location and entails an obligation to carry out that activity (Art. 116(1)).

The transmission system operator may not have another kind of operating license (Art. 117(1)).

The transmission system operator must operate in the form of a public corporation (Art. 117(1)).

The natural gas trader may not have an operating license apart from the universal service provision license (Art. 117(2)).

The natural gas distributor may not have an operating license apart from the license granted with the exception of the small-scale (100.000 users) trading license (Art. 117(3)).

The natural gas storage facility operator may not have an operating license apart from the license granted (Art. 117(4)).

The holder of an emergency reserve storage license is entitled and obliged to operate the storage facility on the basis of the special rules introduced to regulate that activity (Art. 118(3)).

The license holder for organised natural gas market operation may not have an operating license apart from the license granted (Art. 117(4)).

Granting the one-stop-shop capacity trading license is not subject to the condition that the license holder owns, operates or maintains the Hungarian pipeline affected (Art. 117(5)).

The operator of a one-stop-shop international pipeline carries out its activities in Hungary on the basis of a transmission system operating license (Art. 117(6)).

#### 3.3.1.10.2 System access

##### 3.3.1.10.2.1 The obligation to connect

There is an obligation to connect to transmission and distribution pipelines (Art. 67(1)), unless

it is technically impossible.

it violates legislative provisions.

the user refuses to pay the connection fee and to meet the conditions of connection laid down in legislation.

the necessary license has not been obtained.

the transmission system operator does not hold the necessary capacities and the user refuses to provide the necessary capacities.

In case of a refusal from the transmission system operator or the distributor, the regulator may, on application, establish the obligation to enable connection provided that the connection fee is paid (Art. 67(3)).

#### 3.3.1.10.2.2 The right to reserve capacity

The act provides the right to reserve capacity (Art. 71) and the right of access, subject to a contract, to the system to use the reserved capacities (Art. 72).

Access to the system must be provided without discrimination, enabling arbitrary practices, and without unjustifiable restrictions, and its conditions must not jeopardize the security and quality of supply (Art. 76(4))

The reserved capacities are available for use in exchange for a system usage fee (Art. 76(1)).

The system operator in its decision to refuse or suspend access to the system must provide sufficient reasons (Art. 77(3)).

The decision must be notified to the regulator, which decides on the lawfulness of the refusal or the suspension (Art. 77(4)-(5)).

In case the refusal or the suspension was illegal, the regulator applies the legal remedies regulated in this act and obliges the system operator to ensure access within the shortest possible time (Art. 77(6)).

#### 3.3.1.11 *The conditions of providing services in the Hungarian market for natural gas*

##### 3.3.1.11.1 General principle

The operation of transmission and distribution pipelines, and of storage facilities (Art. 86(1)) must be safe, effective, undisturbed, transparent, without undue interference, and non-discriminatory, and is subject to a cooperation obligation with other system operator and with system users (Art. 86(2)).

##### 3.3.1.11.2 Natural gas transmission

The transmission system operator, with the exception of independent system operators appointed by the regulator, must have ownership of the operated pipelines (Art. 4(1)).

The transmission system operator must have the equipment and the technical, material, personnel and financial resources necessary to discharge its tasks and to comply with its legal obligations (Art. 4(2)).

The transmission system operator is obliged, among others, to provide equal treatment for all users or groups of users and to provide equal access to the pipelines for all users or groups of users (Art. 5).

#### 3.3.1.11.3 Transmission system operation

In case of a single licensed transmission system operator, the operation and coordination tasks of the natural gas system are carried out by that system operator (Art. 11(1)).

In case of multiple licensed transmission system operators, the operation and coordination tasks of the natural gas system are carried out by the system operator appointed by the regulator (Art. 11(2)).

#### 3.3.1.11.4 Natural gas distribution:

Natural gas distribution activities are subject to obtaining an operating license (Art. 14(1a)).

The operating license holder for natural gas distribution must have majority ownership of the operated distribution pipelines (Art. 14(1)).

In case the user connects directly to the transmission pipeline, the natural gas distribution tasks will be carried out by the transmission system operator (Art. 18)

For pipelines owned by others, the license holder and the owner conclude an operating contract concerning the operation and maintenance of the pipelines affected (Art. 14(3)).

The natural gas distributor is under an obligation to cooperate with all affected economic operators and other parties (Art. 15).

The natural gas distributor is entitled to decline the connection of the user and the commencing of natural gas distribution services, and to suspend the provision of natural gas distribution services (Art. 16(1)).

#### 3.3.1.11.5 Natural gas storage

Natural gas storage activities are subject to an operating license (Art. 26).

The license holder must have majority ownership of the natural gas storage facility, or it must have asset management rights over that facility (Art. 26(1))

The trade of mobile natural gas reserves offered as contractual security by the user (not an act of natural gas trade): as determined by the conditions of business and according to the procedure approved by the regulator (Art. 27)

The license holder is under an obligation to advertise, as a package and as an individual deal, the mobile storage capacity, the in- and out-storage capacity for the storage year or for intervals within the storage year, and to ensure the freedom of choice for users between the advertised services (Art. 27/A(1))

The license holder is under an obligation to offer the free storage capacities for sale, with the exception of free storage capacities held by holder of a

emergency reserve storage license under an obligation of long-term storage (Art. 27/A(2)-(3))

#### 3.3.1.11.6 Natural gas trade

Trading natural gas is subject to a trading license (Art. 28(1)).

Trading is based on a natural gas trading contract (Art. 28/A).

The license to trade natural gas may be given to an economic operator or to a Hungarian registered subsidiary of an economic operator with a seat in an EU or an EEA Member State (Art. 28(3)).

A limited trading license may be given to an economic operator registered in an EEA Member State licensed in that State to carry out natural gas trading the approachability of which in Hungary is ensured by a representative, and it meets statutory conditions (Art. 28(4)).

A limited trading license may be given to an economic operator registered in Hungary which is in the ownership of a domestic specialised financial institution provided that it meets the conditions laid down the government regulation in the implementation of this act (Art. 28(4a)).

#### 3.3.1.11.7 Universal service provision

The provision of universal services is subject to a universal service provision license determining the service provision area (Art. 32(1)).

Universal service providers are subject to the rights and obligations of the natural gas trader (Art. 32(2)).

The license holder is under an obligation to contract with the users of the universal (Art. 34(1))

The license holder is under an obligation to supply natural gas to user in the service packages and under the prices laid down in legislation (Art. 35).

#### 3.3.1.11.8 The operation of the organised natural gas market

The operation of the organised natural gas market is subject to a license (Art. 46).

The organised natural gas market must be operated in transparent conditions and subject to meeting the equal treatment requirement (Art. 47(2)).

In the public company operating the organised market, the ownership and the voting rights of a single shareholder must not exceed 10 per cent of the capital and the available votes, and the ownership and the voting rights of the license holder must not exceed 50 per cent of the capital and the available votes (Art. 48).

Excluded activities for the license holder and for a third party providing services to the license holder are natural gas trade, natural gas storage, natural gas distribution, one-stop-shop capacity trade, and the third party service provider, natural gas market operation activity (Art. 48/A(3)).

### 3.3.1.11.9 One-stop-shop capacity trading

One-stop-shop capacity trading (on international pipelines) is subject to an operating license (Art. 53(1)).

Obligation to sell to the license holder: the owner of the Hungarian segment of the international pipeline may only sell or transfer the Hungarian capacities to the license holder, subject to the exemption granted by the regulator; the access, price regulation and the price supervision provisions of the act do not apply to the capacity threshold determined in the exemption (Art. 53(2)).

### 3.3.1.11.10 Price and fees regulation

#### 3.3.1.11.10.1 Regulated prices

Compulsory regulated prices are (Art. 103(2), (2a), (2b))

the system usage fee.

the system connection fee.

the fee charged by the universal service provider for additional services.

the price of the universal service.

the price for natural gas resources offered for sale under obligation.

the price of domestically produced natural gas to the amount necessary supply universal service provision.

the consumer price of PB gas supplied in pipelines and in storage containers, the consumer price of canned PB gas (at 11.5 kg) and its price when sold to retailers.

The system usage fee includes (Art. 105(1))

the fee for transmission system operation.

the storage fee.

the distribution fee.

the system management fee.

the natural gas clearing fee.

The system usage fees, the connection fee, and the fee charged by the universal service provider for additional services must comply with the

requirements of transparency, openness and proportionality, and they must be applied in an objective manner and without discrimination. The introduction of differentiated fees for the universal service provider, in order to compensate its disadvantageous position in representing its interests, does not constitute unlawful discrimination. (Art. 105(4)).

For effectively operated license holders, the system usage fees must be determined, having regard to their justified operating and capital costs and to the principle of the lowest costs determined on the basis of comparative assessments, in a manner that they incentivise license holders to increase the effectiveness of their management and the quality of their services, and to increase the safety of supply (Art. 105(5)).

Exemption from the storage fee: in order to promote competition in the natural gas storage sector, the regulator may grant an exemption from the payment of the storage fee (Art. 105/A(6)).

#### 3.3.1.11.10.2 The general principles of price regulation

The regulated price must be regarded as the highest price chargeable (Art. 104(1)).

The parties cannot agree in a contract on a higher price, if they do not agree on a price, the regulated price will be applicable to the affected product or service, the regulated price will be applicable even when the parties agreed unlawfully on a different price, and prices lower than the regulated price may only be introduced without discrimination and they must be publicised prior to their introduction (Art. 104(8)-(9)).

The regulated price is determined ex officio, it must be published by the license holder within 3 days, it cannot be introduced with retrospective effect, its entry into force must be determined, and it will form part of contracts concluded prior to its introduction (Art. 104(2)-(6)).

The regulatory cycle: a minimum 2 and a maximum 6 year cycle for system usage fee, the fee charged by the universal service provider for additional services, the price of universal service provision, and for the connection fee (Art. 104/A).

#### 3.3.1.11.10.3 The 'no pass on' clauses

The sectoral surtax clause: the sectoral surtaxes imposed (under Act 2008:LXVII and Act 2012:CLXVIII) cannot be passed on by the tax subject to the contractual party, which entails, in particular, that the surtax cannot be integrated directly or indirectly into the price of products or services, and the surtax cannot be made as a separate payment obligation of the contractual party; the tax subject must on its own bear the surtax burden (Art. 104(4)).

The financial transaction charge clause: the financial transaction charge imposed (under Act 2012:CXVI) cannot be passed on by the tax subject to the contractual party, which entails, in particular, that the charge cannot be

integrated directly or indirectly into the price of products or services, and the charge cannot be made as a separate payment obligation of the contractual party; the tax subject must on its own bear the charge (Art. 104(4a))

The technical and safety supervision fee clause: the technical and safety supervision fee cannot be passed on by the distribution operator to the contractual party, which entails, in particular, that the fee cannot be integrated directly or indirectly into the price of products or services, and the fee cannot be made as a separate payment obligation of the contractual party; the tax subject must on its own bear the fee (Art. 104(4b)).

#### 3.3.1.11.10.4 Further regulatory powers

Further regulatory powers (by the responsible minister) (Art. 106) to determine

the services and their fees provided by the system operator and the universal service provider on demand from the user for an additional fee.

the minimal services provided by the system operator and the universal service provider on demand from the user free of charge.

the services and their fees provided by the system operator and the universal service provider in case of the violation of its contractual obligations by the user for an additional fee.

the services and their fees provided by the transmission system operator on demand from another transmission system operator for an additional fee.

#### 3.3.1.11.10.5 Pricing for universal services

The price structure for universal services must be fair and equitable, easily and clearly comparable and transparent (Art. 107(1)). The price of the universal service must be determined on the basis of the justified operating and capital costs of an effectively operated license holder, and in a manner that it gives effect to the principle of lowest cost by incentivising the license holder to increase the effectiveness of their management and the quality of their services. The price must also ensure the cost-effective natural gas supply of users. (Art. 107(2)).

#### 3.3.1.11.10.6 The connection fee

The connection fee is payable for connection to the transmission or distribution pipeline, or for obtaining the extra capacity purchased on top of the earlier purchased capacities (Art. 108(1)).

The connection fee must be determined in a manner that it promotes observing the principle of lowest costs, and that it takes into account the

benefits gained from the subsequent connections of new system users (Art. 108(2)).

The amount of the connection fee must not exceed the costs incurred by the transmission system operator or the distributor directly in connection with the connection to the system (Art. 108(2)).

The income generated from the connection fee must be spent of infrastructure development necessary for connecting to the system (Art. 108(3)).

#### 3.3.1.11.10.7 Price freeze for PB gas

The consumer price for pipeline PB gas, PB gas in storage containers and canned PB gas, and the price for selling canned PB gas to retailers (price freeze): it must not exceed 90 per cent of the consumer price applicable on 1 December 2012 (Art. 108/A(1)-(4)). At the time of issuing the bill, the pipeline PB gas provider and the PB gas retailer must inform the consumer of the impact of the price freeze on the price paid (Art. 108/A(5)).

#### 3.3.1.11.11 Emergency powers

The powers of the government in case of a natural gas supply emergency (the balance of supply and use cannot be reinstated through the usual instruments, the demands for use exceed the supply opportunities, or there is an imminent threat of these) include (Art. 97, 97/A, 98)

the regulation of workdays and rest days.

the regulation of the opening hours of private and public premises open to customers.

the regulation of the highest heating temperature in private and public premises open to customers.

other instruments to reduce natural gas usage.

the regulation of the conditions of contracting for the exportation of natural gas produced or stored in Hungary.

the use of the emergency reserve according to the applicable legislation.

the identifying the users the supply of which may or may not be restricted.

The emergency powers of the responsible minister in case of a natural gas supply emergency (to regulate in a ministerial regulation) include (Art. 97/C)

the suspension of contracts to supply users.

the restriction of supply to users.

the regulation of the rights and obligations of license holders.

the regulation of the maximum price of every product and service connected to the supply of natural gas.

### 3.3.2 The market for electricity

The Hungarian market for electricity is regulated by Act 2007: LXXXVI on electricity. In principle, the measure establishes an open and liberalized market for electricity where competition and public service provision both prevail. There is considerable State involvement in certain segments of the market and direct price regulation by the State continues to have a basis in legislation. Only the most important legal provisions are included in this legal mapping report.

#### 3.3.2.1 *Overview of the legal and regulatory environment*

In general, at the level of statutory provisions the Hungarian market for electricity operates as an open market which provides equal access and equal opportunities to EEA economic operators. The aim of the act is to establish an effective competitive market for electricity and to provide for the objective, transparent and non-discriminatory regulation of competitive markets for electricity. Integration into the EU energy market and establishing a transparent price structure for electricity are further declared regulatory objectives. The language requirements in administrative procedures also indicate the openness of the Hungarian market. The legal framework contains numerous restrictions concerning the carrying out of economic activities in the sector, but these, on a general level, are supported either by public interests considerations or by considerations relating to the nature of economic activities in the sector.

Fostering new entries to the market and the establishment of new capacities and infrastructure are declared objectives of the act. As a norm, carrying out economic activities in the Hungarian market for electricity (market entry) is subject to the obtaining of a license (here, operating license), the substantive and the procedural rules relating to which, and the rules governing the payment of the related fees, as regulated in law, are transparent and reasonable. They do not involve directly discriminatory provisions and provisions which would unduly hinder the access of EEA economic operators to the Hungarian market. The conditions imposed – mainly in the public interest – as regards the licensing of Hungarian subsidiaries (Art. 89) may raise issues under EU law. The same applies to the requirement of being established in a particular company law form for the issuing of certain licenses (Arts. 87 and 89), and, to a lesser extent, to the Hungarian office requirement imposed on electricity traders (Art. 88(3)). The regulatory framework operates consciously with compliance clauses (preamble on compliance with EU law; Art. 189, general EU compliance clause). The general clause that the licensing procedure for new production capacities must comply with the requirements of transparency and equal treatment (Art. 78) ensures compliance with EU obligations. The same holds true for the general principles of price regulation (Art. 142 and Art. 143 for

An adequate  
regulatory  
framework

Market access  
ensured

universal services). The coapplication provisions in Arts. 15-17, 35(6), 37, 96(1), 114/A-H ensure that EU requirements are taken into account in the application of the act.

The Hungarian electricity market, as it stands, is characterised by some State involvement capable of delimiting market mechanisms and competition. The appetite for State intervention has been lesser than in the natural gas market. The safe and secure operation of the electricity market is declared as a public interest objective (Art. 4/A). The State enjoys extensive powers of price regulation (Arts. 140 and 142/B). While they are subject to an extensive list of requirements aiming to ensure that they are exercised in harmony with EU requirements (Art. 142), they severely delimit the choices of economic operators (Art. 141). Economic operators are also prevented explicitly from passing on to consumers the burdens imposed on them in the form of sector-specific taxes and surtaxes (Art. 140).

#### *3.3.2.2 The markets*

Electricity production.  
Transmission system operation.  
Electricity distribution.  
Public lighting.  
Electricity trading.  
Universal service provision.  
The operation of the organised electricity market.

#### *3.3.2.3 The activities carried out in the different markets*

State activities.  
Regulatory activities.  
Licensed activities.  
Non-licensed but regulated activities.  
Contracted out licensed activities.

#### *3.3.2.4 The main regulatory principles*

Objective, transparent and non-discriminatory access to the

electricity networks (Art. 1(c)).

Transparent price structures for electricity (Art. 1(d)).

Integration into the EU energy market (Art. 1(f)).

Fostering new entries to the market and the establishment of new capacities and network infrastructure (Art. 1(g)).

#### *3.3.2.5 Public interest clauses*

The safe and secure supply of electricity to users is a priority public interest (Art. 4/A)

In connection with network development activities, the regulator may declare – on application or ex officio – high-voltage (over 132 kV) wires or equipment as serving public purposes (Art. 25/A).

#### *3.3.2.6 The rights of users*

The access of users to the transmission and distribution system must be ensured on the basis of connection and network usage contracts, according to the quality determined in legislation and in conditions of business, and on the basis of transparent, comparable, rational and demand-responsive financial and technical conditions (Art. 56(1)).

Users may purchase electricity based on the conditions laid down in legislation and on the basis of electricity-supply contracts from the electricity trader, the producer, from the organised electricity market, or from electricity imported from abroad (Art. 56(2)).

#### *3.3.2.7 Entry conditions to the Hungarian market for electricity*

##### *3.3.2.7.1 Network connection*

The transmission system operator or the network license holder is obliged to inform system users of the conditions of connection and to cooperate with the system user in developing the most advantageous connection method (Art. 27(1)).

Connection to the network may only be refused on the basis of the technical characteristics of the network (Art. 27(2)). The network license holder must identify the conditions under which the connection may be established (Art. 27(3)).

The transmission system operator cannot refuse the connection of a power station to the transmission network on the grounds of the prospective limitations of network capacities or the costs necessary to develop the network to ensure new connection (Art. 27(3a)).

The system user may connect to the transmission network only at a voltage higher than 132 kV (Art. 27(3b)).

The regulator has jurisdiction to review the lawfulness of refusals to allow connection. In case the refusal was unlawful, the regulator in its decision obliges the network license holder to ensure connection to the network (Art. 27(4)).

The system user after connection must pay the connection fee to the network license holder (Art. 27(5)).

#### 3.3.2.7.2 Network access

The transmission and distribution network is made available by network license holders to system users in exchange for system usage fee and on the basis of a contract (Art. 35(1)).

The conditions of access must be non-discriminatory, they must not enable abusive practices, may not involve unjustified restrictions, and must not jeopardise the security and the determined quality of supply (Art. 35(2)).

The network license holders may secure advantages to producers which use certain environment-friendly technologies. Such advantages do not constitute a violation of the principle of equal treatment. (Art. 35(2)).

Access to the transmission and distribution network may only be refused on the basis of objective, transparent and non-discriminatory conditions laid down in legislation. The same apply to the limitation, reduction or suspension of contracted capacities. (Art. 36(1)).

Access to the distribution network, which is operated independently from the transmission network, may only be refused on the basis of objective, transparent and non-discriminatory conditions laid down in legislation. The same apply to the limitation, reduction or suspension of contracted capacities. (Art. 36(2)).

The regulator has jurisdiction to review the lawfulness of refusals of access. In case illegality is established, it obliges in its decision the network license holder to provide access to the network (Art. 36(8)).

#### 3.3.2.7.3 Network access

The transmission and distribution network is made available by network license holders to system users in exchange for system usage fee and on the basis of a contract (Art. 35(1)).

The conditions of access must be non-discriminatory, they must not enable abusive practices, may not involve unjustified restrictions, and must not jeopardise the security and the determined quality of supply (Art. 35(2)).

The network license holders may secure advantages to producers which use certain environment-friendly technologies. Such advantages do not constitute a violation of the principle of equal treatment. (Art. 35(2)).

Access to the transmission and distribution network may only be refused on the basis of objective, transparent and non-discriminatory conditions laid

down in legislation. The same apply to the limitation, reduction or suspension of contracted capacities. (Art. 36(1)).

Access to the distribution network, which is operated independently from the transmission network, may only be refused on the basis of objective, transparent and non-discriminatory conditions laid down in legislation. The same apply to the limitation, reduction or suspension of contracted capacities. (Art. 36(2)).

The regulator has jurisdiction to review the lawfulness of refusals of access. In case illegality is established, it obliges in its decision the network license holder to provide access to the network (Art. 36(8)).

#### 3.3.2.7.4 The license

The following activities are subject to a license issued by the regulator (Art. 74(1))

The construction of power plants, the development of existing power plants, the production of electricity in power plants, and ceasing electricity production.

Transmission system operation.

Electricity distribution.

Electricity trading.

Universal service provision.

The operation of the organised electricity market.

The operation of public lighting equipment.

The license must be issued when the application for the license complies with Statutory conditions (Art. 75(1)).

The regulator refuses to issue the license in case (Art. 75(3))

the legislative requirements are not met, legislative conditions are not complied with, or the applicant lacks the necessary licenses prescribed by other legislation,

- in case of the operator of the organised electricity market, the license holder carries out other licensed activities in the electricity market as prohibited by Art. 55(5) (Art. 89(2a)),
- for subsidiaries, beyond this case of carrying out other licensed activities, the license may be refused in case (Art. 89(3)),
  - there is a lack of a valid cooperation agreement in force between the regulator and the regulator of the home

State based on the principle of mutual recognition concerning the supervision of both the parent company and the subsidiary,

- the applicant does not declare that it will bear full liability for the obligations entered into by the subsidiary,
- the applicant does not produce the authorisation, approval, or recognition of the regulator of the home State concerning the establishment of the subsidiary,
- the central administration of the applicant is not in the State where its seat is located.

the application contradicts the relevant consideration of energy policy.

the applicant does not possess the financial-economic and technical conditions and equipment determined in law, and the personnel necessary for the continuous, long-term carrying out of the activity, or it does not meet requirements of energy efficiency.

the applicant is under insolvency or winding up procedures.

the previously granted license of the applicant or its predecessor was withdrawn ex officio in the 10 years before the application is submitted.

the application contains misleading or false information.

The license issued involves an exclusive right and obligation for (Art. 76(1))

the transmission system operator to carry out transmission system operation activities.

the distributor to carry out distribution activities in the given geographical area.

the license-holder for the organised electricity market to operate that market.

The license for the universal service provision entails the obligation to provide universal services in the geographical area determined in the license (Art. 76(2)).

The licensing of new production capacities must take place in a transparent and non-discriminatory process (Art. 78).

The responsible minister, on the basis of the recommendation of the regulator, having regard to the balance of electricity supply, the safety of energy supply, and to the priorities of energy policy, especially the energy

mix used by Hungary, may in the process of licensing new production capacities restrict the use of a certain primary source of energy (Art. 79).

The operating license for electricity distribution may be issued to a public corporation or a company with limited liability. It is valid for 25 years. (Art. 84).

The operating license for transmission system operation may be issued to a public corporation. It is valid for 25 years. The application for the license may only be submitted following the regulator establishing in a certification process that the applicant complies with the applicable rules on unbundling. (Art. 87).

The operating license for electricity trading, enabling the complete and direct supply of users, may be issued to an economic operator, or to the subsidiary registered in Hungary of an economic operator having its seat in a Member State of the European Union or of the EEA (Art. 88(2)).

The operating license for electricity trading, enabling only restricted trading activities not involving the direct supply of users, may be issued to an economic operator registered in a Member State of the European Union or the EEA, which actually and lawfully carries out electricity trading activities in that State, and which complies with the conditions laid down in Hungarian legislation and which is capable of proving that compliance, and which maintains an office in Hungary which is available continuously for the regulator to approach (Art. 88(3)).

The operating license for the organised electricity market may be issued to a public corporation, or to the subsidiary registered in Hungary of an economic operator having its seat in a Member State of the European Union or of the EEA. (Art. 89)

The universal service license is issued to the service area determined in the application. When issuing universal service licenses, the regulator is required to ensure that the entire territory of the country is covered by universal service provision. The license may only be issued to licensed electricity traders, or it may be issued together with a license for electricity trading. The activities carried out under the trading license must not jeopardise the universal service provision by the license holder. (Art. 90).

The universal service license may only be withdrawn on the application of the license holder when universal service provision to the users affected is ensured following the withdrawal of the license by another universal service provider (Art. 90/A)

#### 3.3.2.7.4.1 Licenses for power stations

A simplified license is necessary for small power stations covering both construction and electricity production. It is valid for the time interval determined in the license. (Art. 80).

A preliminary license is necessary for power station capable of affecting the operation of the electricity system to a considerable extent. The further necessary licences may be obtained only after securing or on the basis of the preliminary license. For the construction of a nuclear power station, the application for the preliminary license may only be submitted after the publication of the decision by Parliament giving a prior, preliminary consent to the construction. The preliminary license is used for 3 years and may be extended for further periods of 3 years. It is not necessary to obtain a preliminary license when the construction of the power station (over 500 MW) took place on the basis of a call for establishing new capacities in order to address the potential future inability of the market to secure supply. (Art. 80/A).

A (production) license is necessary for a power station over 50 MW. It is valid for the time interval determined in the license. (Art. 81).

Licenses are necessary for expanding the power station, increasing its performance, the suspension of electricity production, and for ceasing electricity production issued subject to the applicable legislative provisions. (Art. 82).

An operating license is necessary for a power station over 50 MW to produce and sell electricity. It is valid for the time interval determined in the license. (Art. 83).

### *3.3.2.8 The conditions of providing services in the Hungarian market for electricity*

#### *3.3.2.8.1 Electricity production*

Electricity production is subject to an operating license (Art. 4(1)).

The license enables the production of electricity and the sale of electricity received from the transmission system operator in the framework of system-level services (Article 4(2)).

For the purpose of securing system-level services, the producer must offer its production capacities, and it must not withhold without justification these capacities or the production of electricity (Art. 5(1)).

##### *3.3.2.8.1.1 Establishing new production capacities*

Everyone is entitled, own its own business risk, to establish new production capacities in accordance to legislation (Art. 7(1)).

The call for establishing new capacities (Art. 8): by the regulator, in case the Hungarian energy market is unlikely to be able to ensure the long-term supply of users, and only when none of the market or regulatory mechanisms will be able to satisfy future demands.

#### *3.3.2.8.2 Transmission system operation*

Transmission system operation is subject to an operating license (Art. 23)

Obligation to carry out tasks in a transparent manner, without undue influence, and subject to the equal treatment principle (Art. 15).

The system-level services relating to the sale and purchase of electricity must be obtained by system users from the transmission system operator (Art. 209).

Transmission system operators are obliged to create a network development plan (Art. 25).

In case the network development plan is not realised by the network license holders, the regulator may put out an open call for the development of transmission networks. The license holders must enable the realisation of the development under the call and must cooperate with the developer. (Art. 26).

In case the transmission system operator, in its duty of care, fails to commence or realise a development included to be realised in the next 3 years in the network development plan, the regulator, in case the development is still justified, is obliged to put out a call for the realisation of the development in question. The transmission system operator can be obliged to have the development financed by a third party and/or have the development by realised by a third party, and/or carry out the development itself. (Art. 26/A).

#### 3.3.2.8.3 Electricity distribution

Electricity distribution is subject to an operating license (Art. 33).

Obligation to carry out tasks in a transparent manner, without undue influence, and subject to the equal treatment principle (Art. 30)

The license holder must purchase the electricity necessary to compensate for network losses in an open process (an open and transparent call) which is accessible to any domestic or foreign producer or trader (Art. 32(1)-(2)).

The surplus electricity purchased in this manner can be sold in the organised electricity market, which transition does not qualify as electricity trading (Art. 32(3)-(4)).

#### 3.3.2.8.4 Public lighting (Arts. 34, 34/A)

Either carried out by the organisation obliged in legislation to provide public lighting, or by the operating license holder.

Subject to a public lighting distribution fee payable after the use of the distribution network to the license holder.

The distributor is obliged to operate, carry out maintenance and develop the network, for which no fee additional to the distribution fee may be charged.

#### 3.3.2.8.5 Electricity trading

Electricity trading is subject to an electricity trading license and meeting the conditions laid down in legislation (Art. 46(1)).

As a main rule, the universal service license holder is subject to the rights and obligations of the electricity trader (Art. 46(2)).

#### 3.3.2.8.6 Universal service provision

The provision of universal services is subject to a universal service provision license (Art. 48)

It entails obligation to supply and to contract to supply electricity based on the expressed demand from the user entitled to access universal services (Art. 48).

It involves the supply of electricity on the basis of the product packages and prices determined in legislation (Art. 49).

The universal service provider is not licensed to supply electricity to users not entitled to access universal services (Art. 50(1)).

#### 3.3.2.8.7 The operation of the organised electricity market

The operation of the organised electricity market is subject to an operating license (Art. 53(1))

It is operated on the basis of contracts with the license holder (Art. 53(2))

Participation in the organised electricity market is not subject to limitations as to the number of participants, and in case the participant meets the conditions laid down in legislation and in other forms of regulation the license holder may not refuse to conclude the contract with him (Art. 53(2))

The organised electricity market is operated by a public corporation in which the ownership or the votes of a single owner may not exceed 25 per cent of the capital or of the total votes (Art. 54(1)).

The license holder is excluded from carrying out other licensed activities in the electricity market (Art. 55(5)).

#### 3.3.2.8.8 Price and fees regulation

The user pays the price of electricity according to the conditions of the electricity-purchase contract and the fees for the usage of the electricity system (Art. 140(1)).

The sales price of electricity is determined either by the agreement of the parties or by the conditions of business of the electricity trader, or in case of universal service obligations, it is determined by the regulation of the minister (Art. 140(2)).

The usage fees of the electricity system are determined in regulation by the regulator within the framework determined by the applicable ministerial regulation (Art. 140(2)).

##### 3.3.2.8.8.1 The 'no pass on' clauses

The financial transaction charge clause: the financial transaction charge imposed (under Act 2012:CXVI) cannot be passed on by the license holder to the contractual party, which entails, in particular, that the charge cannot

be integrated directly or indirectly into the price of products or services, and the charge cannot be made as a separate payment obligation of the contractual party; the license holder must on its own bear the charge (Art. 140(4)).

The sectoral surtax clause: the sectoral surtaxes imposed (under Act 2008:LXVII and Act 2012:CLXVIII) cannot be passed on by the license holder to the contractual party, which entails, in particular, that the surtax cannot be integrated directly or indirectly into the price of products or services, and the surtax cannot be made as a separate payment obligation of the contractual party; the license holder must on its own bear the surtax burden (Art. 140(5)).

#### 3.3.2.8.8.2 Regulated prices

Regulated prices are (Art. 141(9))

the system usage fee.

the system connection fee.

the fee charged by the distribution license holder or the universal service provider for additional services.

the price of the universal service.

The system usage fee includes (Art. 142(1))

the fee for transmission system operation.

the fee for system-level services.

the distribution fee.

the public lighting distribution fee.

The amount and the application of these fees are uniform in the entire country (Art. 142(4)).

The system usages fees must comply with the principles of transparency, openness and proportionality, and they must be applied objectively and without discrimination (Art. 142(5)).

For effectively operated license holders, the system usage fees must be determined, having regard to their justified operating and capital costs and to the principle of the lowest cost determined on the basis of comparative assessments, in a manner that they incentivise license holders to increase

the effectiveness of their management and the quality of their services, and to increase the safety of supply (Art. 142 (6)).

The system usage fees must reflect the cost reduction and other savings achieved in the electricity system (Art. 142(7)).

The regulatory cycle: a 4 year cycle for the system usage fee (Art. 142/A)

The system usage fees determined by the regulator must be regarded as the maximum prices charged; prices lower than the regulated price may only be introduced without discrimination and they must be publicised prior to their introduction (Art. 142/A(6)).

#### 3.3.2.8.8.3 The general principles of price regulation

The regulated price is determined ex officio, directly or by defining the rules of its calculation. The conditions of its application must also be determined. Its entry into force must be defined, and it cannot be applied retrospectively. In case of a modification of the maximum regulated price, the modified price will form part of contracts concluded prior to its introduction. The parties cannot agree in a contract on a price higher than the maximum regulated price. If they do not agree on a price, the regulated price will be applicable to the affected product or service. The regulated price will be applicable even when the parties agreed unlawfully on a different price. (Art. 141).

#### 3.3.2.8.8.4 Further regulatory powers

Further regulatory powers (by the responsible minister) (Art. 142/B) to determine

the services and their fees provided by the distribution license holder and the universal service provider on demand from the user for an additional fee.

the minimal services provided by the system operator and the universal service provider on demand from the user free of charge.

the services and their fees provided in case of the violation of its contractual obligations by the user for an additional fee.

#### 3.3.2.8.8.5 The pricing of the universal service

The pricing structure must be fair and equitable, easily and clearly comparable, and transparent (Art. 143(1)).

The price of the universal service must be determined on the basis of the prices in the electricity market, the justified operating and capital costs of an effectively operated license holder, and in a manner that it gives effect to the principle of lowest cost by incentivising the license holder to increase the effectiveness of their management and the quality of their services (Art. 143(2)).

The prices determined by the minister must be regarded as the maximum prices charged; prices lower than the regulated price may only be introduced without discrimination and they must be publicised prior to their introduction (Art. 143(5)).

#### 3.3.2.8.8.6 The connection fee

The connection fee is determined in regulation by the regulator (Art. 144(1))  
The connection fee must be determined in a manner that it takes into account the cost of development required for ensuring the connection, it promotes observing the principle of lowest costs, and that it takes into account the benefits gained from the subsequent connections of new system users (Art. 144(2)).

The amount of the connection fee must not exceed the costs incurred directly by enabling connections through network development (Art. 144(2)).  
The income generated from the connection fee must be spent of infrastructure development necessary for connecting to the system (Art. 144(3)).

#### 3.3.2.8.9 Emergency powers

In case of a significant disturbance of the electricity system, which is defined in law, system users independent of their contractual rights and obligations must follow the instructions of the transmission system operator and the distribution license holder and they must bear the resulting burdens as determined in legislation (Art. 138).

Emergency powers of the government in case of an electricity supply emergency, which is defined in law (Art. 139(1)), (to regulate in a government regulation) (Art. 139(2))

the suspension of contracts to supply users.

the restriction of supply to users.

the rights and obligations of license holders.

the maximum price of every product and service connected to the supply of electricity.

The user of emergency powers must be proportionate (they must cause the lowest possible interference and must be sustained for the shortest possible time) (Art. 139(4)).

#### 3.3.2.9 The administrative environment

In the absence of an opposing party, the regulator may proceed in a language other than Hungarian and written submissions may be presented

in a language other than Hungarian. In such instance, the written submissions must contain a Hungarian summary. (Art. 168(7)).

The decisions of the regulator, with some exceptions, may be reformed by the court acting in judicial review (Art. 168(10)).

There is no right of revision against final decision of the regulator (Art. 168(11)).

The regulator is liable in tort for its decisions or omissions which are unlawful and which are in a direct causal relationship with the damage (Art 168(12)).

The decisions of the regulator cannot be changed or annulled in supervisory jurisdiction (Art. 168(13)).

### 3.3.3 The market for district-heating

The Hungarian market for district-heating is regulated by Act 2005:XVIII on district-heating. In principle, the measure establishes an open and liberalized transport market where competition and public service provision prevails. Only the most important legal provisions are included in this legal mapping report.

#### 3.3.3.1 Overview of the legal and regulatory environment

In general, at the level of statutory provisions the Hungarian market for district-heating operates as an open market which provides equal access and equal opportunities to EEA economic operators. The aim of the act is to provide for the objective, transparent and non-discriminatory regulation of the market. As a norm, carrying out economic activities in the Hungarian market for district-heating (market entry) is subject to the obtaining of a license (here, operating license), the substantive and the procedural rules relating to which, and the rules governing the payment of the related fees, as regulated in law, are transparent and reasonable. They do not involve directly discriminatory provisions and provisions which would unduly hinder the access of EEA economic operators to the Hungarian market.

An open market

The sector is characterised by price regulation either by the local council or by the responsible minister (Art. 6(2)). The considerations which must be taken into account ensure, in principle, that the market is not damaged unduly by State intervention and prices are applied in a transparent manner (Arts. 57-57/D). The principles of price regulation, however, severely restrict the choices of economic operators (Art. 57/E).

Price regulation

The possibility of electronic correspondence with the regulator is not provided (Art. 5(1)).

#### 3.3.3.2 The markets

district-heating provided by power stations.

district-heating provided through geothermic energy.

District heating provided on the basis of an individual contract (supply of district heating directly to non-residential users), district heating produced for own purposes, and district heating under the asset management of central public bodies are not covered.

#### 3.3.3.3 Entry conditions in the Hungarian market for district-heating

Entry to the market is subject to obtaining an establishment and an operating license from the regulator (Art. 4).

Local council are under an obligation to provide district heating services through a license holder (Art. 6(1)).

### 3.3.3.4 *The conditions of providing services in the Hungarian market for district-heating*

#### 3.3.3.4.1 *The operating and the establishment license*

The production and supply of district heating is subject to an operating license (Art. 12(1)).

The operating license for production is issued, on application, following a successful compulsory commencing of operation (Arts. 14(4) and 15(1)).

The operating license for supply is issued on application and entitles its holder to supply in the determined the service area (Art. 16(1)-(2)).

Both operating licenses are valid without temporal restrictions (Art. 15(2) and 16(3)).

The two licences are issued in separate procedures as separate licences (Art. 17).

The construction, extension, and remodelling of a district heating facility with an output of 5 MW or higher, the increasing and decreasing of its output, the changing of its fuel (together, establishment), and the closing down of such facilities is subject to a license (Art. 12(2)).

The establishment license is valid for the duration indicated. (Art. (14(3))

#### 3.3.3.4.2 *The rules on contracting*

The contract between the producer and the supplier: an obligation to contract annually and for longer-term (a minimum of 5 years) (Art. 35).

The public service contract: an obligation to contract with residential users for the continuous and safe supply of a determined amount of heating (Art. 37(1)).

#### 3.3.3.4.3 *Price and fees regulation*

The connection fee must be determined on the basis of the act on price regulation (Art. 57(1)).

The price of district heating sold to a district heating supplier and the price of district heating sold to residential users must be determined on the basis of comparative analysis regarding costs and prices, and having regard to the following considerations (Art. 57(2))

incentivising the safe production and supply of district-heating at the lowest costs, the improvement of the effectiveness of management, the effective use of capacities, the continuous improvement of the quality of service, and the economic production and use of district-heating.

the justified costs of continuous production and safe supply, the environmental costs of closing down district heating production facilities, and the environmental and economic advantages of renewables.

The connection fee must be determined on the basis of the considerations laid down in legislation in a manner that it will cover the necessary and justified expenditures and the necessary profit of an effectively operated economic operator, and in order to meet the principle of the lowest costs it incentivises these economic operators to continuously improve the effectiveness of their management and the improvement of the quality of their services (Art. 57(3)).

The district heating supplier initiates, by indicating the relevant circumstances and the necessary amount, the modification of connection fees, in a process before the regulator. The regulator decides whether the proposed fee meets the conditions for determining the connection fee. The final decision of the regulator is sent to the local government with regulatory competences to determine the connection fee. The local council regulation must follow the decision issued by the regulator confirming that the new fee meets the statutory conditions, although this does not exclude the local council regulating a lower price. In case the regulator fails to decide on the application, the local council can endorse the fee proposed in its regulation. (Art. 57/A)

The regulator may ex officio control the compliance of the applicable connection fee with the statutory conditions (Art. 57/B).

The district heating provider must publish on its website and must inform the regulator of (Art. 57/C)

the agreements between the producer and the supplier concerning the purchase of district heating and its price.

the agreements between the supplier and the local council concerning public service provision.

the agreements between the supplier and the local council concerning the supply of district heating and its price.

The information produced must include the applied price, or fee, the price structure, the costs and their amounts, the fees and their amounts, the determination of expected profit, and any other information which has relevance for pricing (Art. 57/C).

The price of district heating sold to a district heating supplier and the price of district heating sold to residential users, as maximum regulated prices, and the price structure of the regulated price and the conditions of its application are determined, having regard to the recommendation of the regulator, in a regulation by the responsible minister (Art. 57/D(1)).

The parties cannot agree lawfully in a contract on a price higher than the regulated price (Art. 57/E(1)).

The regulated price must be applied in case the parties have not agreed on a price or they agreed on a different price in violation of the applicable legislative provisions (Art. 57/E(1)).

Prices lower than the regulated price may only be introduced without discrimination and they must be publicised prior to their introduction (Art. 57/E(2)).

In case of a modification of the maximum regulated price, the modified price will form part of contracts concluded prior to its introduction, but the parties may agree on the application of a lower price (Art. 57/E(3)).

#### *3.3.3.5 The administrative environment*

In the licensing process, the applicant is not entitled to use electronic correspondence with the regulator (Art. 5(1)).

## 3.4 The waste market

The Hungarian waste market is regulated by Act 2012:CLXXXV on waste which implemented with delay the EU Waste Framework Directive (Directive 2008/98/EC) and other EU legislation on waste. It regulates a relatively open market with strong public service obligations and State- and other public ownership in certain segments. Only the most important legal provisions are included in this legal mapping report.

### 3.4.1 Overview of the legal and regulatory environment

The Hungarian waste market is a relatively open market. In principle, 'economic operators' are afforded access to the main segments of the waste management market, including collection, recovery, disposal, trading, brokering, and transporting. The term 'economic operator' covers, in the meaning of the act, several types of domestic business operators and specific actors (e.g., business associations, groupings, cooperatives, state-owned companies etc.), as well as the 'supranational' company forms of EU law encompassing the European economic interest grouping, the European Company, the European cooperative society, and the European Grouping of Territorial Co-operation. The statutory definition, however, omits from its scope undertakings established in other Member States and their subsidiaries and other forms of establishment in Hungary.

The waste management market is characterised by robust State involvement. Waste management is defined as the public service duty of the State and local councils and the delivery of public waste management services is effectively nationalised. Only economic operators in the direct or indirect majority ownership of the State or local councils may receive a license to carry out public waste management services. They are, however, entitled to invite sub-contractors in the delivery of public services selected in a public procurement procedure (Art. 41(3)). Moreover, waste treatment services can be exempted from the rules governing public waste management services. In case the public service operator does not have adequate waste treatment facilities, the waste collected must be transferred to a licensed waste management operator (Art. 42(2)).

### 3.4.2 The markets

The market for waste collection.

The market for waste recovery.

The market for waste disposal.

The market for waste trading, brokering and transport, waste exportation, importation and transit.

A relatively open market created by regulation

State (public) duties and State (public) ownership

### 3.4.3 The activities carried out in the Hungarian market for waste

State activities.

Regulatory activities.

Licensed activities.

Notified activities.

#### 3.4.3.1 State activities

##### 3.4.3.1.1 Waste management planning

In line with the EU planning requirements, the government adopts the National Waste Management Plan (*Országos Hulladékgazdálkodási Terv*), including the National Prevention Programme (*Országos Megelőzési Program*) (Art. 73). The responsible minister approves the regional waste management (Art. 74). The programmes and the regional plans are drawn up for a 7 year period.

##### 3.4.3.1.2 The organisation of public waste management services

At national level, the State is obliged to manage public waste management services carried out as a public a public duty (Art. 2(2)). It performs the general functions, such as setting objectives, or determining the course for improvement in the sector, and the functions of coordination and planning. The State develops a regime for the optimal use of resources and it collects the public service fees. The State sets up the coordination organization which advises the government on the subsidies provided for public waste management services, the geographical targeting of service areas, and the regulation of public waste management services ( Art. 32/A). Since 2016, the National Waste Management Coordinating and Asset Management Inc. (*Nemzeti Hulladékgazdálkodási Koordináló és Vagyonkezelő Zrt*) acts as the coordination organization, which is a registered company owned by the State and forms part of the portfolio of the Hungarian Asset Management Inc. (*Magyar Nemzeti Vagyonkezelő Zrt*).

##### 3.4.3.1.3 The duties of local councils

Local councils exercise all local competences concerning waste management public services. They lay down detailed rules for public services provided within their administrative area, designate waste management public service operator, and conclude the public service contract following a tendering process with that operator. (Art. 33.).

#### *3.4.3.2 Regulatory activities*

These include the registration and authorisation of waste management activities (Art. 88(1)(4)), the regulation of prevention programmes and waste management plans (Art. 88(1)(7)), the setting up and regulation of take-back schemes (Art. 88(1)(10)), the regulation of public waste management service fees (Art. 88(1)(17)), and the selection of public service operators and the drafting and conclusion of public service contracts (Art. 88(1)(18)).

#### *3.4.3.3 Licensed activities*

Waste management services can be carried out subject to a waste management license (Arts. 12-14) and a classification license (Art. 34), obtaining which latter is a condition for concluding a public service contract with the economic operator concerned.

#### *3.4.3.4 Notified activities*

Trading and brokering with waste is subject to an obligation of notification and registration (Art. 13).

### **3.4.4 The rules on ownership**

The classification license may only be issued to an economic operator authorized to provide public waste management services, in which the State, a local councils or an association of local council controls the majority of votes directly or indirectly based on its ownership share, and which in its capacity as the owner of the company, is entitled to appoint or dismiss the majority of executive employees or members of the supervisory board (Art. 81.)

### **3.4.5 Waste management as a public service obligation**

Public waste management services cover operations comprising part of the statutory public service. The public service encompasses inter alia the collection, transport and treatment of waste and operation of related waste management facilities. The tasks and competences are allocated to the national and local (municipal) levels.

The minimal level of public waste management services is determined as (Art. 42)

the collection and transportation of municipal waste from property users (household green waste, mixed waste and separately collected waste, over-sized waste etc.).

the collection and transportation of waste collected at collection points, waste collection sites.

the treatment of waste falling within the scope of public waste

management services.

the operation waste management facilities required for public waste management services.

administration (invoicing fees etc.).

#### *3.4.5.1 Restriction on public service operators*

Apart from public waste management services, public service operators are not allowed to pursue further waste management activities for which waste management license or registration is required (Art. 42).

### **3.4.6 Entry conditions in the Hungarian waste management market**

#### *3.4.6.1 Economic operators' having access to the market*

The carrying out of waste management services is available only to 'economic operators' as defined in the act with a reference to the concept used in Act 1952:III on civil procedure. The terms 'economic operator' covers inter alia companies, groupings, cooperatives, State-owned companies, other State-owned economic agencies, European economic interest grouping, European Company, European cooperative society, European Grouping of Territorial Co-operation, and other actors, such as housing cooperatives, water management organizations, forest management associations, law firms, private pension funds etc.).

#### *3.4.6.2 The license*

The carrying out of waste management activities is subject to obtaining a waste management license or to registration. The carrying out of public waste management services is subject to obtaining a classification license. (Art. 62).

Waste management licenses are granted for a period not longer than 5 years (Art. 79).

The operation of waste management activities under a waste management license is subject to the payment of an annual supervision fee (Art. 82/A).

##### *3.4.6.2.1 The classification license*

Public waste management services may be provided upon obtaining a classification license, which is a condition for concluding the public service contract with the economic operator affected. The classification license may only be issued to an economic operator authorized to provide public waste management services, in which the State, a local councils or an association of local council controls the majority of votes directly or indirectly based on

its ownership share, and which in its capacity as the owner of the company, is entitled to appoint or dismiss the majority of executive employees or members of the supervisory board (Art. 81.)

The license is granted for a period of 36 months (Art. 9, Act 2013:CXXV).

#### *3.4.6.2.2 The waste collection license*

Waste collection activities are subject to obtaining a waste management license for collection. Waste producers may collect waste from their own premises without obtaining a license for a maximum period of 1 year. (Art. 12).

#### *3.4.6.2.3 The waste recovery license*

Waste recovery operations are subject to obtaining a waste management license (Art. 15).

#### *3.4.6.2.4 The waste disposal license*

Waste disposal operations are subject to obtaining a waste management license (Art. 17).

#### *3.4.6.2.5 The waste transportation license*

Waste transportation is subject to obtaining a waste management license. Certain waste transportation activities (e.g., collection of selected waste at stores, supermarkets) are not subject to licensing (Art. 14).

#### *3.4.6.3 The notification and registration*

Waste trading and brokering, and the operation of brokering organisations is subject to notification and registration with the regulator for a period not longer than 5 years (Art. 79). They are allowed to purchase, sell, transport and mediate waste falling within the scope of public waste management services exclusively on behalf of the public service operator, with the exception when they provide for the treatment of such waste (Art. 13).

### **3.4.7 The conditions for providing services in the Hungarian market for waste management**

#### *3.4.7.1 The public service contract*

Public waste management services are carried out on the basis of a public service contract concluded between the local council and the public service operator selected in a public procurement procedure. Only one public service contract for waste management services can be concluded by the local council which must be in a written form. (Art. 34).

The maximum duration of public service contracts is 10 years.

#### *3.4.7.2 The regulation of the public service fee*

On the recommendation of the regulator, the public management service fee is established by the responsible minister. The fee is collected by the coordinating organisation (the National Waste Management Coordinating and Asset Management Inc.). (Art. 47/A).

The amount of the public service fee must be determined on the basis of the amount of mixed waste using economic benchmarking analysis relating to prices, costs and expenses. The fee should promote cost-effectiveness in delivering the public waste management services, improve the efficiency of the service, improve the quality of the public service, and encourage the reduction of the impact of waste on the environment. There are certain costs relating to the delivery of the public service recognised at statutory level, such as the justified expenses of delivering the public waste management services, the justified costs of the fulfilment of environmental obligations, and the justified costs of the long-term fulfilment and development of the public service, which should be taken into account when determining the amount of the service fee. (Art. 46).

#### *3.4.7.3 Transparency obligations*

Public service contracts for waste management are published on the public platform of the National Environmental Protection Information System (*Országos Környezetvédelmi Információs Rendszer*), and local councils are also required to publish their public service contracts (Art. 34).

#### *3.4.7.4 The principle of cost efficiency*

Public waste management services must be organised so as to meet the requirement of cost-effectiveness in realising environmental objectives. Account must be taken of the level of operating costs deemed sustainable in light of the solvency of customers to whom the service is provided. Future increases of fees 'should be kept at the minimum' having regard to the related costs. (Art. 3(1g)).

The principle enjoys priority over the requirement of reasonable profit allowed in public service compensation offered to undertakings under a public service obligation (Art. 3(2)).

#### *3.4.7.5 The prohibition of cross-subsidisation*

The amount of the fee charged for public waste management services must be calculated so as to cover the justified costs and expenses of providing the public waste management services wholly, while allowing the public service operator to make a reasonable profit from such activity. However reasonable profit shall not provide for the covering of costs and expenditures of other economic activities which are outside the public waste management services. (Art. 3(1h)).



## 3.5 Public water supply and water utilities

The EU policy laid down in Directive 2000/60/EC establishing a framework for Community action in the field of water policy is implemented by Act CCIX of 2011 on public water utility services. The act sets out foremost the obligations in relation to public water utility services, the protection of environmental and national assets in the domain, and the requirements for operating the public utilities as well as providing services in this field. The act regulates the Hungarian public water utility service sector as a mainly restricted and monopolised market. Only the most important legal provisions are included in this legal mapping report.

### 3.5.1 Overview of the legal and regulatory environment

The provisions introduced by Act 2001:CCIX, using a 5 year transitional period, fundamentally changed the market. State- and other public ownership were reinstated, State responsibility was reinforced, and State involvement in the market was augmented. With the exception of concessions for public water utility service provision and, to a certain extent, undertakings providing 'out-sourced' services, it operates as a closed market with entry to the market severely restricted by State- and other public ownership rules. Technical modifications, especially concerning the so called 'customer equivalent' index, stimulated concentration in the market and led to a drastic reduction in the number of companies operating in the market (from 400 to 40). The sector is also subject to direct price regulation by the responsible minister.

A closed public market created by regulation

### 3.5.2 The markets

The operation of public water utilities and providing public services in the field of drinking water supply (including firewater supply).

The operation of public water utilities and providing public services in the field of wastewater disposal and treatment.

Independent public education.

### 3.5.3 The activities carried out in the Hungarian market of public water supply and water utilities

State (and local council) activities

Regulatory activities.

Licensed activities.

#### *3.5.3.1 State (and local council activities)*

Public water utility services encompass activities in the field of drinking water supply (water extraction, delivery to the customers etc.) and waste water treatment services (collection, disposal, purification, disposal of sewage sludge etc.). These services are carried out as public task. The local councils and, exceptionally, the State have not only the rights to undertake the related tasks, but it is also their obligation to provide customers public water utility services (Art. 1(1c))

Principally, local councils have the fundamental competences regard public water utilities operating in their geographical area. The State has rights and obligations concerning the water utilities owned exclusively, or at least in 50 per cent by the State (Art. 9(1)).

#### *3.5.3.2 Regulatory activities*

The activities of the regulator, the Hungarian Energy and Public Utility Regulatory Authority established by Act XXII of 2013, include licensing (Art. 3), price regulation (Art. 73), and the supervision of the public water utility service providers (Art. 5/A). It also acts as a consumer protection authority in certain domains (Art. 5/E).

#### *3.5.3.3 Licensed activities*

The provision of public water utility services is subject to licensing. The relevant licenses are the service provider license (Art. 36) and the operating license (Art. 37).

#### **3.5.4 The rules on ownership**

The act favours State or other public ownership in connection with public water utilities and undertakings providing public water utility services. Public water utilities, as defined by the act, are exclusively in ownership of the State or/and local councils. Water utilities are classified, on request, as public water utility by the decision of Hungarian Energy and Public Utility Regulatory Authority. Separate structures (pipelines on private properties not connected to the public water utility, industrial utilities not integrated the public water utility etc.) are not public utilities. (Art. 6(5)).

Companies providing public water utility services on the basis of asset management contracts (Arts. 23-26) or rent-operating agreements (Arts. 29-31) are in exclusive State-ownership, or in the exclusive ownership of the local council which bears the responsibility for organising the public service in question. In contrast, public water utility services provided under a concession (Arts. 27-28) are provided by a concession undertaking, which under Act 1991:XVI on concessions is principally a company established in Hungary (Art. 20). Act 2011:CXCVI on national assets (Art. 12(13)) also

provides that this company has to be a 'transparent company' covering especially domestic or foreign companies holding legal personality, in case

their ownership structure and the real owner (a natural person) in terms of the relevant legal provisions can be identified.

the company has tax residence in EU, EEA, OECD Member States, or in a third country, which has signed a double taxation treaty with Hungary.

it is not classified as a 'controlled foreign company' in terms of Act 1996:LXXXI on Corporate Tax and Dividend Tax (Art. 1(11)).

the foreign shareholder (owning directly or indirectly at least 25 per cent of the shares) of an 'economic operator' meets all three requirements listed above

The contracted public water utility service provider is enabled to outsource certain activities (e.g., daily operation of water utilities, customer service etc.) to companies which qualify as a 'transparent company' in terms of the above criteria. The State and/or local councils must own directly or indirectly the qualified majority of shares in the companies providing 'out-sourced services.' The latter undertakings may establish other out-sourcing companies jointly with the State and/or local councils. (Art. 45(5)).

### **3.5.5 Rules on the provision of public water utility services**

Public water utilities provide water for human consumption and make available the waste-water disposal system for at least 25 users (Art. 2).

The operation of public water supplies can be carried out under asset management contracts, rent-operation schemes, or under concession agreements (Art.15). These operating contracts are approved by the operating license issued by the regulator.

As stated earlier, the company providing public services under an asset management contract or under a rent-operation scheme is owned by the State or the responsible local council, or owned jointly by them (Art. 16(6a)).

They can establish and own other service provider companies exclusively, or in joint ownership with the State and/or local councils (Art. 16(6b)). These can also be operated within the framework of a holding company.

Concession agreements are concluded under Act 1991:XVI on concessions based, in principle, on a public tender procedure.

The public service provider may contract out certain of its activities. The value of these contracts must not exceed 10 per cent of the net income achieved in the previous year. (Art. 45(2)). The activities available for contracting out include maintaining the daily operation of public water utilities, repairing of public water utilities, operating customer services, meter

reading, the collection of fees, supervising consumer premises, and replacing the primary water-meters. As indicated earlier, out-sourced activities may be carried out by companies classified as ‘transparent company’ only.

### 3.5.6 Entry conditions in the Hungarian market for public water supply and water utility services

#### 3.5.6.1 *The service provider license*

The service provider license is a specific classification license qualifying the applicant as ‘public water service provider’. It can be requested only by limited liability companies (*korlátolt felelősségű társaság.*) and by public companies (*zártkörűen működő részvénytársaság.*)

The regulator can refuse the application in case (Art. 37)

the relevant legal provisions or requirements are not met.

the applicant does not fulfil the financial, economic, technical, environmental requirements for providing a persistent and long-term public water supply, or the applicant possesses neither the technological assets and equipment nor the human and financial resources necessary to public water.

the applicant is under bankruptcy or liquidation procedure.

an earlier license of the applicant or its predecessor company was withdrawn as a result of circumstances with its control in the previous 10 years.

The modification or the withdrawal of the license should not lead to the impairment of the supply safety or quality (Art. 37/A(8)).

#### 3.5.6.2 *The operating license*

The operating license can be requested by ‘public water service provider’ companies possessing the service providing license. The operating license authorises as well as obliges the ‘public water service provider’ company to provide exclusively water supply services in the operating area determined by the license.

The regulator can refuse the application in case (Art. 37/A)

the company does not possess the service provider license.

the operating contract enclosed to the application does not meet the requirements of the act and the implementing legal provisions relating to the operating area, sector as well as the structure of the public water supply.

the applicant does not meet the requirements of the act and the implementing legal provisions.

minimum level of the so called 'customer equivalent' – derived from all operating license of the applicant, including the license procedures in progress – is not met.

The regulator is prevented from refusing applications from undertakings which possess an effective service provider license obtained before 31.12.2011, in case the refusal risks violating the provision of any bilateral investment treaty concluded by Hungary (Art. 37/A(3)).

The modification or the withdrawal of the operating license should not lead to the impairment of the supply safety or quality (Art. 37/A(8)).

## 3.6 Mining

The Hungarian mining industry is regulated by Act 1993:XLVIII on mining providing a general regulatory framework for all mining – in the broadest sense – activities. Provisions specifying regulatory and technical details are found in Government Decree 203/1998. They provide for an, in principle, open Hungarian mining sector. Only the most important legal provisions are included in this legal mapping report.

### 3.6.1 Overview of the legal and regulatory environment

Mining is, in principle, an open sector in the Hungarian economy, however, its dynamics is heavily shaped by the fact the state has exclusive property rights over all mineral resources and geothermic energy at their natural place (Art. 3(1)). The participation of commercial operators, both domestic and foreign, is ensured through concession agreements concluded between the State and private economic operators (Art. 8). The restrictions imposed on mining activities apply without discrimination and they are justified by reasonable and objective public interest and environmental considerations (Arts. 2(1) and 2(2)).

The regulatory framework is designed consciously to comply with the relevant EU obligations (Art. 51, general compliance clause). There is an explicit cooperation obligation imposed on the regulator in cross-border affairs with regulators in other EU Member States (Art. 42/V(1)).

### 3.6.2 Mining and mining-related activities

The act covers, in particular, (Art. 1(1))

the mining of raw materials.

land restoration subsequent to extraction.

the management of waste heaps.

other activities for non-mining purposes carried out using mining methods not covered by other acts (mine shaft sinking, deep drilling, tunnel and drift driving).

the utilisation of geological structures suitable for hydrocarbon storage.

activities with geothermal energy.

the management of mining waste.

geological exploration.

the establishment, operation and closure of mineral borrow pits for

Market access  
ensured

(the establishment of public water infrastructure.

the safeguarding of Hungarian mining tradition and the protection of mining cultural heritage.

The geological storage of carbon dioxide for research and development or for new product testing purposes, an manual gold washing are not covered by the act.

### 3.6.3 Mining concessions

The following raw materials are available to be mined under a concession (Art. 8)

mineral raw materials.

geothermal energy.

crude oil and crude oil products.

The establishment and operation of pipelines for transporting oil products may also fall under a concession.

The concession process begins by determining the concession area (Art. 9(1)), which is followed by a public tender (Art. 10(1)), the evaluation of tender submissions by the Evaluation Committee, and the granting of the concession.

Concession agreements can be concluded for a period of maximum 35 years, which can be extended on one occasion by half of the original duration (Art. 12(1)).

Concession rights are transferable by contract subject to the approval of the responsible minister. There is no need for a new tendering procedure. (Art. 18).

A concession company must be established to manage the activities under the concession agreement. The concession holder must have a majority ownership in the concession company in the entire duration of the concession agreement (Art. 13(1)).

Mining concession holders must pay a mining royalty at 16 percent of the income generated to the State (Art. 20(1)). The concession holder automatically acquires property rights over the extracted mineral raw materials or geothermal energy (Art. 3(1)).

#### **3.6.4 The national security clause**

Mining permits may be 'denied or withdrawn for the reason of national security in case of a business organization owned by the citizens of third countries or third countries regarding the European Union' (Art. 22/A(7)).

## 3.7 Agriculture and forestry

The market for agricultural and forestry land in Hungary is regulated by Act 2013:CXXII on the trading of agricultural and forestry land. It covers the trade (acquisition) and the use of land (Art. 1(1)). Acquisition under the act involves the acquisition of land under any title or in any manner, with the exception of inheritance, expropriation and restitution (Art. 6(2)).

Upon EU accession, the regulation of the ownership and acquisition of agricultural land was affected by a derogation negotiated in the EU accession process. Point 3(2) of Annex X of the Treaty of Accession allowed for 7 years after accession the maintaining of the legislative provisions in force, which severely delimited the acquisition of agricultural land by legal persons and by natural persons that are not Hungarian nationals, or who do not habitually reside in Hungary.<sup>133</sup> The derogation was extended for a further 3 years in 2011. The application of the derogation was subject to meeting the principle of equal treatment,<sup>134</sup> and prior authorisation processes for the acquisition of land were subjected to the general requirements following from the EU jurisprudence that they must be based on objective, transparent and openly accessible considerations, which are maintained for a longer period of time and the application of which meets the non-discrimination principle.<sup>135</sup>

### 3.7.1 Overview of the legal and regulatory environment

The 2013 act introduced a restrictive regime for the acquisition and use of land which, in general terms, meets the relevant requirements of EU law as developed in the jurisprudence of the EU Court of Justice. The infringement procedure, which was brought before the Court of Justice in June 2016 focuses on the violation of the principle of legal certainty, the right to property, and of the acquired rights of investors which occurred, mainly, as a result of the circumstances of introducing the new legal provisions.<sup>136</sup> The infringement case's central claim concerns the modifications introduced as regards the usage rights ('usufruct rights') of foreign investors which were discontinued without giving them a sufficient transitional period as well as

A restrictive legal framework

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<sup>133</sup> The derogation did not extend to EU citizens who intend to engage as self-employed in farming activities, and had resided lawfully in Hungary for a minimum of 3 years and had pursued farming activities.

<sup>134</sup> Further restrictions affecting natural and legal persons from other Member States could not lawfully be introduced, and EU individuals could not lawfully be treated more disadvantageously than individuals from third States. Individuals from other Member States could not be subjected to substantive and procedural legal requirements which did not apply to Hungarian citizens.

<sup>135</sup> -515/99, C-519/99-C-524/99. és C-526/99-C-640/99. sz. *Reisch* egyesített ügyekben 2002. március 5-én hozott ítélet [EU:C:2002:135], 32--33. pontok; C-300/01. sz. *Salzmann*-ügyben 2003. május 15-én hozott ítélet, [EU:C:2003:283], 44--52. pontok.

<sup>136</sup> IP-16-2102. There are two preliminary ruling cases referred by Hungarian courts to the Court of Justice, which are registered as Cases C-52/16 and 113/16.

the termination of land lease contract concluded before July 1994. The more recent infringement procedure initiated in March 2016 addresses the regulation of the ban on the acquisition of land by legal persons and the obligation imposed on buyers to farm the land themselves.<sup>137</sup>

The restrictive regulation of natural persons entitled to acquire the ownership of land (Art. 10), as well as the limitations on plot sizes, in the light of the jurisprudence of the Court of Justice, does not raise issues under EU law. The almost complete prohibition concerning the acquisition of land by legal persons, which allows only a very narrow exemption based on public interest grounds, (Arts. 9 and 11) may be more difficult to defend under the free movement of capital. While the broad policy leeway enjoyed by the Member States in this regard could, in principle, justify the introduction of such restrictive measures, and the exemptions provided could ensure that the restriction is regarded as proportionate, the near blanket nature of the prohibition and the possibility, which follows from the general scope of the exclusion, of achieving the public interest objectives by less restrictive means may enable a more negative assessment under EU law. The prioritised treatment of established churches in Hungary as opposed to other legal persons may also be problematic as the same treatment is not offered to churches established in other Member States which may thus be affected in carrying out their public interest services in other Member States and even in Hungary.

The administrative restriction of obtaining the prior approval of the acquisition by the agricultural authority (Art. 9), considering the fact that its decisions are subject to judicial review (Art. 30), does not raise problems under EU law as interpreted in the jurisprudence of the Court of Justice. Assumedly, the judicial review provided will only meet the relevant requirements of EU law in case it complies with the conditions imposed by the Hungarian Constitutional Court in its decision reviewing the constitutionality of the new act.<sup>138</sup> The discretionary powers made available to the agricultural authority to refuse to provide the prior approval of the acquisition on grounds that it would lead to an 'irrational land plot structure' are less certain to meet the requirements of EU law which demand that the Member States adequately delimit discretionary powers in administrative decision-making and ensure that decisions are taken on the basis of objective and relevant grounds.

The regulation of the involvement of local land committees, mainly because of the manner their powers are regulated, raises considerable concerns. Provided that their participation is capable of influencing the exercise of the

The ban on legal persons is problematic

The administrative environment is generally acceptable

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<sup>137</sup> IP-16-1827.

<sup>138</sup> Decision 17/2015, ABH 2015, 773.

free movement of capital and freedom of establishment,<sup>139</sup> their ability to exercise their powers ‘on the basis of known facts and its best knowledge’ and on the grounds of other, rather generally regulated considerations (Art. 24) may contradict the requirements under EU law concerning the limitation in regulation of administrative discretion. Local land committees are also given powers to assess general considerations and circumstances relating to the acquisition of land, such as whether the contract for acquisition is capable of circumventing the limitations imposed on acquisition in the act, the person concerned will gain a legal position which would enable a future abuse of his right of pre-emption, the acquisition will take place without a justifiable economic purpose, or whether the price paid is proportionate to the value of the land acquired. They are not required to provide reasons for their decisions and legal redress against their involvement is also rather limited. The applicable conflict of interest rules are rather limited. The original provisions of the act which gave the powers of both active and passive veto (former Art. 27(2)) were annulled by the Constitutional Court on account of the violation of the requirements of objective assessment and effective legal redress.<sup>140</sup>

### 3.7.2 The acquisition of land ownership

Only individuals, natural or legal persons, identified in the act, in a manner and to the extent as defined by the act, may acquire the ownership of agricultural land (Art. 6(1)).

The ownership of land may be acquired only by (Art. 10(1))

domestic natural persons, and  
citizens of European Union Member States.

These must qualify as farmers in the meaning of the act (Art. 2).

This notion is defined as a domestic natural person or citizen of an EU Member State registered in Hungary as having obtained the agricultural or forestry qualification laid down in legislation, or, in absence of such a qualification, for at least 3 years, has been continuously carrying out, in his own name and risk, agricultural or forestry activities in Hungary, and has secured price income from that activity, or it has not been able to secure price income as the agricultural or forestry development realised has not yet been put to operation, or qualifies as the member of a Hungarian registered production organised, owned in at least 25 per cent by him, that carries out agricultural or forestry activities as a personal contribution (Art. 2).

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<sup>139</sup> Decision 17/2015 declared that their contribution is indirect and is of private law nature.

<sup>140</sup> Decision 17/2015.

Domestic natural persons and citizens of EU Member States, that do not qualify as farmers in the meaning of the act, may only acquire ownership, in case size of the land held by that person and the acquired land together does not exceed 1 hectares (Art. 10(2)).

This rule is not applicable when the person concerned is a close relative of the person from whom ownership is acquired (Art. 10(3)), and

when the ownership of land is acquired for recreational purposes (Art. 10(3a)).

The ownership of land may be acquired, in case it is supported by considerations of land-ownership policy, or it serves the purposes of social employment, or serves other public interest objectives, by (Art. 11(1))

the State, or

certain legal persons.

These legal persons include (Art. 11(2))

established churches or its internal legal person, as a result of contracts for personal maintenance, life annuity, gift, or inheritance.

the mortgage lender according to the legislative provisions on mortgage lending.

the local council for the purposes of social employment, as part of its social land programme and local development policy.

The acquisition of ownership of agricultural land is excluded for (Art. 9(1))

foreign natural persons.

another State, territorial unit of another State, or organ of another State.

legal persons if they are not covered by the enabling provisions of the act.

### 3.7.3 Acquisition by exchange or gift

The acquisition of land by exchange may only take place when the parties agree in the contract on the mutual exchange of ownership, and (Art. 12(1))

the land is located in the same locality as the land owned by the party; or one of the parties qualifies as a local resident in the meaning of the act, or one of the parties has its residence or centre for agricultural operation for at least 3 years in the locality, the administrative border of which is at maximum 20 kilometres on public road from the administrative border of the locality where the land in question lies.

Only close relatives, established churches and their internal legal person, the local council, or the State may acquire ownership through a gift (Art. 12(2)).

#### **3.7.4 Administrative approval**

As a main rule, the contract of acquisition, as well as the gaining of ownership outside of acquisition, is subject to the approval of the agricultural authority (Art. (7(1)-(2))).

The approval of the contract does not exempt the parties from meeting the required validity conditions, and it does not replace the necessary authorisation or approval obtainable from other authorities (Art. 7(1)).

For the acquisition of ownership or for any other transactions affecting ownership, the parties must use a paper-based document which meets the security requirements laid down in legislation (Art. 8).

#### **3.7.5 Declarations by the new owner**

As a condition of acquiring land ownership, the new owner, in the contract on the transfer of ownership, or in a declaration drafted as a public document or as a private document with full attesting force, undertakes the obligation that the use of the land will not be given to another person, that the land will be used him, and through this it will comply with the obligation of land use, and that in the 5 years after acquiring ownership the land will not be used for other purposes (Art. 13(1)). In case the land in question is in the usage of a third person, the party must undertake the obligation that the duration of this usage will not be extended and after its expiry it will undertake the obligations mentioned earlier (Art. 13(4)).

As a condition of acquiring land ownership, the new owner, in the contract on the transfer of ownership, or in a declaration drafted as a public document or as a private document with full attesting force, declares that has not outstanding payment obligations relating to the use of land (Art. 14(1)).

As a condition of acquiring land ownership, the acquirer cannot have been declared in the 5 years before acquiring ownership to have entered into a transaction concluded in circumvention of the restrictions applicable to acquiring agricultural land (Art. 14(2)).

### 3.7.6 Limitations on the size of land acquired

The farmer, and the close relative and the person acquiring land for recreational purposes, may only acquire the ownership of land up to 300 hectares including the land already in his ownership and use (Art. 16(1)).

The farmer and the agricultural cooperative may only acquire the tenure of land up to 1200 hectares including the land already in his tenure (Art. 16(2)).

This limitation is 1800 hectares for special agricultural activities (animal husbandry, and seed production) (Art. 16(3)).

The limitations do not apply to the legal persons entitled in this act to acquire the ownership of land (Art. 16(4)).

### 3.7.7 The right of pre-emption

Pre-emption rights can be exercised in the following order (Art. 18(1)).

the State for purposes of land-ownership policy, or social employment, or of other public interest objectives.

the farmer using the land that qualifies as

- a local resident neighbour, or
- a local resident, or
- has its residence or centre for agricultural operation for at least 3 years in the locality, the administrative border of which is at maximum 20 kilometres on public road from the administrative border of the locality where the land in question lies.

the farmer that qualifies as a local resident neighbour.

the farmer that qualifies as a local resident.

the farmer that has its residence or centre for agricultural operation for at least 3 years in the locality, the administrative border of which is at maximum 20 kilometres on public road from the administrative border of the locality where the land in question lies.

Pre-emption rights do not apply to (Art. 20)

acquisition between close relatives.

acquisition between the parties in joint ownership.

the acquisition of land on the basis of legislation as a condition of securing a subsidy.

acquisition by the local council for the purposes of social employment, as part of its social land programme and local

development policy.

acquisition of land for recreational purposes.

The acquisition contract, and only its content and formalities, and the declarations issued in case of the exercise of pre-emption rights are first examined and controlled as a matter of its validity and ability to enter into force (Art. 23(1)). The authority refuses to approve the contract and the pre-emption declarations in case (Art. 23(1)-(2))

it constitutes a non-existent or void contract as a result of the violation of legislative provisions.

the contract does not contain the compulsory declarations of the acquirer, or they were not attached to the contract as required by legislation.

the pre-emption declaration does not meet the formal requirements, does not come from the person entitled to exercise pre-emption rights, comes from the person entitled but the basis of the pre-emption right, or the legislative foundation of that right cannot be established, or it is not based on the legislation indicated or on the priority order indicated, comes from the person entitled but it does not contain the compulsory declarations or they were not attached.

the procedural provisions regard the exercise of pre-emption rights were violated.

The agricultural authority needs to obtain a position statement of the local land committee concerning the refusal or the approval of the acquisition contract declarations issued in case of the exercise of pre-emption rights (Art. 24(1)). The local land committee assesses the acquisition on the basis of publicly available factual information and its best knowledge, having regard especially to the fact (Art. 24(2))

whether the acquisition contract is suitable for the circumvention of the of the restrictions applicable to acquiring agricultural land.

whether it can be determined that the parties have agreed on the acquisition before the entry of the force of the act, but they wanted to have the acquisition enter into force in the procedure regulated by the act by one of the parties making a declaration to that affect, or by obtaining such a declaration from a third person.

whether the acquirer or the person entitled to exercise his pre-emption right at the first place,

- is suitable to fulfil the statutory obligations undertaken by him, or

- will gain a legal status through which it may, in the future, be able to exercise his pre-emption rights in an abusive manner,
- will acquire ownership without a justifiable economic need, for the sole purpose of securing the ownership of a maximum amount of land.

whether the consideration offered is proportionate to the trading value of the land, and whether in such case, the disproportionate consideration was used to prevent the exercise of pre-emption rights.

The position statement of the local land committee determines which person may exercise his right of pre-emption, it may support the exercise of multiple pre-emption rights, and in case it does not support the exercise of pre-emption rights, it must declare whether it supports acquisition by the acquirer stated in the contract (Art. 25).

The local land committee ensures when acting in its competences that speculative acquisitions of land are prevented, land plots are established and maintained that enable sustainable and competitive farming, and that the interests of the local farming community are respected (Art. 68(3)).

The position statement of the local land committee can be challenged in a complaint before the local council (Art. 68(3)).

The agricultural authority refuses to approve the contract in case (Art. 27(1)-(2))

the local land committee does not support the acquisition by any of the pre-emption right holders or by the acquirer stated in the contract, or

the agricultural authority establishes subsequently that the acquisition contract should not have been approved by it in a previous procedure, or

the agricultural authority establishes in connection with the acquirer or the pre-emption right holder supported by the local land committee that

- it arrives to the opposite conclusion in certain of the questions assessed by the local land committee,
- the land registry, in the 5 years before concluding the acquisition contract, imposed a final land protection fine for the unlawful use of the land for other purposes or for the violation of the obligation to use the land,
- it has outstanding land usage fee payment obligations established in a final decision

The agricultural authority may refuse, in opposition to the position statement issued by the local land committee, the approval of the contract, especially when (Art. 27(3))

in connection with the acquirer or the pre-emption right holder supported by the local land committee, it arrives to the opposite conclusion in certain of the questions assessed by the local land committee, or

the acquisition would lead to an irrational land-ownership structure.

Rules on the replacement of the acquirer stated in the contract by the holder of a pre-emption right by the decision of the agricultural authority (Art. 30)

only judicial review is available against these decisions.

The same rules apply to the approval by the agricultural authority of the acquisition of ownership through other legal transactions (Art. 31). The special rules are covered by Arts. 32-35.

The following acquisition contracts do not require approval by the agricultural authority (Art. 36(1)).

the acquisition of ownership by the State.

the sale of State- or local council owned land.

acquisition of ownership through a gift.

acquisition between close relatives.

acquisition between joint owners to the purpose of ending joint ownership.

the acquisition of land on the basis of legislation as a condition of securing a subsidy.

acquisition in a process of land plot reregulation.

acquisition by the legal persons entitled by this act to acquire the ownership of land

### **3.7.8 The obligation and transfer of usage**

The owner may only transfer the usage of land to the natural or legal person defined in the act, and for the purposes, in the manner, and to the extent also defined in the act (Art. 38(1)).

As a main rule, the transfer of usage is subject to the authorisation of the agricultural authority (Art. 39).

Land usage may only be transferred to a farmer or to an agricultural cooperative with the exception of (Art. 40)

land usage contracts for recreational purposes.

the usage by the forest owners-association of forest in the ownership and use of its members.

agricultural schools and agricultural higher education institutions in connection with their basic educational or research tasks.

established churches or their internal legal person for the educational, social, or economic purposes.

Usage rights over land may not be acquired by (Art. 41)

a legal person that does not meet the transparency requirements laid down in legislation.

public companies.

As a condition of acquiring land usage rights, the new user, in the contract on the transfer of usage rights, or in a declaration drafted as a public document or as a private document with full attesting force, undertakes the obligation that it complies during the interval of the contract with the statutory requirements on the transfer of land usage, the use of the land will not be given to another person, that the land will be used him, and through this it will comply with the obligation of land use (Art. 42(1)).

As a condition of acquiring land usage rights, the new user, in the contract on the transfer of ownership, or in a declaration drafted as a public document or as a private document with full attesting force, declares that has not outstanding payment obligations relating to the use of land (Art. 42(3)).

The limitations on the size of land acquired for ownership apply to acquiring land for usage with the exceptions that in case of agricultural cooperatives the maximum limit on usage can be exceeded, up to 1800 hectares, by the use of the land owned by a person who has been a member of the cooperation for at least 1 year (Art. 43).

The temporal limitation on leasehold contracts: it must be concluded for a definite amount of time, for a minimum of 1 economic year and for a maximum of 20 years (Art. 44).

### **3.7.9 The administrative environment**

Contracts concluded for acquiring land ownership or land usage rights are void in case they violate the acquisition limitations and prohibitions laid down by this act (Art. 60(1)). In such cases, the entire contract will be void (Art. 60(3)).

Compliance with the statutory provisions is controlled by the agricultural authority; in case of a violation, it informs the person concerned and instructs him to restore lawful conditions (Art. 62). In case of non-compliance with the authority's instruction, the authority imposes a fine (Art. 63). In case lawful conditions are not restored within 6 months, the authority, with the exception of forestry land, orders the compulsory usage of the land by a third person (Art. 64).

## 3.8 Education services

### 3.8.1 Pre-school, primary and secondary education

The Hungarian pre-school, primary and secondary education sector is regulated by Act 2011:CXC on national public education. The measure establishes a sector which prioritizes State involvement, but which does not exclude non-State established and maintained public education service providers as well as independent providers. Only the most important legal provisions are included in this legal mapping report.

#### 3.8.1.1 *The overview of the legal and regulatory environment of the sector*

The public education sector in Hungary, as regulated at statutory level, is characterised by a robust State presence not only in the regulatory and financing aspect, but also in terms of institution maintenance and the actual education service provision (Art. 74). Public education is declared as a public interest task which is discharged, principally, by State maintained public education institutions (Arts. 1(2) and 2(1)). The learning and development programmes are centrally regulated, the quality framework is set up and operated by the State, and State bodies enjoy extensive supervisory powers (Arts. 3(9) and 5).

The possibility for non-State established and maintained public education, including commercial-based service provision is, however, explicitly recognized (Arts. 31-33). The framework for establishing and maintaining non-State established higher education institutions is available (Arts. 6 and 9). The participation of foreign-established education institutions and international schools in the public education sector is permitted, primarily, subject to the requirement of mutual recognition (Art. 90). The clause (Art. 90(1)) enabling the rejection of mutual recognition in case the operation of the education institution violates in the Fundamental Law may be overly broad in its formulation and allows rather broad discretionary powers to the responsible minister.

Entry to the market and the conditions of operation in the market are, at the level of legislation, determined in an objective and transparent manner. In principle, the different education institutions including foreign-established institutions receive equal treatment in law. Entry is subject to registration (Art. 21) and in certain instances to obtaining an operating license (Art. 23). The material, personnel, and quality requirements do not impose unreasonable or unjustifiable burdens on education service providers. The language requirement imposed in Art. 3(5) seems unproblematic under EU law. The act contains a general EU compliance clause in Art. 100.

Heavy State involvement

A margin for non-State, commercial, and independent services

Overall reasonable and objective regulatory burdens

### 3.8.1.2 *The sectors*

Public education provided by the State.

Public education provided by non-State entities.

Independent public education.

Public education includes pre-school learning and development, learning and development with children with special needs, primary education, secondary education, secondary education involving professional training, adult public education (Art. 3(6)-(8)).

Public education institutions are pre-school institutions, primary schools, secondary schools, basic artistic schools, special pedagogical institutions, and combined education institutions (Art. 7(1)-(2)).

#### 3.8.1.2.1 *Independent public education*

The responsible minister may establish, or authorise the establishment of other public educational institutions, provided that they meet the relevant requirements laid down in legislation (Art. 6(4)).

The responsible minister may authorise the establishment of primary and secondary schools which follow a particular pedagogical programme, provided that they meet the relevant requirements laid down in legislation.

The costs of authorisation are borne by the applicant. (Art. 6(4)).

The 'alternative' pre-school, primary and secondary education institutions establish their pedagogical programme on the basis of the pre-school development programme or the framework educational programme approved by the responsible minister (Art. 9(8)). These documents may determine the particular and exceptional (Art. 9(8))

principles of pre-school development and pre-school life, the forms of pre-school development, and the tasks of the pre-school teacher.

the material taught in schools and the related assessment requirements.

the preparation for the State examinations.

the compulsory teaching hours.

the working hours of staff.

quality systems, the equipment and instruments used, and the applicable construction planning requirements.

the management model followed, and the organisation of development and learning.

the acceptable professional qualifications.

The introduction of an alternative programme which reaches beyond the relevant provisions laid down in legislation is subject to the restraint that financing of these programmes from the State budget covers only the compulsory tasks as determined by this act, and the financing of further tasks undertaken cannot be requested from the State budget (Art. 9(9)).

'Alternative' pre-school, primary and secondary school institutions are public education institutions which discharge their development and education tasks by using non-traditional pedagogical methods (Art. 9(10)).

These are subjected to obtaining an operating license from the responsible minister on application of the representative of the institution or the organisation maintaining the institution (Art. 9(10)).

#### *3.8.1.3 State tasks in public education*

Basic public education tasks are discharged by the State (with the exception of pre-school development) (Art. 74(1)),

- pre-school development is the task of the local council, which discharges its task either by the establishment and maintenance of a local council institution, or by concluding a public education agreement with a private or a church-funded institution (Art. 74(2)).

Basic public education tasks are discharged (Art. 74(2))

- either by the establishment and maintenance of a State institution, or
- by concluding a public education agreement with a private or a church-established institution.

#### *3.8.1.4 The nature of the sector*

Public education is a public service task (Art. 1(2)).

The general framework and guarantees of public education are provided by the State (Art. 1(2)).

It is the public service task of the State to provide the free and compulsory primary and the free and equally accessible secondary education as stated in the Fundamental Law (Art. 2(1)).

Public education institutions act under their professional autonomy, but are subject to regulation and State supervision concerning quality and their democratic and lawful operation (Art. 3(9)).

### 3.8.1.5 *The entry conditions in the Hungarian education sector*

#### 3.8.1.5.1 *The right of establishing and maintaining public education institutions*

Institutions of public education may be established and maintained, having obtained the license laid down in legislation, (Art. 2(3))

by the State.

within the framework of this act by

- national minority councils,
- churches as legal persons,
- organisations carrying out religious tasks,
- other persons or organisations.

Pre-school educational establishments may also be established and maintained by local councils (Art. 2(4)).

#### 3.8.1.5.2 *The registration*

Public educational institutions are established by their registration in the registry of public education institutions on the day of the registration (Art. 21(1)).

The registration is issued in an administrative decision (Art. 21(7)).

Non-State body established public education institutions may only be registered in case its operation complies with the local public education operation and development plan (Art. 21(2)).

The costs of registration are borne by the applicant (Art. 21(4)).

#### 3.8.1.5.3 *The license*

For public education institutions established by a person other than a central public body financed from the State budget or a local council, an operating license must be obtained for the commencing of its activities (Art. 23(1)).

The operating license may be issued only when the conditions for the delivery of tasks are met, and less than 6 months passed since the registration of the public education institution (Art. 23(2)).

The costs of obtaining the license are borne by the applicant (Art. 23(2)).

In case of a newly established development and education format, compliance with the conditions may be ensured gradually on the basis of a development plan. Compliance is supervised annually, and in case the development plan is not followed, the license will be withdrawn (Art. 23(3)).

The application for the license may be rejected in case (Art. 23(7))

the pedagogical programme does not meet the relevant legislative requirements.

the institution does meet the personal and material conditions laid down in legislation for its operation.

in case of a newly established development and education format, the development plan is insufficiently justified, and the budget contains insufficient information for determining how the financing of the operation of the public education institution will be ensured.

its operation does not comply with the public education development plan.

The license for the operation of a development and education institution may only be issued when (Art. 23(9))

it has its own permanent seat of operation.

it was established for the operation of a minimum 1 group or class capable of securing places for a maximum number of children.

it meets the personal and material conditions laid down in legislation for its operation.

#### 3.8.1.5.4 The language requirement

The language of public primary and secondary education is Hungarian, in national minority public education institutions in part or wholly the language of the national minority, and in bi-lingual public education institutions in part the foreign language determined (Art. 3(5)).

#### 3.8.1.5.5 The basic tasks carried out in public education

The basic public education tasks are (Art. 4(1))

pre-school development.

primary school development and education.

secondary school development and education.

adult education.

basic artistic education.

development and education of people with special needs, or in special circumstances.

### 3.8.1.5.6 The conditions of delivering tasks in public education

#### 3.8.1.5.6.1 The development and education programme and plan

The pre-school development programme: prepared on the basis of the national basic pre-school development programme (Art. 5(2))

The primary and secondary school framework development and education plan: based on the national basic development and educational plan, and they are prepared either by the responsible minister or, subject to prior approval, by the organisation maintaining the public education institution. The costs of the approval are borne by the applicant. (Art. 5(4)-(9)).

#### 3.8.1.5.6.2 The material and personnel conditions

The conditions of the delivery of task by a public education institution (Art. 22(1))

it has a permanent seat of operation and it has the premises necessary for the delivery of tasks.

it has a permanent personnel sufficient to discharge its tasks.

it has the necessary financial instruments to carry out the tasks (in case it is an institution with instruments and equipment, documentations, regulations and budget determined in legislation).

The public education institution has a permanent seat of operation in case the premises necessary for the delivery of its tasks, as determined in legislation, are in its exclusive possession for an indeterminate amount of time (Art. 22(2)).

For church-established or private public education institutions, it is sufficient that the right of usage of the necessary premises is secured for a minimum of 5 academic years (Art. 23(10));

In case the premises are located in a building in shared use with another education institution, it must be established in the licensing process whether the institutions concerned are able to operate without disturbances, the maximum number of children indicated in the founding document can be adequately placed, and staff is able to operate adequately (Art. 23(10)).

The public education institution has permanent personnel sufficient to discharge its tasks in case 70 per cent of the staff necessary to carry out its basic tasks is employed in a permanent employment or civil service relationship (Art. 22(2)).

The instruments and equipment necessary to carry out the tasks must be provided by the maintainer or the operator. The necessary financial instruments, including the planned revenues, must be provided by the

founder or the maintainer. The maintenance and the operating expenditures of public education institutions must be planned in an annual budget. (Art. 22(2)).

#### 3.8.1.5.6.3 Rules on non-State (private and church) established public education institutions

The may be operated and may organise their activities under rules different from the general rules laid down in this act (Art. 31(1)).

The may, in particular, (Art. 31(2))

depart from the principle of religious neutrality.

depart from the rules on the compulsory admission of children.

depart from the rules governing class sizes with the exception of the rule on maximum class size.

prescribe payment obligations for the services provided.

participate on the basis of a written agreement in the delivery of educational public service tasks determined in this act.

In case a private public education institution undertakes, in an agreement, public service tasks, it will be eligible for State operating subsidies. In this instance, it will be subject to the provisions on the compulsory admission of children. (Art. 33(1)).

#### 3.8.1.5.7 Rules on financing public education institutions

The main source of financing is State financing and the financing provided by the maintainer and the operator, which can be supplemented by the fees paid for services, tuition fees in case it is authorised by this act, and the other own incomes of the institution (Art. 88(1)).

The basic tasks of public education are financed from the State budget. Other tasks may also be financed from the State budget. (Art. 88(2)).

The State budget provides a State subsidy for discharging the public education tasks of a non-State maintained public education institution, provided that it complies with the conditions laid down in the operating license (Art. 88(3)).

#### 3.8.1.5.8 International/cross-border provisions

##### 3.8.1.5.8.1 Rules on foreign-established education institutions

Foreign-established education institutions may operate and may issue foreign certificates in Hungary only in case it is recognised under legislation as an education institution and its certificates are recognised under legislation as certificates issued in education in the State of origin, and this recognition is proved in Hungary (Art. 90(1)).

Mutual recognition in Hungary can be rejected in case the operation of the education institution is contrary to the Fundamental Law (Art. 90(1)).

The foreign-established education institution, on application, is registered and licensed by the responsible minister (Art. 90(1)).

The foreign-established education institution which was not recognised as an education institution in the State of origin may only operate in Hungary in case it is registered by the responsible minister (Art. 90(6)).

The same rules of mutual recognition applies to international schools with the difference that the institution must be recognised by the relevant international accreditation organisation (Art. 90(1)).

The establishment, the operation (development and teaching activities) and its supervision, and matters and decisions related to children in foreign-established education institutions are subject to the laws and regulations of the State of origin (Art. 90(2)).

Foreign-established education institutions and international schools may be parties to a public education agreement, which must be concluded with the responsible minister (Art. 90(7)).

#### 3.8.1.5.8.2 Rules on establishing Hungarian public education institutions abroad

Hungarian public education institutions may only be established in another State subject to the authorisation of the responsible minister, and in case the law of that State or an international agreement enables its establishment (Art. 90(4)).

### 3.8.2 Higher education

The Hungarian higher education sector is regulated by Act 2011:CCIV on the national higher education system. The measure establishes a sector which prioritizes State involvement, but which does not exclude non-State established and maintained higher education service providers as well as foreign-established providers. Only the most important legal provisions are included in this legal mapping report.

#### 3.8.2.1 Overview of the legal and regulatory environment

The higher education sector in Hungary, as regulated at statutory level, is characterised by a robust State presence not only in the regulatory and financing aspect, but also in terms of institution maintenance and the actual education service provision. The operation of the higher education system is declared as a State task (Art. 2(2)). The learning and teaching programmes are centrally regulated, the quality framework is set up and operated by the State, and State bodies enjoy extensive supervisory powers. The public as opposed to a commercial nature of higher education is also supported by the competition law clause in Art 5(3).

The possibility for non-State established and maintained higher education, including commercial-based service provision is, however, explicitly recognized (Art. 4(1)). The framework for establishing and maintaining independent public education institutions is also available (Art. 94). The participation of foreign-established higher education institutions in the higher education sector is permitted, primarily, subject to the requirement of mutual recognition and equivalence (Art. 76). The rules (Art. 76) on the rejection of mutual recognition in the licensing of foreign-established higher education institutions are objective and regulated with sufficient precision limiting the discretionary powers available. The language requirements concerning the attestation of equivalence (Art 76) seem flexible and reasonable. The more favourable regulation of EEA-established higher education institutions (Art. 77) does not raise issues at this level.

Entry to the market and the conditions of operation in the market are, at the level of legislation, determined in an objective and transparent manner. In principle, the different higher education institutions including foreign-established institutions receive equal treatment in law. Entry is subject to State recognition (Art. 6) and obtaining an operating license (Art. 7). The material, personnel, and quality requirements do not impose unreasonable or unjustifiable burdens on education service providers. The language requirement imposed in Art. 3(5) seems unproblematic under EU law. The act contains a general compliance clause (Art. 118) and a number of specific compliance clauses dealing with the form and content of the degrees awarded (Arts. 51 and 52), the operation of EEA-established higher education institutions in Hungary (Art. 77), and with the mutual recognition

Considerable  
State  
involvement

A margin for  
non-State,  
commercial,  
and foreign-  
established  
services

Reasonable  
and objective  
regulatory  
burdens

of degrees issued by foreign-established higher education institutions (Art. 80). The rules on the participation of Hungarian nationals in higher education in another EEA Member States (Art. 79) ensure compliance with EU obligations. The Hungarian language requirement in Art. 2(5) is formulated as a burden on the State and not as barrier to entry, and the requirements in the act on foreign language higher education provision and on joint degrees indicate an openness towards new markets.

The most controversial legal requirements of the act concern the conditions of participating in State higher education with a full or partial State scholarship (Arts. 48/A-48/O). State scholarship, in effect, stands for State-funded higher education where no tuition fee is charged, which characterizes the larger part of the Hungarian higher education system. Under the scholarship regime, students are placed under concrete obligations as to the maximum duration of their State funded studies and, more importantly from the perspective of EU free movement provisions, concerning their finding employment in Hungary after finishing their studies. The violation of these obligations undertaken in a written declaration at the beginning of higher education studies entails a penalty of individuals being compelled to pay back the scholarship (State funding) received. The positive assessment of these obligations, which are likely to discourage Hungarian citizens from exercising their right to free movement, may be helped by the provisions which introduce a certain degree of flexibility as to the application and enforcement of the obligations.

**A Hungarian  
employment  
obligation and  
penalties for  
graduates**

#### *3.8.2.2 The sectors*

Domestic public higher education.

Domestic commercial higher education.

Higher education services in another State.

#### *3.8.2.3 State tasks*

The operation of the system of higher education is the task of the State (Art. 2(2)).

The State must ensure that in every discipline Hungarian language higher education is available (Art. 2(5)).

#### *3.8.2.4 Competition law clause*

The transformation of higher education institutions does not fall under the scope of Hungarian competition law (Art. 5(3)).

### 3.8.2.5 *The entry conditions in the Hungarian higher education sector*

#### 3.8.2.5.1 *The basic tasks carried out by higher education institutions*

Higher education institutions carry out, as their basis tasks, education, scientific research, or artistic activities (Art. 2(1)).

Basic education tasks include higher professional education, basic higher education, advanced higher education (master-level), higher education at doctoral level, and professional training (Art. 2(3) and Art. 3).

The basic education tasks may only be carried out by a higher education institution (Art. 2(3)).

Higher education institutions may carry out their education tasks – in part or completely – in a foreign language (Art. 2(5)).

Higher education institutions must be established, and operated, to carry out the higher education tasks determined in this act (Art. 6(1)).

#### 3.8.2.5.2 *The establishment of higher education institutions*

Higher education institutions may be established by (Art. 4(1))

the Hungarian State (public higher education institutions operated as body financed from the State budget).

a national minority council (public higher education institutions operated as body financed from the State budget).

the legal person of an church (church-established higher education institution).

a commercial undertaking with a seat in Hungary (private higher education institution).

foundations, public foundations, or religious organisations registered in Hungary (private higher education institution).

the Art. 95/A maintenance organisation.

#### 3.8.2.5.3 *State recognition*

Higher education institutions established and operated under this act must obtain State recognition from Parliament (Art. 6(1)).

State recognition may be given in case (Art. 6(2))

the higher education institution meets the conditions necessary for carrying out its activities.

it is able to provide education in at least two teaching or scientific disciplines and in at least 4 teaching programmes at basic, basic and master, basic, master and doctoral, or master and doctoral level.

Higher education institutions meet the conditions necessary for carrying out its activities in case the personal, material, organisation and financial instruments necessary for a continuous operation, and the necessary institutional documents are at its disposal (Art. 6(3)).

The higher education institution is created by the State recognition (Art. 6(4)).

It may commence its operation when it receives, on its application, its operational license, it is registered, and Parliament decided on its State recognition (Art. 6(5)).

#### 3.8.2.5.4 The license

Higher education institutions are issued an operating license provided that (Art. 7)

they have a permanent seat of operation,

- the permanent seat of operation is the location for carrying out the basic education activities and for the management of the higher education institution, which must be available for at least 8 years for the carrying out of its tasks.

they have permanent teaching and research personnel,

- this conditions is met when at least 60 per cent of the teaching and research staff are employed in a civil service or an employment relationship.

The operating license is issued when the maintainer testifies that the conditions for the operation of the higher education institution have been met, or they will be met gradually as dictated by the demands of teaching and research in that higher education institution (Art. 8(1))

The operating license is issued subject to the condition that operation may only be commenced after obtaining the State recognition from Parliament (Art. 8(2)).

The operating license is subject to revision by the education authority at least every 5 years (Art. 8(2)).

#### 3.8.2.5.5 The types of higher education institutions

Higher education institutions established under this act may be universities or colleges. The use of these denominations is only permitted for higher education institutions under State recognition, or for foreign-established higher education institutions operating under this act in Hungary. (Art. 9(1)-(2)).

Universities must (Art. 9(3))

provide a minimum of 8 basic and 6 master-level programmes, and a doctoral programme.

ensure that at least 60 per cent of their personnel employed in civil service or employment relationship has a higher degree by research (*tudományos fokozat*).

be able to provide some of their programmes in foreign languages.

operate a scientific society for students.

#### Universities of applied sciences must (Art. 9(3a))

provide a minimum of 4 basic and 2 master-level programmes.

ensure that at least 45 per cent of their personnel employed in civil service or employment relationship has a higher degree by research (*tudományos fokozat*).

be able to provide some of their programmes in foreign languages.

operate a scientific society for students.

#### Colleges must (Art. 9(4))

ensure that at least 45 per cent of their personnel employed in civil service or employment relationship has a higher degree by research (*tudományos fokozat*).

operate a scientific society for students.

#### 3.8.2.5.6 Special statuses for higher education institutions

The responsible minister for the purpose of achieving strategic national aims may appoint a higher education institution as having special importance (Art. 10(1)).

Universities or university faculties may receive the title of 'research university' or 'research faculty' on the basis of their excellence in teaching and in research (Art. 10(2)).

Colleges offering multiple programmes, ensuring excellence in teaching, having international recognition in the area of applied science, and participating in widespread international cooperation in teaching may receive the title of 'college of applied sciences' (Art. 10(3)).

The higher education institutions affected may receive further financing from the responsible minister (Art. 10(4)).

### 3.8.2.5.7 The rules on performing higher education activities

Teaching and learning activities in higher education institutions are carried out on the basis of a teaching and learning programme (Art. 15(1)).

The teaching and learning plans for individual programmes form part of the teaching and learning programme, and they must be prepared on the basis of the teaching input and output requirements laid down in legislation (Art. 15(1)).

Teaching programmes can be organised either as full time programmes, or part-time programmes, or distance learning programmes (Art. 17(1)).

### 3.8.2.6 Financing students in higher education and the freedom of movement

The responsible minister determines annually in a decision which programmes are available on a full- or partial State scholarship (the majority of programmes are) (Art. 46)

Students receiving a full- or partial State scholarship must (Art. 48/A)

graduate from the degree programme in the time interval determined for that programme in its teaching input and output requirements laid down in legislation, or in a time period which at maximum is one and a half times longer than the time period regulated in legislation.

with the 20 years following graduation, establish and maintain a Hungarian employment relationship covered by the national insurance framework, or work as self-employed in Hungary for a duration equivalent to that of the higher education programme supported by full- or partial State scholarship (the Hungarian employment obligation),

- the Hungarian employment obligation may be fulfilled in multiple temporal instalments (Art. 48/B(1)),
- the Hungarian employment obligation may be fulfilled by nationals of neighbouring States covered by the Act on Hungarian minorities in neighbouring States in the State of origin (Art. 48/B(3)),
- in determining the time period spent in Hungarian employment, the period of voluntary military service in Hungary and of employment in the State of origin of persons covered by the Act on Hungarian minorities in neighbouring States must be calculated at a double rate (Art. 48/B(6)).

pay back to the Hungarian State 50 per cent of the State scholarship received in case he does not graduate from the degree programme within the time period indicated above (payback obligation in case of overstepping the time constraint).

pay back to the Hungarian State the State scholarship received, increased with the official rate of inflation, in case he does not maintain the employment relationship regulated above or does not work as self-employed in Hungary as determined above (payback

obligation in case of violating the Hungarian employment obligation).

The divinity studies exemption: students participating in degree programmes in divinity studies are exempt from the Hungarian employment obligation and the payback obligation in case of the violation of the Hungarian employment obligation, and the payback obligation concerning the delayed finishing of studies may only be applied having regard to the special requirements of such programmes (Art. 48/B(4)).

The obligations of the State: the Hungarian State by relying on its employment policy tools is obliged to seek opportunities to ensure that graduates receiving full- or partial State scholarship find adequate employment opportunities in Hungary (Art. 48/C(1)b).

The formalities: students receiving full- or partial State scholarship must at the time of enrolment in a higher education institution make a written declaration that they undertake the obligations related to the State scholarship system (Art. 48/D(2)).

The rules on the payback obligation: the payback obligation is determined in a decision. The payment must be made 30 days after the decision becomes final. The payback obligation can be taken over by another person. The payback obligation is a personal obligation which does not affect the inherited estate. (Art. 48/P). Rules on payment by instalments of the payback obligation (Art. 48/Q). The payback obligation can be enforced as taxes (Art. 48/R).

#### 3.8.2.6.1 Flexibility rules

The period of Hungarian employment includes (Art. 48/L)

the time interval when the infant-care fee, childcare support and the childcare support fee are paid, or

the period when job seekers allowance is paid.

The time constraint, and the payback obligation in case of overstepping the time constraint do not apply to female students that gives birth to 3 children (Art. 48/M(1)).

The payback obligation in case of overstepping the time constraint does not apply to students that complete less than 2 semesters in higher education (Art. 48/M(2)).

The time spent in higher education can be suspended on 2 occasions for a maximum period of 2 years for the purpose of determining whether the time constraint has been met in case of (Art. 48/N(1)-(2)) studies spent in a foreign HEI, or studies in adult education leading up to a foreign language certificate.

The payback obligation in case of overstepping the time constraint does not apply, based on their application, to students that maintain a Hungarian employment relationship for the duration equivalent to that of the higher education programme supported by full- or partial State scholarship (Art. 48/N(3)).

The time constraint does not apply, based on their application, to students that are unable to graduate from the degree programme on account of a sustained illness, accident, or childbirth (Art. 48/O(1)).

The Hungarian employment obligation, the payback obligation in case of overstepping the time constraint, and the payback obligation in case of violating the Hungarian employment obligation do not apply, fully or in part, based on their application, to students that are unable, outside of their duty of care, to meet these obligations on account of their changed capacity to work, sustained, illness, accident, childbirth, the raising of 2 or more children, or of other unexpected cause (Art. 48/O(2)).

#### *3.8.2.7 State financing*

State financing is available to State-established higher education institution, and, subject to an agreement with the government, to church-established and private higher education institution (Art. 84(3)).

#### *3.8.2.8 Non-State maintained (church-established and private) higher education institution*

Private higher education institutions may be operated as reflecting the religious or other beliefs of the founder (Art. 94(1)).

Its operation and management is subject to the relevant provisions of this act (Art. 94(4)).

Its founding document must declare whether the private higher education institution is operated on a not-for-profit basis or as a commercial undertaking (Art. 94(5)).

The incomes of the private higher education institutions include financing from the founder, State financing, and other incomes (Art. 95(4)).

#### *3.8.2.9 International/cross-border provisions*

##### *3.8.2.9.1 Rules on the operation of foreign-established higher education institutions in Hungary*

Foreign-established higher education institutions may operate degree programmes in Hungary in case (Art. 76(1))

they are recognised in the State of origin as a State recognised higher education institution,

the degree programme and the degree offered in Hungary is equivalent to a State recognised degree programme,

an operating license was issued by the education authority.

The issuing of the operating license may be declined in case, on the basis of the opinion of the higher education accreditation body obtained by the education authority, significant differences in the operating and teaching conditions in Hungary and in the State of origin can be established (Art. 76(2)).

The issuing of the operating license may be declined in case the recognition (of equivalence) in Hungary of the foreign degree offered is impossible (Art. 76(3)),

in case the recognition (of equivalence) of the foreign degree offered is impossible in Hungary, the licensed higher education institution must inform, subject to the supervision of the education authority, all applicants of this circumstance (Art. 76(3)).

Licensed foreign-established higher education institutions are registered by the education authority. The license is subject to review at least in every 5 years by the education authority. Their operation is subject to the compliance supervision by the responsible minister. (Art. 76(3)).

The education authority may require a certified copy or a certified Hungarian translation of documents attesting that the conditions of operation in Hungary are met. The education authority publishes the list of foreign languages using which the applicant is not required to submit a certified Hungarian translation of the relevant documents. (Art. 76(4)).

As a general rule, the establishment, the teaching and research activity and their supervision, the operation of the institution, and the setting of the entry conditions are subject to the regulation of the State of origin (Art. 76(5)).

As a general rule, neither full-, nor partial State scholarship may be obtained for programmes offered by foreign-established higher education institution (Art. 76(7)).

#### 3.8.2.9.1.1 EEA-established higher education institutions

The same rules apply to HEI with a seat of operation in an EEA Member State with the exceptions that (Art. 77(1)-(3))

the issuing of the operating license cannot be declined on grounds of recognition of equivalence.

operators entitled to provide cross-border higher education services in Hungary are required to notify the education authority of their intention to provide cross-border services to Hungary (no obligation to obtain operating license). The registration of such higher education institution is subject to meeting the general requirements of operating degree programmes by foreign-established higher education institution in Hungary.

The provision by a Hungarian higher education institution of a degree programme as a non-shared degree programme offered as a State recognised basic or master-level or equivalent degree programme in a higher education institution established in an EEA or OECD Member State is subject to the registration by the education authority. The degree programme will be registered in case the partner institutions have agreed on the provision of the programme, and the foreign HEI undertakes the obligation of issuing a foreign degree for the programme taught in Hungary. As a general rule, the establishment, the teaching and research activity and their supervision, the operation of the institution, and the setting of the entry conditions are subject to the regulation of the State of origin. As a general rule, neither full-, nor partial State scholarship may be obtained for programmes offered by foreign-established higher education institution. (Art. 77(4)).

#### 3.8.2.9.2 Rules on the operation of Hungarian higher education institutions abroad

Subject to the rules laid down in a government regulation, registered by the education authority, and provided that it is compatible with the legal order of the receiving State (Art. 78(1)). The responsible minister may subsidise such operation of Hungarian higher education institution (Art. 78(2)).

#### 3.8.2.9.3 Rules on joint degree programmes by a Hungarian and a foreign-established higher education institution

Joint degree programmes may be operated subject to the conditions that (Art. 78(3))

the higher education institutions involved are State recognised higher education institutions in their home State.

the joint degree qualifies as a higher education degree under the law of the States affected.

the higher education institutions involved are licensed to provide a degree programme the teaching input and output requirements are equivalent to those of the degree programme in question.

students complete at least 30 credits in the Hungarian higher education institution involved.

The participation of the foreign-established higher education institution is not subject to obtaining an operating license for Hungary (Art. 78(4)).

The degree programme is registered by the education authority (Art. 78(5)).

#### 3.8.2.9.4 Rules on the participation of Hungarian citizens in higher education abroad

It is not subject to an authorization (Art. 79(1)).

Hungarian citizens participating in a degree programme in an EEA State offered by a State recognised higher education institution are entitled to the student loan available to students in Hungarian higher education institution (Art. 79(4)).

#### 3.8.2.10 *The administrative environment*

The responsible minister exercises powers of compliance supervision over non-State higher education institutions. (Art. 65(1)).

The carrying out of activities regulated as higher education basic tasks by natural persons, legal persons or other organisations without meeting the licensing and operating conditions laid down in this act are subject to the compliance supervision by the responsible minister (Art. 66(1)).

During the licensing of higher education institutions and the review of operating licenses, the education authority is required to obtain the opinion of the Hungarian Accreditation Body. The opinion must be taken into account in this process, but it does not bind the education authority. The applicant must pay and administrative service fee. (Art. 67).