

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

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Table of contents

Table of contents	1
Summary of findings	11
Introduction	15
1 The Hungarian legal system and the (European) market economy.....	19
1.1 The legal and regulatory environment of the transition economy	19
1.2 Trends and patterns after 2010	31
1.2.1 Policy directions	33
1.2.2 The quality of the legal and regulatory environment	37
2 Market access and level playing-field after 2010: key area case-studies	47
2.1.1 State ownership	47
2.1.2 State monopolies	47
2.1.2.1 The National Infrastructure Development Corporation.....	49
2.1.3 Regulated professions	49
2.1.4 Favouritism in economic regulation	51
2.1.5 Legal redress	52
2.1.6 State aids	54
2.1.7 Licensing and planning	55
2.1.8 Sectoral taxes and surtaxes	59
2.1.9 Openness, transparency, and State-owned undertakings	59
3 Market access and level playing-field: sectoral legal mapping and review	63
3.1 Horizontal legal provisions.....	63
3.1.1 The general rules on providing services in the Hungarian market	63
3.1.1.1 Access and equal treatment in the Hungarian services market.....	63
3.1.1.2 Specific requirements ensuring market access and a level playing-field	66
3.1.1.3 The exemptions regulated separately	68
3.1.2 The establishment of branches in Hungary	69
3.1.2.1 Rules on establishment and operation.....	69
3.1.2.2 The equal treatment requirement	70
3.1.2.3 Rules on operating conditions.....	70
3.1.2.4 Rules on financial or investment service branches	70
3.2 The transport market	71
3.2.1 Transport by rail	71

3.2.1.1	Overview of the legal and regulatory environment	71
3.2.1.2	The markets	75
3.2.1.3	The activities carried out in the different markets.....	76
3.2.1.4	Rules on ownership	78
3.2.1.5	Railway construction and the NIF clause.....	79
3.2.1.6	Entry conditions in the Hungarian market for railway transport services	79
3.2.1.7	The conditions of providing services in the Hungarian railway transport market	82
3.2.1.8	Network access.....	94
3.2.1.9	The rules of contracting for the provision of services in the Hungarian railway transport market	98
3.2.1.10	Railway network operation	99
3.2.1.11	Agreements on cross-border traffic	100
3.2.1.12	Financing through EUROFIMA	100
3.2.1.13	Railway safety	100
3.2.1.14	The administrative environment	100
3.2.2	Transport by road	103
3.2.2.1	Overview of the legal and regulatory environment	103
3.2.2.2	The markets	105
3.2.2.3	The activities carried out in the different markets.....	105
3.2.2.4	Rules on the ownership of public roads	108
3.2.2.5	Road construction and the NIF clause.....	108
3.2.2.6	Rules on the asset management of public roads	108
3.2.2.7	Entry conditions in the Hungarian market for passenger transport services	108
3.2.2.8	The conditions of providing services in the Hungarian market for transport services by road	112
3.2.2.9	Access to the road network.....	119
3.2.2.10	The administrative environment	119
3.2.3	Transport on waterways	121
3.2.3.1	Overview of the legal and regulatory environment	121
3.2.3.2	The markets	122
3.2.3.3	The activities carried out in the different markets.....	122
3.2.3.4	Entry conditions in the Hungarian market for transport on waterways	123
3.2.3.5	The conditions of providing services in the Hungarian market for transport on waterways	125
3.2.3.6	Ownership and access concerning waterways and shipping routes	127

3.2.3.7	The administrative environment	128
3.2.4	Air transport	129
3.2.4.1	Overview of the legal and regulatory environment	129
3.2.4.2	The markets	130
3.2.4.3	The activities carried out in the different markets.....	130
3.2.4.4	Entry conditions in the Hungarian market for air transport	131
3.2.4.5	The conditions of providing services in the Hungarian market for air transport	134
3.2.4.6	The administrative environment	137
3.3	The energy market.....	139
3.3.1	The market for natural gas.....	139
3.3.1.1	Overview of the legal and regulatory environment	139
3.3.1.2	The markets	140
3.3.1.3	The activities carried out in the different markets.....	141
3.3.1.4	State-ownership	141
3.3.1.5	Rules on infrastructure development	141
3.3.1.6	The pre-emption rights of the Hungarian State (natural gas storage)	142
3.3.1.7	Restrictions on transactions involving natural gas storage facilities.....	143
3.3.1.8	The obligation to offer for sale natural gas resources	143
3.3.1.9	The rules of negotiated access to natural gas storage facilities.....	144
3.3.1.10	Entry conditions in the Hungarian market for natural gas	145
3.3.1.11	The conditions of providing services in the Hungarian market for natural gas	148
3.3.2	The market for electricity	157
3.3.2.1	Overview of the legal and regulatory environment	157
3.3.2.2	The markets	158
3.3.2.3	The activities carried out in the different markets.....	158
3.3.2.4	The main regulatory principles.....	159
3.3.2.5	Public interest clauses	159
3.3.2.6	The rights of users	159
3.3.2.7	Entry conditions to the Hungarian market for electricity	159
3.3.2.8	The conditions of providing services in the Hungarian market for electricity	164
3.3.2.9	The administrative environment.....	171
3.3.3	The market for district-heating.....	172
3.3.3.1	Overview of the legal and regulatory environment	172
3.3.3.2	The markets	172

3.3.3.3	Entry conditions in the Hungarian market for district-heating	172
3.3.3.4	The conditions of providing services in the Hungarian market for district-heating	173
3.3.3.5	The administrative environment	175
3.4	The market for postal services	176
3.4.1	Overview of the legal and regulatory environment	176
3.4.2	The markets	178
3.4.3	The activities carried out in the Hungarian postal service market	178
3.4.3.1	State activities	178
3.4.3.2	Regulatory activities	178
3.4.3.3	Licensed activities	178
3.4.3.4	Notified activities	179
3.4.4	The universal postal services clause	179
3.4.5	The replacement services clause	179
3.4.6	The non-replacement services clause	180
3.4.7	The market for postal service intermediaries	180
3.4.8	Unbundling (financial)	180
3.4.9	Entry conditions in the Hungarian market for postal services	180
3.4.9.1	Legal form and establishment	181
3.4.9.2	Notification	181
3.4.9.3	Licensing	181
3.4.10	The universal postal service	182
3.4.10.1	The obligation to consider liberalisation	184
3.4.10.2	Access to universal postal services	184
3.4.10.3	The price of universal postal services	185
3.4.10.4	The compensation of unfair financial burdens	185
3.4.10.5	The public service contract (for universal postal services)	186
3.4.10.6	Rules on the operation of the universal postal service market	186
3.4.10.7	The provision of connected public services	187
3.4.10.8	The limitation or suspension of universal postal services	187
3.4.11	The administrative environment	188
3.5	The waste market	189
3.5.1	Overview of the legal and regulatory environment	189
3.5.2	The markets	190
3.5.3	The activities carried out in the Hungarian market for waste	190

3.5.3.1	State activities	190
3.5.3.2	Regulatory activities	191
3.5.3.3	Licensed activities.....	191
3.5.3.4	Notified activities.....	191
3.5.4	The rules on ownership	191
3.5.5	Waste management as a public service obligation	191
3.5.5.1	Restriction on public service operators.....	192
3.5.6	Entry conditions in the Hungarian waste management market.....	192
3.5.6.1	‘Economic operators’ having access to the market.....	192
3.5.6.2	The license	192
3.5.6.3	The notification and registration.....	193
3.5.7	The conditions for providing services in the Hungarian market for waste management.....	194
3.5.7.1	The public service contract.....	194
3.5.7.2	The regulation of the public service fee	194
3.5.7.3	Transparency obligations	194
3.5.7.4	The principle of cost efficiency.....	194
3.5.7.5	The prohibition of cross-subsidisation	195
3.6	Public water supply and water utilities	196
3.6.1	Overview of the legal and regulatory environment	196
3.6.2	The markets.....	196
3.6.3	The activities carried out in the Hungarian market of public water supply and water utilities	196
3.6.3.1	State (and local council activities)	196
3.6.3.2	Regulatory activities	197
3.6.3.3	Licensed activities.....	197
3.6.4	The rules on ownership	197
3.6.5	Rules on the provision of public water utility services	198
3.6.6	Entry conditions in the Hungarian market for public water supply and water utility services	199
3.6.6.1	The service provider license	199
3.6.6.2	The operating license	199
3.7	Mining	201
3.7.1	Overview of the legal and regulatory environment	201
3.7.2	Mining and mining-related activities	201
3.7.3	Mining concessions	202
3.7.4	The national security clause	203

3.8	Agricultural and forestry land	204
3.8.1	Overview of the legal and regulatory environment	204
3.8.2	The acquisition of land ownership	206
3.8.3	Acquisition by gift	207
3.8.4	Administrative approval	207
3.8.5	Declarations by the new owner	208
3.8.6	Limitations on the size of land acquired	208
3.8.7	The right of pre-emption	209
3.8.8	The obligation and transfer of usage	212
3.8.9	The administrative environment	213
3.9	The health care sector	214
3.9.1	Overview of the legal and regulatory environment	214
3.9.2	The different segments of the Hungarian health care sector	215
3.9.3	The different health care services provided	216
3.9.4	The activities carried out in the Hungarian health care sector	217
3.9.4.1	State activities	217
3.9.4.2	Local council activities	217
3.9.4.3	Regulatory activities	217
3.9.4.4	Activities by health insurers	217
3.9.4.5	Licensed activities	217
3.9.4.6	Notified activities	218
3.9.5	The responsibility of the State	218
3.9.6	Responsibility for the provision of health care public services	218
3.9.7	The right to health care	218
3.9.8	Ambulance services	218
3.9.9	Transportation of patients	219
3.9.10	The provision of blood services	219
3.9.11	Entry conditions in the Hungarian health care sector	219
3.9.11.1	The general clause	219
3.9.11.2	The forms of carrying out health care services	219
3.9.11.3	Licensing	220
3.9.11.4	Notification	221
3.9.11.5	Material and personal conditions	221
3.9.12	Health care public services	222

3.9.12.1	Financing.....	222
3.9.12.2	Contracting out.....	222
3.10	The social services sector	224
3.10.1	Overview of the legal and regulatory environment	224
3.10.2	The different segments of the Hungarian social services sector.....	225
3.10.3	The different social services provided	225
3.10.4	Local council and State presence.....	226
3.10.5	Local council and State obligations	226
3.10.6	The obligations of the maintainer (State, church and other)	227
3.10.7	Limitations on the number of persons in care.....	227
3.10.8	Organisational framework.....	228
3.10.9	Financing from the State budget	228
3.10.10	Entry conditions in the Hungarian social services sector	229
3.10.11	The cover fee	231
3.10.12	The entry fee.....	232
3.10.13	Further fees.....	232
3.10.14	Contracted social services.....	232
3.10.15	Contracting out certain services	232
3.11	The education sector	233
3.11.1	Pre-school, primary and secondary education	233
3.11.1.1	The overview of the legal and regulatory environment of the sector	233
3.11.1.2	The sectors.....	234
3.11.1.3	State tasks in public education.....	235
3.11.1.4	The nature of the sector	235
3.11.1.5	The entry conditions in the Hungarian education sector.....	236
3.11.2	The vocational training sector.....	241
3.11.2.1	Overview of the legal and regulatory environment	241
3.11.2.2	The sector	241
3.11.2.3	Practical training.....	242
3.11.3	The adult education sector	244
3.11.3.1	Overview of the legal and regulatory environment	244
3.11.3.2	The sector	244
3.11.3.3	Entry to the sector	246

3.11.3.4	Subsidised adult education.....	248
3.11.3.5	The pecuniary security.....	248
3.11.4	Higher education.....	249
3.11.4.1	Overview of the legal and regulatory environment	249
3.11.4.2	The sectors.....	250
3.11.4.3	State tasks.....	250
3.11.4.4	Competition law clause	251
3.11.4.5	The entry conditions in the Hungarian higher education sector.....	251
3.11.4.6	Financing students in higher education and the freedom of movement.....	255
3.11.4.7	State financing	258
3.11.4.8	Non-State maintained (church-established and private) higher education institution 258	
3.11.4.9	International/cross-border provisions	258
3.11.4.10	The administrative environment	261
3.12	Financial services	262
3.12.1	The market for services provided by financial institutions	262
3.12.1.1	Overview of the legal and regulatory environment	262
3.12.1.2	The market.....	263
3.12.1.3	The State investment clause.....	263
3.12.1.4	Restriction on investment in real estate	263
3.12.1.5	Other restrictions on investment	263
3.12.1.6	Market entry.....	264
3.12.1.7	Provisions on cross-border establishment and the cross-border provision of services 266	
3.12.2	The cooperative banking services market	270
3.12.2.1	Overview of the legal and regulatory environment	270
3.12.2.2	The market.....	271
3.12.2.3	The integration obligation	271
3.12.2.4	The starting asset (State ownership).....	271
3.12.2.5	Market entry.....	272
3.12.2.6	The conditions of operation	273
3.12.3	The insurance services market.....	277
3.12.3.1	Overview of the legal and regulatory environment	277
3.12.3.2	The markets	278

3.12.3.3	State-provided reinsurance services	278
3.12.3.4	Non-discrimination on the basis of sex	278
3.12.3.5	The principle of closed operation.....	279
3.12.3.6	Market entry.....	279
3.12.3.7	The conditions of operation	285
3.12.3.8	The sale of insurance	288
3.12.3.9	Insurance intermediaries.....	288
3.12.4	The investment services market.....	291
3.12.4.1	Overview of the legal and regulatory environment	291
3.12.4.2	The market.....	291
3.12.4.3	Market entry.....	292
3.12.4.4	Provisions on cross-border establishment and the cross-border provision of services 293	
3.12.5	The payment services market.....	295
3.12.5.1	Overview of the legal and regulatory environment	295
3.12.5.2	The market.....	295
3.12.5.3	Access to payment systems.....	296
3.12.5.4	Market entry.....	296
3.12.5.5	Provisions on cross-border establishment and the cross-border provision of services 297	

Summary of findings

The legal and regulatory environment for economic activity in Hungary, seen from a general perspective, ensures the operation of open and competitive markets where the fundamental requirements arising from the law of the EU Single Market are, as a norm, observed. Overall, law and regulation enable the operation of market mechanisms, foster competition in individual sectors and ensure its protection under general legislation, secure the non-discriminatory treatment of market participants, and provide acceptable and reasonable barriers to entry to markets. From the perspective of the applicable EU legal obligations, the legal system in Hungary, on the whole, guarantees the equal treatment of EU nationals and market operators, provides access to the domestic market for market participants from other Member States, and secures a level playing-field for domestic and EU economic operators. The institutional hiatuses, which were identified in the process of transition to a market economy, such as corruption, a weak public procurement framework, politicised economic regulation, or the low efficiency and efficacy of public administration and the judiciary, continue to be addressed in the modernisation agendas of successive governments.

From a structural perspective relevant for EU market integration, the Hungarian economy, as a result of the particular path followed in the economic transition process, remains to be characterised by a significant structural asymmetry. On the one hand, there are the export-driven, value-producing industries financed mainly through foreign investment and owned, predominantly, by foreign parent-companies. On the other, there are the sectors producing for the domestic product and services market, now including the majority of public services, where foreign investment, competition and market mechanisms are 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 operate closed under regulation for competition and they may be subject to 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 the growth-promising exporting sectors maintained their privileged, market- and competition-friendly regulatory treatment, and the sectors producing for the domestic market were confronted with increasing 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 some 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 characterised by a high degree of volatility and uncertainty, which not only undermined the overall quality of law and regulation, but also put the rights and interests of the market operators affected to jeopardy. Regulatory volatility and uncertainty also raised the possibility of arbitrary, potentially abusive uses of public powers in the private economic domain and put pressure on the mechanisms of legal protection made available in the previous decades. 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 and, in some instances, also to shake up competitive positions in these markets in favour of certain, mainly domestic, market participants. This manifested in the use of regulation for the restructuring competitive conditions in individual markets, the closing or opening of markets, introducing new regulatory and tax burdens and barriers to entry, and for strengthening State prerogatives and ownership. Certain sectors, as a result, saw a reduction in the scope of competition, liberalisation efforts were withheld or reversed on government decision, and in some instances market mechanisms were replaced by strict price regulation, or their operation was subjected to direct political discretion.

In the quarter of a century after the regime change, successive governments in Hungary, despite repeated commitments to modernisation, seem to have 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 convincingly 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 still 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, has a direct impact on stakeholder satisfaction and their decisions finding themselves

exposed to raw political power. The explicit political nature and the rarely 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 true intentions in certain markets and confront stakeholders with unexpected, not necessarily bona fide changes. Economic favouritism supported by legal regulation in certain sectors, such as retail, sheds doubts as to whether State intervention took place in the public interest. Overall, the developments question whether competition and the operation of market mechanisms as well as openness and the equal treatment of market participants can be taken for granted even after a decade spent 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, primarily from the perspective of the obligations which follow from EU law. It focuses 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 work was carried out to answer the question whether despite two decades of harmonisation with the law of the European Union and after more than 10 years of EU membership there remain major contradictions and conflicts between Hungarian economic law and regulation and the requirements of EU law. The dynamics of the relationship between Hungarian and EU law received particular attention as made necessary by the legal and policy changes implemented after 2010 which in certain sectors of the national economy rolled back competition and market mechanisms and which treated certain economic sectors as separable from the Single Market.

The general research question pursued by this report can be broken down into further specific areas of inquiry. The first issue investigated was whether Hungarian economic law and regulation contain provisions which continue to discriminate on the basis of nationality, residence or establishment within the EU. The second question considered was whether the legal and regulatory environment of individual economic sectors hinders the entry of EU market participants to the Hungarian market, or discourages them from entering or remaining in the market. It is similarly important whether the application and enforcement of legal rules and the operation of the broader administrative environment have a restrictive effect on the exercise – both actual and potential – of the fundamental freedoms of the Single Market. The third question raised was whether there are trends or distinct directions in Hungarian economic policy and regulation which indicate the turning away – at a systemic level – of the national economy from the Single Market.

In effect, the report serves as a comprehensive review of compliance carried out by independent academic researchers of Hungarian economic regulation covering a broad range of economic sectors with EU obligations arising from the law of the Single Market. It was produced to provide an indication for the Hungarian State, the European Commission, and for economic and social stakeholders of major trajectories of change, systemic inertias, and of areas of conflict and concordance requiring focussed attention, as revealed in legal regulation, with a view to developing future strategies in EU and national policy-making and by individual market

participants. The report provides an academic basis as produced by legal researchers of broader discussions concerning the flexibility of EU legal obligations in the economic domain, the ability of EU law to accommodate different varieties of capitalism at the national level, Member State responsibilities and discretion in regulating the national economy, and, finally, the role of law – both EU and national law – in confining national choices. It also provides an important source-material for further research in the Europeanisation of Hungarian economic law and regulation with special regard to the political, institutional and legal pressures at the local level which shaped that process.

The report forms 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 involves, on the one hand, the production of comprehensive legal mapping reports in individual EU policy areas, such as the EU fundamental freedoms, which identify and analyse in depth the scope and the weight of obligations imposed on the Member States in the EU and which discuss the possibilities available in law to depart in national policy-making from those obligations. The research group also produces legal expert review reports which are based on the research carried out to examine the reactions given in law and policy by Hungary to EU obligations, especially those of non-compliance and the attempts at sustaining national legal and policy particularism. Both strands of work are made relevant by the Hungarian policy on Europe, which, as expressed in the relevant policy documents and in individual policy developments, places a considerable emphasis on representing and protecting Hungary's national interests within the EU.

This review report begins with an overview of the trajectories of legal development after 1989 leading up to Hungary's accession to the European Union in 2004 which, as seen from a general perspective, laid down in Hungary the basis of a functioning market economy based on competition and of the transparent and non-discriminatory treatment of market participants (Part 1.1). This is followed by a general scrutiny of the particular changes and trends in Hungarian economic policy and regulation which emerged after the elections in 2010 (Part 1.2). Our analysis, in these two parts, 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 the changes implemented (Part 2).

The main body of the review report is provided by the comprehensive legal mapping reports produced covering the legal and regulatory environment of individual sectors of the national economy (Part 3). These mapping reports

first identify and analyse the main issues raised by the relevant pieces of 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 specific conditions imposed on carrying on economic activity in the affected markets, and, finally, analyse the specific rules concerning the administrative environment of the market investigated. These mapping categories were developed on the basis of the logic of EU economic law and the applicable provisions of EU sectoral legislation.

The legal mapping reports focus on the most relevant segments of the national economy, mainly in the services sector. The sectors selected serve as focal areas of reporting on the Hungarian economy, and/or have been discussed and analysed for known hiatuses, backlogs, or controversial developments in domestic policy and regulation. Since the aim was to provide an understanding and analysis of the overall state of law and regulation in light of the core principles of EU economic law, legal mapping was confined to the general sectoral legislative instruments. Having identified the relevant pieces of legislation in force, the mapping reports then categorised the relevant legal provisions and included them in the corresponding mapping category. The legal provisions which bear special relevance from the perspective of the law of the Single Market, such as State ownership, State prerogatives, robust public interest elements, or price regulation, were treated separately and highlighted in the reports. The legal information collected in this manner provided the basis of the general overviews introducing the mapping reports on individual sectors which identified the main characteristics and the potential hiatuses of the legal and regulatory environment of those sectors.

The Lendület-HPOPs research group is grateful for the feedback and evaluation provided by the participants of the expert workshop organised in Budapest in July 2016 to discuss the first draft of this report.

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. However, 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 far-reaching regulation, over a number of markets. State involvement and delayed or reduced market opening characterised especially the public service markets where successive governments remained reluctant to dispose of political controls over market decisions. 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 incoming 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, non-discriminatory treatment and the level playing-field demanded by the Single Market seem to have been replaced in law and regulation by practices of favouring certain domestic economic operators. The business environment became characterised by volatility and uncertainty, which also allowed for broad executive discretion in economic regulation and opened the possibility for arbitrary, possibly abusive State intervention in the private economic domain.

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.¹ Law and regulation was used to reduce State ownership (i.e., privatisation), introduce market mechanisms, and to protect competition in the newly formed or reformed markets. The legal changes also ensured, as a general rule, the protection of private property and free enterprise and the enforceability of contracts.² From the mid-1990s, the opening of markets to trade and competition was mainly driven by the

The development of a mixed market economy

¹ See below the 2004 and 2016 OECD economic surveys of Hungary.

² See below the OECD's 2000 Report on regulatory reform in Hungary.

gradual incorporation of European Union rules in the EU accession process. The Hungarian market economy thus created was, however, characterised by a significant structural asymmetry. On the one hand, it included a developed exporting sector based on foreign investment which was supported by a legal framework which fostered competition and enabled market mechanisms. 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 liberalisation and the introduction of competition and market mechanisms were either restricted, or completely withheld.³ This was also reflected in law and regulation. While exporting sectors were subjected to market-friendly and pro-competition regulation, including a developed private law framework serving the interests of market participants, the inward looking sectors had to endure a burdensome public law regulatory framework and an ineffective and inefficient administrative environment. Some components of the legal framework of the market economy, such as public procurement, the fight against corruption, or a good governance and better regulation programme, were never allowed to reach their potential.

The 2004 OECD paper on product market competition and economic performance in Hungary (hereinafter, the 2004 OECD paper),⁴ which formed part of the 2004 OECD economic survey of Hungary,⁵ noted that economic transition Hungary was achieved on the base provided by the post-Soviet 'relatively market-based' economy developed after 1968.⁶ In that structure, production facilities remained State-owned and were governed by central planning, but gradually some market-type mechanisms were introduced. It also observed that the Hungarian market prior to 1989 was generally isolated from international trade, international investment and international competition, mainly because its external markets were provided by the COMECON agreement. After 1989, the majority of State-owned enterprises in manufacturing and services were privatised and they were placed to operate in a regular market environment. As a general rule, their conduct was subjected to competition law and policy. This was not the case in the network industries where liberalisation and privatisation were more limited.

The 2004
OECD
assessment

³ See below the 2004 OECD Paper.

⁴ Carl Gjersem, Philip Hemmings, Andreas Reindl, 'Product market competition and economic performance in Hungary', Economics Department Working Papers No. 381, Paris: OECD, 2004 (2004 OECD Paper).

⁵ 2004 OECD Economic survey of Hungary, Paris: OECD, 2004.

⁶ See also Regulatory reform in Hungary: enhancing market openness through regulatory reforms, Paris: OECD, 2000 (2000 OECD Report on regulatory reform). 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., a two-tier banking system, import liberalisation, income tax and VAT), Commission Opinion on Hungary's Application for Membership of the European Union, DOC/97/13 (1997 Commission Opinion on Hungary's application for membership).

The OECD's 2000 report on regulatory reform in Hungary indicated that in the transition process a large amount of legal and regulatory changes needed to be implemented as the institutional features of the planned economy had to be removed and the legal conditions for a functioning market economy had to be established. It noted that the constitutional reforms of the early 1990s, by ensuring the protection of the right to property and freedom of enterprise, provided the basis of this legal transformation process which led to the adoption of new legislation on companies, intellectual property, taxation, accounting, bankruptcy and insolvency, and competition. Direct price regulation was gradually, although not completely, phased out, foreign direct investment was liberalised, investment protection rules were introduced, and the restrictions on capital flows were removed. The report also recognised that in the EU accession process economic regulation in Hungary was subject to extensive harmonisation 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 characterised by a generally healthy level of competition protected by a good standard of competition regulation and enforcement.⁷ It highlighted that national economic policy, in general, was devoid of intentions of sheltering domestic industries by adopting protectionist measures, and it emphasised that 'in terms of privatisation, competition law, sector-specific regulation, subsidies and public procurement, the approach to competition in many respects' Hungary differed 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.⁸ 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 privatised or remained in State-ownership. The paper also established that the State had been keen on continuing with practices of price regulation, and that 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 in law of considerable barriers of entry.

⁷ For similar conclusions, see 2001 OECD Territorial reviews: Hungary, Paris: OECD, 2001.

⁸ For similar conclusions, see 1999 OECD Economic survey of Hungary, Paris: OECD, 1999.

The European Commission's 1997 opinion on Hungary's application for EU membership declared that, continuing with the 'gradualist approach' introduced as early as the late 1960s, the Hungarian economy had developed to be characterised, 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 remarked that a stable institutional framework was put and that this framework was able to guarantee that the rule of law is observed.⁹ It added that the legal system provided a 'stable statutory framework in which economic actors can operate' and there were no significant administrative hurdles to setting up economic activities. The report also 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 for market participants. It also listed in detail the gradual developments in the towards establishing a legal framework for a market economy, which were implemented in parallel with the extensive privatisation process, such as the progressive liberalisation of trade and prices, the liberalisation 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 continuing to lack 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 standardisation,

⁹ It mentioned, in particular, that the 'Parliament functions satisfactorily' and 'the central institutions of the State function smoothly'.

- the lack of inland administrative capacities to replace border-controls,
- transparency and efficiency issues with State aid controls,
- institutional hiatuses in consumer protection which may undermine effective enforcement.

The justice system failing to operate 'in a satisfactory way at all levels', especially problems with

- 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 liberalisation.

The Commission's seminal report analysed extensively the administrative and judicial capacities available in Hungary to give effect to EU obligations. Its findings provided 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 was comparable to that found in EU countries, administrative tasks and competences were reasonably well defined, the administrative system was sufficiently modernised to be able to adapt to the requirements of the market economy, and it was equipped with the necessary powers and responsibilities. It noted that there were further administrative reforms on the agenda, which at the level of planning seemed 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 pressing hiatuses in the Hungarian administrative and judicial system.

Issues with
administrative
and judicial
capacities

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

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

There was an increasing lack of experienced public sector staff, lack of management and other softer skills in civil service, lack of sufficient training, and there was an increasing inability to recruit quality candidates.

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

There was an increasing exposure to corruption.

There were problems with inter-institutional communication and coordination.

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

The ensuing regular reports of the European Commission¹⁰ noted gradual, although not necessarily satisfactory improvements in the problematic areas. They monitored the modernisation efforts in public administration which aimed to increase efficiency and effectiveness,¹¹ the reforms of the judiciary addressing efficiency, quality and institutional organisation problems,¹² and the measures adopted to address corruption problems. They also noted the legal developments leading to the further expansion of the market economy and the further opening of economic sectors to market forces.¹³ The criticisms concerning the legal and regulatory environment of

Gradual
improvement
and continuing
problems

¹⁰ Regular report on Hungary's progress towards accession 1998, 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; Regular report on Hungary's progress towards accession 2000, 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; Regular report on Hungary's progress towards accession 2002, http://ec.europa.eu/enlargement/archives/pdf/key_documents/2002/hu_en.pdf.

¹¹ E.g., territorial reform and regionalisation, modernisation of public administration services, addressing human resources and training issues.

¹² E.g., training and qualification; efficiency and case load problems; internal organisation shortcomings; technical background.

¹³ E.g., railway transport services and energy, where developments were particularly slow.

economic activity remained, however, by-and-large the same.¹⁴ There remained a continuing need to improve the enforcement of competition law, conduct a coherent and credible regulatory policy, improve the overall regulatory environment, roll back regulated prices,¹⁵ and to ensure that the implementation of regulatory policy is more consistent and less uncertain.¹⁶ The reports indicated, in particular, the following hiatuses.

The State continued to keep a permanent stake in a high number of privatised undertakings which secured direct influence over a broad range of decisions.¹⁷

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

Copyright and pharmaceutical patents were offered only weak protection.

There were weak institutional frameworks in place for

- implementing standardisation 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.

¹⁴ 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 functioned well, property rights were protected and contract enforcement was good. The 2001 report noted that there were no significant barriers to market entry and exit, and that there was 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.

¹⁵ The 2000 and 2001 reports noted that 18 per cent of the consumer price index follows from regulated prices.

¹⁶ In particular, there was a clear need to consolidate the legal framework with regard to regulated monopolies and privileged undertakings.

¹⁷ The 1999 report noted after the 1998 elections a clear change in policy in this matter with an emphasis on maintaining State influence and control.

The European Commission's 2003 comprehensive report on Hungary's preparation of membership,¹⁸ which closed the EU accession process assessed, as the positive attributes of the legal and regulatory environment of economic activity in Hungary the following.

A credible economic policy was in place which included a commitment to privatisation and liberalisation in the market and to the liberalisation of regulated prices.

There was a continued functional, institutional, and legal modernisation of public administration.

There was a continued strengthening of regional and local public administration.

A more effective judiciary emerged from long-needed territorial reorganisation and other organisational reforms.

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

An improved legal and institutional framework was put in place for the fight against corruption.

The comprehensive report identified the following as issues requiring further attention.

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

Considerable corruption risks, especially in public procurement.

The government failed to 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 under EU law.

The institutional framework was in need of development in areas, such as

- food safety,

¹⁸ Comprehensive monitoring report on Hungary's preparation for membership, http://ec.europa.eu/enlargement/archives/pdf/key_documents/2003/cmr_hu_final_en.pdf.

- 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.

A comprehensive review of the ability of law and regulation in Hungary to serve the economic policy aim of establishing and maintaining a functioning market economy was provided in the 2000 OECD report on regulatory reform. 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.¹⁹ 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 on the basis of the objective that an equality of competitive opportunities need to be ensured in the Hungarian market. The legal and regulatory framework in Hungary, as it emerged from years of EU harmonisation in the accession process, was held to provide equal competitive opportunities for domestic and foreign economic operators (investment, in particular) and to avoid unnecessary trade restrictiveness, and was committed to the reduction of technical barriers to trade.

The report, however, highlighted significant shortcomings. These, 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

The state of
law and
regulation in
2000

Continuing
fundamental
regulatory
shortcomings

¹⁹ 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 1997 Commission Opinion on Hungary's application for membership.

operation of the administration.²⁰ The regulatory process was criticised 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 significant hiatus mentioned.²¹

Regarding the general state of the Hungarian legal and regulatory system, the report established that while the requirements of non-discrimination, regulatory harmonisation 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 in the business environment were pursued with considerably lower intensity. The report revealed, in particular,

An overall
mixed
experience

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 organised,
- 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,

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

²¹ 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 market-opening which is, nevertheless, capable of achieving non-trade related policy objectives. For this purpose, Hungarian governments need to make a much clearer commitment to adhering to the principles of efficient regulation.

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 publicise 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 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 harmonisation of technical regulation and standards as

- Hungary is seriously committed to harmonising domestic legislation with international and European regulatory and standardisation systems, mainly in the framework of the EU accession process,
- standardisation in Hungary was remodelled according to the EU approach on standardisation (a voluntary character of national standards was established and standardisation 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. 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 criticised as unnecessarily delimiting competition. 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 market participants 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.²²

Continued
criticisms

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 emphasised the need for procedural and organisational reforms so that resources are used more effectively and that the Competition Authority is able to prioritise 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 privatisation and subjecting privatised 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

Sectoral
issues

²² For similar conclusions, see 2002 OECD Economic survey of Hungary, Paris: OECD, 2002.

industries, some network industries remained in the operation of State-owned enterprises, certain retail sectors remained over-regulated (e.g., pharmaceuticals)²³ 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 had achieved – to a different extent and in a different pace in each of the sectors – the EU liberalisation agenda. It engaged in progressive privatisation, 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 liberalisation process was to a considerable extent affected by extraneous political considerations, such as the shielding of public revenues hoped to be secured from privatisation from the negative consequences of liberalisation. 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),²⁴ and it allowed incumbents to remain significant or even dominant market participants. The paper, finally, emphasised that a number of network industries, such as railway transport and postal services, had remained unaffected by liberalisation and the markets continued to be controlled by a State-owned monopoly.

Uneven
liberalisation

1.2 Trends and patterns after 2010

The global financial and economic crisis left damaging consequences for the Hungarian economy.²⁵ 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 and also by pre-crisis government policies. Other changes followed a declaredly patriotic, new economic policy direction which focused, in certain sectors, on prioritising

Deepening
asymmetries

²³ 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 are given protection from competition by larger retail chains.

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

²⁵ Economic crisis in Europe: causes, consequences and responses, Luxembourg: Office for Publications of the European Communities, 2009.

local economic and economic policy interests. In the emerging economic model, the structural asymmetry which had become to characterise the Hungarian economy after 1989 was further reinforced. In law and regulation, 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. The main obligations under the Single Market – the cross-border provision of services and cross-border establishment – were, however, not affected. State-ownership increased and market mechanisms were rolled back in some key sectors.

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 even closing of existing markets. Competition in certain markets was delimited as a policy imperative 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.²⁶

Despite the robustness and the often explicit unfairness of the controversial changes introduced in law and regulation in certain economic sectors, on the whole, the legal and regulatory framework for economic activity in Hungary continues to serve the interests of a functioning market economy.²⁷ Regressive developments in some areas of economic regulation are unable to challenge the fact that EU accession and EU membership have resulted in the near complete eradication from the legal and regulatory framework of

Regulatory
changes and
hiatuses

The overall
relevance of
new policy
directions

²⁶ High administrative burdens and the limitation of competition 'in major non-tradeable sectors' have always characterised the Hungarian business environment, 2014 OECD Economic survey of Hungary, Paris: OECD, 2014.

²⁷ The 2016 OECD Economic survey of Hungary, Paris: OECD, 2016 stated that 'on average regulation is not particularly strict' and it accepted that considerable efforts were made towards regulatory simplification. See, for instance, the lowering of the regulatory burdens of developments having significance for the national economy, and the general programme for deregulation, administrative burden reduction and the rationalisation of the administration.

discrimination on the basis of nationality and/or residence²⁸ and of other obvious 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 harmonised to EU rules, and the local governance and administration of the Single Market is generally adequate.²⁹ Violations of EU obligations remain monitored and controlled by the Commission and, with the help of the EU Court of Justice, by national courts, and breaches receive – even if with delay – some form of remedies.³⁰ The legal system, although not without controversies, continues to protect property rights and freedom of enterprise, contracts are enforced in law, legally recognised market mechanisms govern domestic markets populated by private economic operators, and the administration and the judiciary perform their market related tasks.³¹ As the 2014 OECD economic survey of Hungary 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’.³²

1.2.1 Policy directions

Reinforcing and increasing State involvement in certain economic sectors became one of the visible hallmarks of Hungarian economic policy after 2010 (Points 3.2.2.3.4, 3.2.2.8.2.2, 3.3.1.4, 3.4.10, 3.5.4, 3.6.4, 3.12.1.4).³³ 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 of the State. Incumbents were expelled, or their market opportunities were reduced, and they were replaced by new private or State-owned market participants. Often the introduction of progressive sector-specific taxes and surtaxes supported this process, some of which raised the possibility of the selective treatment of

Economic
patriotism and
increasing
State
involvement

²⁸ A notable exception is the case concerning the Hungarian regulation of the profession of public notaries, see *infra* note 75.

²⁹ See, for instance, under 3.1 on Act 2009:LXXVI on the general rules of commencing and continuing activities in the service economy.

³⁰ See, Marton Varju and Mónika Papp, ‘The crisis, economic particularism and EU law: what can we learn from the Hungarian case?’ 2016 53(6) *Common Market Law Review* 1647-1674. See also, the Single Market Scoreboard of the EU Commission, http://ec.europa.eu/internal_market/scoreboard/performance_by_member_state/hungary/index_en.htm.

³¹ On backsliding in economic constitutionalism in Hungary, see Marton Varju and Nora Chronowski, ‘Constitutional backsliding in Hungary’ 2015 6 *Tijdschrift voor Constitutioneel Recht* 296-310 and Nora Chronowski and Marton Varju, ‘Two eras of Hungarian constitutionalism: from the rule of law to rule by law’ 2016 8(2) *Hague Journal of the Rule of Law* 271-289.

³² *ibid.*, at 28.

³³ Similar developments were noted in the period between 1998 and 2002 by the Commission’s 1999 regular report on Hungary’s progress towards accession, *supra* note 10.

market operators.³⁴ In general terms, their use was made necessary by the imperative of maintaining a balanced structure for public finances following a competitiveness and growth enhancing reshuffling of the Hungarian tax structure. Their selective application, however, provided an effective instrument of domestic favouritism.

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. The relevant developments have their roots in the mixed market economy developed in the 1990s in which the State, acting alongside and often in place of competitive markets, plays a crucial stabilising and providing role. After the crisis, there was an obvious need to strengthen the State's position in the economy which led to enhancing in law and regulation the protection of its assets, establishing exclusive State functions in relation to strategic public infrastructure, emphasising 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 also found support in other policy considerations, such as a need to respond to a 'cost-of-living crisis', addressing which may involve regulated compulsory price reductions or freezes or the establishing in law of the 'not-for-profit' nature of certain economic activities.³⁵

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 used in the public interests and to the benefit of the community,³⁶ 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).³⁷ These latter include national public roads, the national core railway network, the State-owned international commercial airport and the related aviation premises, and the natural gas emergency reserve storage facilities which were renationalised at that time.³⁸ The objective

Enhanced
protection for
national
assets

³⁴ Point 2.1.8.

³⁵ See infringement procedure no. 2014/2271 concerning the retention of regulatory powers available to the national regulator by the government and the exclusion of certain costs from the calculation of network electricity and gas tariffs.

³⁶ Their use is restricted to ensuring the delivery of public tasks and of public services, including the development of the necessary infrastructure.

³⁷ For local councils, similar provisions are laid down in Art. 5.

³⁸ Art. 124/B of 2008:XL on natural gas supply 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. See also the policy concerning the augmenting of State ownership in the financial services

pursued by these provisions was to restrict the tradability 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,³⁹ which were recognised as having restricted tradability.⁴⁰

The act regulated extensively the economic activities reserved to the State and to local councils ('exclusive economic activities')⁴¹ (Art. 12), thereby severely restricting the market. 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;

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;

sector, in particular, Bill T/10536 on the 2017 budget its Art. 11 replacing Art. 45/A of Act 2011: CXCV on the Act on public finances, which stated that State ownership in banks with their centre of administration in Hungary must be achieved through increases in their capital, provided that this complies with the principle of private market economy investor, is in harmony with the mid-term business strategy of the bank, and that a legal and financial screening is undertaken.

³⁹ Including public parking services and the *Balatoni Hajózási Zrt.*

⁴⁰ Restricted tradability 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 another 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 tradability is lifted only when the economic operator ceases to carry out a public service task.

⁴¹ 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.

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 specific concessions clause applicable as the main rule (Art. 12).⁴² 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.⁴³ There are, however, several general and specific exemptions from the concessions clause recognised 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, 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

⁴² The transfer of ownership of national assets: the tendering clause in Art. 13 holds that, 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.

⁴³ 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.

instances economic operators under direct or indirect State and/or local council ownership).

The risks of economic patriotism

While the policy directions followed after the crisis are difficult to criticise from a legal perspective, their execution in law and regulation based on a patriotic agenda enabling national favouritism and protectionism raise issues, especially under EU law. The main problem 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 respects the rights and interests of the individuals affected.⁴⁴ The obligations under the Single Market are very likely to be violated when the national measures enable selectivity to the disadvantage of non-domestic economic operators.⁴⁵ Another significant issue was the adoption of the relevant legislation in rushed, low-transparency and low-accessibility procedures.⁴⁶ Their enforcement was also problematic as it allowed no or very limited time for the affected individuals to adjust their conduct, and it had only limited regard to property rights and legitimate expectations and risked abusive uses of public powers and the disrespecting of considerations arising from the rule of law. There were insufficient assurances in place that regulation will not serve opportunistic purposes in bad faith in the interest of individual favoured businesses under the cover of general interest claims of economic patriotism.⁴⁷

1.2.2 The quality of the legal and regulatory environment

Old hiatuses and new problems

The monitoring reports on the Hungarian economy issued after 2010 indicated rather clearly not only the old shortcomings, but also the new controversies in economic regulation. The reports of the Hungarian business community, for instance, the economic reports of the German-Hungarian Chamber of Industry and Commerce, identified similar issues.⁴⁸ The 2012 OECD economic survey of Hungary,⁴⁹ which was still rather reserved in assessing the changes, brought attention to the policy unpredictability which characterised the Hungarian business environment

⁴⁴ See the examples introduced in Part 2.

⁴⁵ See also infringement no. 20164066 concerning the prohibition on retailers of applying different profit margins for to domestic and imported agricultural and food products, despite the fact that the cost of imported products is subject to currency and exchange rate fluctuations.

⁴⁶ Compulsory impact assessment regulated in Act 2010:CXXX on the legislative process (Art. 17) was avoided by bills presented to Parliament as private members' bills.

⁴⁷ See also infringement no. 20162146 concerning the excess coverage for depositors of *Széchenyi Bank*.

⁴⁸ <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.

⁴⁹ 2012 OECD Economic survey of Hungary, Paris: OECD, 2012.

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 put in place so that a more predictable and better controlled operation of institutions is ensured.⁵⁰ The 2014 OECD economic survey, together with the 2014 OECD paper on enhancing competition and the business environment in Hungary (hereinafter, the 2014 paper),⁵¹ 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

The 2014 paper identified regulatory volatility and high 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;

⁵⁰ 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', Economics Department Working Paper No. 786, Paris: OECD, 2010, at 20 and 26.

⁵¹ Álvaro Pina, 'Enhancing competition and the business environment in Hungary', Economics Department Working Paper No. 1123, Paris: OECD, 2014.

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

High barriers to entry

high administrative burdens;⁵²

low trust and transparency in public institutions;

old and new sectoral barriers to entry;⁵³

lock-in effects;

distortive price regulation which cause obstacles to competition.⁵⁴

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;

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

⁵² For instance, in the retail sector where economic activity is subject to numerous permits and licenses.

⁵³ Such as the monopolisation of tobacco retail, which led to a higher profit guaranteed by law, 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.

⁵⁴ 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 centralise 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.

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.⁵⁵

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, 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.

**Sustained
criticisms**

Ad hoc and difficult to predict policies and policy-making.

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

⁵⁵ 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 liberalised and competitive markets so that price regulation, having regard to the need to provide social prices in the market, could eventually be phased out.

- 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 with 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).

In connection with the network industries, 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 considerably the possibilities of entry to the market of network industries. It warned that the distorted price structure in the energy market imposed by regulation (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 criticised 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.

Regulation
damaging the
network
industries

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 and has given rise to discriminatory uses of those powers.⁵⁶ 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 decentralisation 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

New barriers
to entry

⁵⁶ See the examples raised in Part 2.

virtual network operator) access to networks, undermine competition and pose significant barriers to entry.

The Europe 2020 country reports issued by the European Commission⁵⁷ 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,⁵⁸ which was labelled as a 'long-standing challenge' for Hungary;⁵⁹

a low quality of legislative and regulatory processes,⁶⁰ 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;⁶¹

low and deteriorating regulatory quality;

low effectiveness and efficiency in public administration;⁶²

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

⁵⁷ Country Report Hungary 2016, 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; 2014 Assessment of the national reform programme and convergence programme for Hungary, 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; 2012 Assessment of the national reform programme and convergence programme for Hungary, 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.

⁵⁸ Including complex administrative procedures and e-government services. The step towards administrative burden reduction and simplification were accepted as promising.

⁵⁹ 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'.

⁶⁰ A very high number of measures must be amended within one year of their adoption.

⁶¹ Deliberate policy to circumvent impact assessment obligations by introducing bills in Parliament through private members' motions, see supra note 46.

⁶² Including the lack of administrative capacities and the lack of preparation to service cross-border economic activity (e.g., through e-administration).

problems with the quality, independence, and the efficiency of the judicial system.⁶³

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).⁶⁴

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.⁶⁵

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.⁶⁶

In business services, market entry is hindered by the prevalence of reserved activities, the 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.⁶⁷

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

Uncertain regulatory and strategic framework in the network industries,

- in the energy sector:

- deteriorating business climate because of regulatory

⁶³ Raised in the 2012 and 2013 assessments.

⁶⁴ Until 2014, 13 mergers (in the energy, financial, textbook publishing, IT and transport sectors) were approved by government without having the Competition Authority authorising them on the basis of their impact on competition.

⁶⁵ 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 the OECD PMR indicator putting Hungary as having the highest legal barriers of entry and to the OECD surveys which indicate the lowest transparency of policy-making in the region.

⁶⁶ Indications regarding the state of barriers to entry in the regulated profession also follow from the increasing Hungarian entries to the Database of Regulated Professions. See also point 2.1.3 below.

⁶⁷ Such as the food chain supervision fee, Sunday and night trading rules, penalising operation at loss, and the restrictive planning of commercial premises, also covered in Part 2 of this report.

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, which are not cost reflective, and, therefore, together with other regulatory interventions damage the sector, especially economic operators under a universal service obligation,⁶⁸
- 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 monopoly energy utilities holding, because it needs to deliver low prices and meet the costs of those prices,⁶⁹ will need to be permanently compensated by the State, which
 - will increase State liabilities in this market,
 - may damage public service delivery.⁷⁰

The annual Council recommendations⁷¹ based on the country reports brought attention to the following critical areas.

Continued
criticisms

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:

⁶⁸ The problems identified: rates of return were reduced to zero, continuous loss-making in the sector, withheld investments.

⁶⁹ The new monopoly lacks the ability to cross-finance USOs as it has a limited business portfolio.

⁷⁰ The operation of the new monopoly lacks of transparency and there are no guarantees that public service delivery will be based on adequately prepared decisions.

⁷¹ Council 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).

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, which diminishes business prospects in the sector.

2 Market access and level playing-field after 2010: key area case-studies

The direction pursued in economic policy after 2010, on the one hand, brought about considerable changes and, on the other, reinforced older trends in the law and regulation of economic activity in Hungary.⁷² 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 (1.2.1), 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 (3.3.1). It must be noted, however, that the augmenting and/or protecting of State ownership characterises only certain sectors of the national economy, and the execution of this policy may not be entirely coherent (i.e., in the electricity market State ownership received much less emphasis than in the market for natural gas). There were also instances of the State rescuing economic operators or the State acting as a private or public investor (e.g., the integration of cooperative credit institutions (3.12.2)), which interventions were not pursued under a comprehensive strategy for the nationalisation of industries (i.e., while certain manufacturing industries, e.g., railway carriage construction, received State help, the food processing industry, especially in the meat sector was left unaided).

Increased and continued State ownership in public markets

2.1.2 State monopolies

After 2010, a number of previously open markets were replaced by State monopolies. These developments often found their basis in parallel policy considerations (e.g., social policy, education policy, public service policy). They could also be explained having regard to 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

Increased State participation through State monopolies

⁷² For a complete legal scrutiny, see Marton Varju and Mónika Papp, 'The crisis, economic particularism and EU law: what can we learn from the Hungarian case?' 2016 53(6) *Common Market Law Review* 1647-1674.

outside of competitive markets. In some instances, the aim followed could have been the securing the revenue generated by the market for the State. It was particularly problematic with these developments that it was difficult to dismiss doubts that the changes were introduced to expel unwanted economic operators or burdensome competitors from the market and/or to replace products and services offered by the market by ones which – not only in terms of quality, but also as a matter of their content – could be controlled more closely by the State.

The education textbook market was placed under a State monopoly by Act 2013:CXXXII on the supply of textbooks for the national system of public education. Its aim was to set up the State organisation responsible for textbook development and publication and to put in place the not-for profit economic operator responsible for the distribution of those textbooks (Art. 2). In the waste market, the new legal provisions, as shown under point 3.4, 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, in which the State or the local council 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). The system is now under challenge by the European Commission which claimed that the exclusive right granted to the State-owned National Mobile Payment Ltd., which serves as a platform service providers must use when they provide payment intermediary services in connection with public services, 'right unnecessarily and significantly restricts access to a market that was previously fully open to competition, thereby harming existing investors and dissuading future investors with no appropriate justification.'⁷³

⁷³ MEMO-14-470.

2.1.2.1 *The National Infrastructure Development Corporation*

The development of national public road and railway infrastructure, as regulated in the relevant sectoral measures, was given as an exclusive task to the National Infrastructure Development Corporation (NIF). The NIF is a public corporation in sole State-ownership the activities of which are public tasks carried out in the public interest. The 'NIF clauses' (3.2.1.5 and 3.2.2.5) recognised in legislation regulate the NIF as a prioritised development partner, or reserve certain infrastructure development tasks for the NIF, especially when they involve State-owned assets and are financed from the State budget or from EU funds. The NIF is regulated to act in the name, in the interest and to the benefit of the State.

2.1.3 Regulated professions

The high entry barriers applicable in the law to regulated professions have repeatedly been criticised by the different surveys on the Hungarian economy. The majority of these were laid down in the statutory requirements concerning the exercise of the given profession, but there are numerous professional, ethical and other rules imposed by the relevant professional bodies. According to the latest, 2015 evaluation of the European Commission,⁷⁴ which looked at 8 different factors in evaluating access to professions (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), Hungary was at 12th position among the 28 Member States as a matter of entry barriers in accountancy, lawyers, engineers, and architects. This relatively decent performance must, however, be assessed in light of the disappointing results concerning individual indicators. As to the most severe restriction, reserved areas of activity for a profession, Hungary is the 4th worst performing Member State for the four professions examined. The price regulation applied to architects and accountants put Hungary again among the worst performing Member States. There is also an infringement procedure in progress 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.⁷⁵

High entry
barriers

⁷⁴ Business services – Assessment of Barriers and their Economic Impact, <http://ec.europa.eu/DocsRoom/documents/13328/attachments/1/translations/en/renditions/native>.

⁷⁵ Case C-392/15, Commission v Hungary. (OJ 2015/C 302/34). 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 brought against other Member States.

High entry barriers and regulatory burdens on the professional services in Hungary were also indicated in the 2014 OECD economic survey.⁷⁶ It mentioned three specific problems relating to the exercise of regulated professions. Firstly, the survey suggested that 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 were judged to go beyond what is necessary for the protection of consumers in these domains. Secondly, the survey highlighted that the price recommendations of the professional bodies for architects,⁷⁷ engineers,⁷⁸ and for accountants⁷⁹ prevent the development of effective competition among members of the profession. It mentioned that while these are only recommended prices, in business practice they have often become strictly implemented standards. Thirdly, the heavy and diverse entry conditions to the market of pharmacies were identified by the survey as damaging and excessive, and it recommended the application of less restrictive alternative means to ensure the protection of public health.⁸⁰

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

Price recommendations by professional bodies, which were held to violate competition law on the ground that there was a lack of an explicit legislative basis for the adoption of such measures.⁸¹

The impact of regulations adopted by the professional body for architects on prices, which later was given powers in legislation to publish recommended prices.⁸²

Registration fee introduced by a county bar association, which declared as constituting an unjustified increase of the annual registration restricting entry into the profession.⁸³

Discriminatory registration fee introduced by a county bar association.⁸⁴

⁷⁶ The entry barriers currently in place have also been criticised by the Hungarian Competition Authority, *GVH beszámoló az Országgyűlés részére*, 2013, at 121; *GVH beszámoló az Országgyűlés részére*, 2014, at 28-29.

⁷⁷ Art. 11(2)(g) of Act 1996:LVIII.

⁷⁸ See the price regulations of the Hungarian Chamber for Engineers, <https://www.mmk.hu/tudastar/dijszabas>.

⁷⁹ Act 2007:LXXV. See the price recommendation by the professional body, http://www.mkvk.hu/kamarai/kozlemenyek/dijminimum_20160525.

⁸⁰ Act 2006:XCVIII.

⁸¹ Cases Vj-56/2003/18; Vj-148/1998; Vj-137/1999; Vj-98/2004; Vj-137/1999/18; Vj-1/1999/25.

⁸² Cases Vj-136/1999/31 and Vj-201/2005/21. See also Case Vj-137/1999/18.

⁸³ Case Vj-84/2007/74.

The regulation of professional webpages and marketing restrictions adopted by the national bar association.⁸⁵

Decisions by professional bodies prohibiting the comparing of professional services.⁸⁶

Reserving
market
opportunities

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.⁸⁷ The market operated by foreign economic operators was closed without offering a genuine transitional period 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.⁸⁸ The new market created for electronic vouchers⁸⁹ (the *SZÉP*-card) was regulated in a manner which, in the words of the Commission, *de facto* reserved entry to the market to the three large banks domiciled in Hungary.⁹⁰ 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 Commission⁹¹ 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 Directive⁹² and established the violation of its core provisions.⁹³ The CJEU also rejected the justifications brought by Hungary either on the ground that Hungary had failed to provide any evidence in support of its claims,⁹⁴ or that

⁸⁴ *ibid.*

⁸⁵ Case Vj-180/2004/32.

⁸⁶ Cases Vj-115/1999/20 and Vj-1/1999/25.

⁸⁷ See also the changes implemented in the slot machines and casinos market, *infra* note 120.

⁸⁸ Act 2011:CLV.

⁸⁹ Act 2011:CLVI, Act 1993:XCVI and Government Regulation 55/2011.

⁹⁰ Action brought on 10 April 2014 in Case C-179/14, *Commission v Hungary* (OJ 2014/C 202/12).

⁹¹ 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).

⁹² Directive 2006/123/EC on services in the internal market (OJ 2006/L 376/36).

⁹³ Articles 14 and 15: paras. 46-47, 54-67, 81-88, 89-90, 102-107, Case C-179/14, *Commission v Hungary*.

⁹⁴ 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.

they had clearly failed to meet the directive's requirement of proportionality.⁹⁵

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 reduce the possibilities to mount challenges in law against the measures adopted – as deemed necessary and appropriate by government – to introduce rapid and far-reaching changes in the market. While in pressing circumstances the balance between the interests of effective market governance and the effective legal protection of individuals may indeed be reconsidered, the manner in which legal redress opportunities were reduced in individual instances in Hungary gives way to a more negative interpretation of the changes.

The most fundamental of these 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 scrutiny.⁹⁶ The direct cause of the modification is believed to be the decision of the Constitutional Court which had earlier established the violation of constitutional provisions by the retroactive and disproportionate tax obligations introduced by the incoming government.⁹⁷ Furthermore, 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.⁹⁸ Condemnation before European fora 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.⁹⁹

Avoiding legal challenges

⁹⁵ Para. 91, *ibid.*

⁹⁶ 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 2011:CLI 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 the assessment of the Venice Commission in Opinions 614/2011 (CDL-AD(2011)001) and 665/2012 (CDL-AD(2012)009).

⁹⁷ Decision 184/2010 of the Constitutional Court.

⁹⁸ 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.

⁹⁹ 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.

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.¹⁰⁰ 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. Under the new rules, the Constitutional Court has jurisdiction to review the regulations issued by the new regulator,¹⁰¹ which forum lack the necessary expertise and has, in recent years, exercised near complete deference to government discretion in regulating the economy.¹⁰² The EU Court of Justice's ruling in *E.ON Földgáz Trade Zrt.*¹⁰³ concerning the previous arrangements for judicial review confirmed that legal protection had already been an issue in Hungary when it held 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.

The removal of certain individual transactions in particular markets from their usual administrative environment¹⁰⁴ and making the corresponding decision subject to ministerial or government discretion, which decision will then be taken in the form of legislation, was a practice repeatedly exercised in Hungary after 2010. Using legislation to deliver individual decisions also had the significant consequence of legal challenges in judicial review being excluded against those decisions. Under Art. 24/A of Act 1996:LVII on competition, the government is authorised to declare in the public interest – in a government regulation not subject to judicial control – the fusion of certain undertakings as having relevance of strategic importance and, thus, exempting them from the usual authorisation of the Competition Authority. Article 93/A of the same act enables – provided that Article 101 TFEU, as determined by the Competition Authority is not applicable in the case – the responsible minister to exempt cartels in agricultural product markets from the general prohibitions of the act, which decision is not subject to judicial review. Art. 84/A(2) of Act 1991:XLIX the government is empowered to

¹⁰⁰ It is suspected that the new act (Act 2013:XXII) was enacted, in part, 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 lowering utility prices.

¹⁰¹ This is an indication that the policy aims of excluding the Constitutional Court from matters of fiscal and economic regulation were never particularly convincing.

¹⁰² See the analyses at supra note 31.

¹⁰³ Case C-510/13, *E.ON Földgáz Trade*, EU:C:2015:189.

¹⁰⁴ See also the recent modification of nuclear energy legislation by Act 2016:CXLIII which in Art. 10 enabled the government to legislate the modes and conditions of departing from the planning licenses issued in case of nuclear establishments and nuclear waste storage facilities under construction.

declare – again in a regulation – certain undertakings as having special relevance of strategic relevance, which will exempt their winding up from the normally applicable rules and place the winding up process under the control of a State-owned liquidator company (National Reorganisation Non-profit Ltd.). The declaring of certain investment projects of having special economic importance under Act 2006:LIII, which relieves the implementation of such projects from a considerable amount of regulatory and administrative burdens, again cannot be challenged in judicial review. The original regulation of the licensing of the planning of commercial premises under Act 2012:CLVII did not provide for the judicial challenge of the planning decision taken by the minister.

2.1.6 State aids

State aids have been used in Hungary, on the one hand, to attract foreign investment, enable market entry and increase welfare, and, on the other, to defend – pursuing a protectionist agenda – national industries and champions exposed to European and international champions. According to the EU State Aid Scoreboard 2015 (latest figures from 2014), Hungary is among those Member States that grant the highest percentage of their GDP to support undertakings through instruments which may qualify as State aid.¹⁰⁵ According to the national expenditure report, in 2014 Hungary spent 1.63 per cent of its GDP as State aid, while the EU average is considerably lower at 0.72 per cent. In the last few years, Hungary increased aid significantly for purposes of regional development and to support SME's. Lesser amount of aid was spent on sectoral development. The new Block Exemption Regulation¹⁰⁶ had a significant impact as it was used to prepare extensive measures in pursuance of the so called horizontal goals.

As a recent development, the sectoral taxes and surtaxes adopted by Hungary introducing in a selective manner additional burdens on market participants, predominantly in favour of the Hungarian competitors of larger foreign-established undertakings, were subjected to investigation by the European Commission under State aid law.¹⁰⁷ The so called advertisement tax¹⁰⁸ was struck down by the Commission on grounds of providing selective unjustified advantage to smaller undertakings producing low turnovers in the Hungarian advertising market.¹⁰⁹ The tax base was the turnover of the publisher of advertisements in media advertising spaces covering the entire group and not allowing the deduction of any costs. The Commission held

Intensive use
of State aid

Sectoral taxes
challenged as
State aid

¹⁰⁵ European Commission: State aid scoreboard 2015, ec.europa.eu/competition/state_aid/scoreboards/index_en.html.

¹⁰⁶ Regulation 651/2014/EU declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (OJ 2014/C 187/1).

¹⁰⁷ See Point 2.1.8.

¹⁰⁸ Act 2014:XXII.

¹⁰⁹ SA. 39235 (2015/C 1520 final).

that as a result of the application of 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 tax measure appeared by its very design to differentiate between undertakings based on their size. The Commission also held that the objectives raised by Hungary in support of the tax were unavailable to justify the steeply progressive nature of the tax, especially that undertakings were subjected to very substantial differentiated treatment. In effect, the highest tax rate applied to a single participant in the Hungarian media market and this undertaking paid approximately 80 per cent of the total revenue gained from the tax advances.

The European Commission also challenged two similar progressive sectoral taxes, and, having reached a similar conclusion, adopted injunction decisions ordering the suspension of the application of the tax measures in question. The tobacco industry health contribution fee¹¹⁰ and the food chain supervision fee¹¹¹ were considered to provide selective advantages which were not justified by the logic of or the objective pursued by the fiscal burden at issue. As regards the food chain supervision fee, the Commission noted that the average level of the fee charged is exceptionally high and only seven food chain operators, mainly multinational supermarket chains, were obliged to pay the fee at the higher rate, which resulted in an evident differential treatment of undertakings concerned. Following the Commission's injunction decisions in the three cases, Hungary modified the relevant legislation and adopted a flat rate turnover based tax in place of the progressive taxes.

In the case of the advertisement tax, although the Commission acknowledged that with the modifications Hungary took steps in the right direction, it maintained that its concerns had not been fully addressed. For this reason, it obliged Hungary to recover the incompatible State aid from the undertakings affected.¹¹²

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 old barriers 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, mainly foreign-owned economic operators to the benefit of their, predominantly domestic competitors.

¹¹⁰ Act 2014: XCIV. SA.41187 (2016/NN) 17.07.2015.

¹¹¹ Act 2008:XLVI. SA. 40018 (2015/NN), 17.07.2015.

¹¹² IP/16/3606. At the time of writing, the non-confidential version of the decision was not available.

In the tobacco sector, both the retail and the wholesale supply segments of the market received new rules regulating entry when the previously open market was reregulated in 2012. Act 2012:CXXXIV subjected entry to the retail market to the condition of obtaining from the responsible public authority the right to sell tobacco products by means of a concession and a license (Art. 2).¹¹³ 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,¹¹⁴ 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 reregulation of the establishment and operation of pharmacies introduced new entry barriers alongside those already existing in the sector. Act 2006:XCVIII on pharmaceutical retail requires both an establishment and an operating license for the setting up 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). The act also imposes geographical limitations linked to population numbers and to the distance between pharmacies (Art. 49/A). Besides obtaining both the establishment and the operating license,¹¹⁵ 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’¹¹⁶ 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 is subject 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

¹¹³ 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. See the assessment of the changes under ECHR law, ECtHR, *Vékony v Hungary*, Appl. No. 65681/13, judgment of 13 January 2015.

¹¹⁴ 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. See also Act 2014:XCV which made the operation of the wholesale tobacco market (‘the supply of the tobacco retail market’) an activity reserved exclusively for the State and prepared the granting of the concession for that market without open tendering to a consortium, a member of which has widespread interests in the retail market.

¹¹⁵ The rights guaranteed under the operating license are non-transferable.

¹¹⁶ The personal right is granted, on application by the pharmacist, by the public health authority (Art. 56).

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 the business undertaking operating the pharmacy (Art. 74(1)).¹¹⁷ Another entry barrier is the requirement that 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 four 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 four pharmacies, or of two 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 the applicable 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 had sufficient time to prepare for the entering of the new market, the online gambling and betting market was liberalised.¹¹⁸ Service provision in this market is now also subject to an authorisation obtained from the tax authority (Art. 2(2) Act 1991:XXXIV).¹¹⁹ In the new market, as stated in Art. 2(2a), activities fall under Hungarian legislation in case they are organised from Hungary, when the service recipient takes part from the territory of Hungary, or when the provision of services 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.

In parallel, 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

Entry barriers
and other
restrictions:
gambling and
betting

¹¹⁷ The ownership of the pharmacist having a personal right, the employed pharmacist and the pharmacist having an ownership in the economic operator may only be taken into account in relation to four public pharmacies.

¹¹⁸ 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).

¹¹⁹ Art. 2(7) excludes marketing, organisation and intermediary activities for unauthorised gambling and betting services.

introduced in regulating 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.¹²⁰ 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.¹²¹ 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.¹²² 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.¹²³

As repeatedly highlighted in the OECD and EU reports, the commercial retail market, especially food retail was subjected to a series of distortive, sometimes selectively implemented interventions which increased the burden on economic operators in this sector. Selective sector-specific fiscal burdens formed an important part of the regulatory package.¹²⁴ 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.¹²⁵ Hungary reacted to this by moderating the progressive nature of the fee repealing its 0 per cent rate which had favoured predominantly local retail chains.¹²⁶ The modification of the Act on commerce by Act 2014:CXII, which now penalises undertakings in the retail 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,¹²⁷ which were then applied under broad ministerial powers in procedures lacking transparency, predominantly, to the benefit of local food retail chains.¹²⁸

Entry barriers
and other
restrictions:
commercial
retail

¹²⁰ Act 2013:CLXXXV.

¹²¹ Act 2011:CXXV.

¹²² 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.

¹²³ Paras. 50-63, Case C-98/14, *Berlington*, EU:C:2015:386.

¹²⁴ Paras. 37-41, Case C-385/12, *Hervis*, EU:C:2014:47. The progressive food-chain supervision fee imposed on the food retail sector in 2014 Act 2014:LXXIV.

¹²⁵ SA.40018. *Supra* note 111.

¹²⁶ Act 2015:XLVI.

¹²⁷ Act 2012:CLVII. The Commission closed the infringement procedure initiated in this matter on 25 February 2016 (Infringement number: 20132086).

¹²⁸ <<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.

According to the recent amendment proposed¹²⁹ to Act 2007:LXXXVI on electricity, having regard to the general interest of maintaining a balanced operation of the energy production system, the number of construction and operating licenses available for wind power stations and windfarms will be determined annually in a government regulation. The measure also proposed excluding areas of national heritage and areas of environmental importance from land available for planning purposes. The construction of new capacities will be subject to the responsible minister an open call for tender. As a consequence, entry to this segment of the energy market will be subject to limitations and possibilities established in government discretion.

Entry barriers:
wind energy

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 increasing the share in the tax burdens of non-exporting sectors mainly in the services economy,¹³⁰ are now standard components of the business environment in Hungary.¹³¹ Despite the repeated appeals to withdraw them, on account of their distortive effect on investment and productivity,¹³² and despite the legal challenges under EU law against the selective components of these taxes,¹³³ the government, apart from modifications arising from the successful legal challenges and apart from gradual decreases in the tax burden when those were 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.¹³⁴

Selective
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

¹²⁹ Bill T/11901. The modifications were not included in the latest amendment package in Act 2016:CXLIII. See, however, Government Regulation 277/2016 modifying the detailed planning rules applicable to the planning of wind power stations.

¹³⁰ Fiscal consolidation and lowering the tax burden on labour, Paris: OECD 2014, at 25.

¹³¹ In order to prevent what would be an automatic response by economic operators, there are explicit clauses in sectoral legislation prohibiting their passing on to consumers (Art. 104 of Act 2008:XL on natural gas supply). See also Art. 141 of Act 2008:XL prohibiting the taking into account of the sectoral surtax in determining the price for the sale on non-contracted natural gas resources by gas traders.

¹³² 2014 OECD economic survey of Hungary, at 25.

¹³³ See supra notes 108-110, 124-125, and Commission country report, 2016, at 35.

¹³⁴ 2014 OECD economic survey, at 25 and Commission country report, 2016, at 35.

active in different markets in the Hungarian economy. As a broader objective, the measures were envisaged to provide an enhanced protection to business information and secrets relating to the operation of these companies and, thus, to secure their competitiveness in a changing market environment. 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 right to information. Also, in liberalised sectors, or in sectors waiting to be liberalised, it is difficult to dismiss the doubt that business secrecy protection is used to entrench the market position of the incumbent economic operator, or is introduced to hide from scrutiny business transactions which aim to enhance the position of incumbents before market opening.¹³⁵

In 2016, Act 2012:CLIX on postal services was amended¹³⁶ 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, and market interests of the State-owned incumbent. The second sentence of Art. 53(4) now reads that

Increasing the protection of business information held by State-owned companies

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.¹³⁷ 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

¹³⁵ This development needs to be interpreted together with the above discussed re-emergence of State monopolies and the enhancement of State ownership in different sectors of the Hungarian market, see Points 2.1.1 and 2.1.2.

¹³⁶ Bill T/8829,

¹³⁷ Decision 7/2016 of the Constitutional Court.

environment relating to freedom of information. The responsibility for the lawful application of the clause was deferred to ordinary courts in prospective litigation in individual cases, with which the Constitutional Court declined to appreciate in terms of constitutional protection the difference between statutorily ensured information rights and information rights which need to be vindicated in legal procedures. As a matter of formal legal obligations, national courts will have to be read 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 jeopardise entirely the right of access to information.

As part of the 2017 budget, Act 2016:LXVII modified Act 2009: CXXII – a key piece of regulation of public markets in Hungary – on the more efficient operation of business undertakings in public ownership.¹³⁸ 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. As with the

¹³⁸ 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.

modification affecting the postal service market, the statutory protection of information rights was weakened by shifting the burden onto individuals wishing to exercise those rights.

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

3.1 Horizontal legal provisions

3.1.1 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 Directive¹³⁹ and to introduce provisions for the enforcement of Regulation 1024/2012/EU.¹⁴⁰ 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 highly detailed regulation of the exemptions provided under EU law (Art. 1(1)). Some of the exemptions concretised in the act are framed in a rather general manner and their generous interpretation by public authorities or courts may lead to conflicts with EU law, especially when the act needs to be read together with the sectoral measures in force. 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)).

3.1.1.1 Access and equal treatment in the Hungarian services 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/authorisation, 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

¹³⁹ Directive 2006/123/EC on services in the internal market (OJ 2006/L 376/36).

¹⁴⁰ Regulation 1024/2012/EU on administrative cooperation through the Internal Market Information System (OJ 2012/L 316/1).

Hungary (Art. 4(1)),

- 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 a Hungarian citizen,
 - the seat of the organisation 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,
 - there were previous periods of providing services in Hungary as well as 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 domestic 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 on 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/authorisation, 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 domestic 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 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 furthermore

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)).

3.1.1.2 Specific requirements ensuring market access and a level playing-field

3.1.1.2.1 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, which, however, does not include 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 as defined in Art. 11(1) are void (Art. 11(2)).

3.1.1.2.2 Lower 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.

3.1.1.2.3 The prohibition of double administrative scrutiny

In domestic licensing procedures, 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 State, 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)).

3.1.1.2.4 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 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 domestic 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 established in Hungary.

3.1.1.2.5 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. 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 providing adequate evidence. (Art. 17).

3.1.1.2.6 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).

3.1.1.3 The exemptions regulated separately

3.1.1.3.1 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.

3.1.1.3.2 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 implemented 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.

3.1.2 The establishment of branches in Hungary

The establishment and operation of Hungarian branches by foreign-registered undertakings, including undertakings established in the EEA Member States, is regulated by Act 1997:CXXXII. The application of its provisions is subsidiary to the application of the provisions of the relevant international agreements, even in absence of explicit statutory provisions to this effect (Art. 1(2)). Under the act, registered Hungarian branches are entitled to carry on economic activities in Hungary and to act, in this connection, in procedures before the relevant public authorities and in legal relationships with third persons (Art. 3(1)). They have full legal personality, may obtain rights and undertake obligations under law, and they may, in particular, acquire assets, conclude contracts, initiate civil action and be drawn into civil litigation (Art. 3(1a)). They may maintain more than 1 places of operation (Art. 3(2)).

3.1.2.1 Rules on establishment and operation

The branch is established by virtue of its registration in the company registry, and may commence its operation upon registration (Art. 4(1)).

The branches of companies established in an EEA Member State, as empowered by Hungarian legislation, may carry on economic activities subject to obtaining an establishment or operation license on the basis of licenses issued by the home Member State supervisory authority (Art. 7(2)).

In absence of a contrary provision of an international agreement, Hungarian legislation may reserve the right of carrying on certain economic activities in

the form of a branch to undertakings established in an EEA Member State, or to an EEA Member State established organisation holding at least a majority ownership in such undertakings (Art. 8)).

3.1.2.2 The equal treatment requirement

Hungarian branches must be subject to equal treatment under law as a matter of their establishment and operation (Art. 9(1)).

As an exception from this principle, Hungarian branches may be subjected, in compliance with the international obligations of Hungary, to differentiated treatment under law with a view to giving effect to public order, public security, public health considerations, considerations relating to the stability of the financial system, or to considerations relating to the protection of the lawful interests of creditors, account holders, investors and insured persons which cannot be protected in law by other means, and with a view to giving effect, to the necessary extent, to the relevant legal and technical differences between branches of foreign- and domestic-established undertakings (Art. 9(2)).

3.1.2.3 Rules on operating conditions

The foreign established undertaking must provide on a continuous basis the assets necessary for the operation of the Hungarian branch and for financing its payment obligations (Art. 11).

The economic activity carried on by the Hungarian branch is governed by the legal provisions applicable to Hungarian-established undertakings (Art. 15).

Hungarian branches may be eligible to obtain the subsidies provided from the State budget in case of explicit statutory provisions to this effect introduced with a view of giving effect to the relevant international obligations of Hungary (Art. 15).

Hungarian branches are covered by Hungarian legislation governing membership in chambers of commerce (Art. 16).

3.1.2.4 Rules on financial or investment service branches

Hungarian branches established to provide financial services, or investment services are subject to the same rules, unless legislation orders otherwise (Art. 24(1)).

Hungarian financial service branches of companies established in an EEA Member State are established upon their establishment in law and may commence their operation subject to compliance with the relevant statutory provision, in parallel with submitting its application for its registration in the company registry (Art. 24(2)). Such financial service branches may also represent the company concerned and may undertake obligations under its name without meeting further statutory obligations (Art. 24(3)).

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:XLI on passenger transport services.¹⁴¹ In principle, the measures, which implement the EU railway transport directives, establish an open and liberalised 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 interest considerations, or by considerations relating to the nature of economic activities in the railway sector.

An adequate
regulatory
framework

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. The legal provisions governing market entry do not involve directly discriminatory provisions and provisions which would unduly hinder the access of EEA economic operators to the Hungarian market. The same holds true, in general, for the rules on network access, including the rules on access fees, and on capacity allocation.

Market access
ensured

The regulatory framework operates consciously with EU compliance clauses (Arts. 29/B(1)-(5), 30(1)-(4), 59(1), 65c, 67/I(4))(Art. 89, 2005:CLXXXIII and Art. 52, 2012:XLI: general EU compliance clause), which include EEA clauses (Arts. 6(3), 9/C(4)), rules on public service contracts (Art. 25(1), 2012:XLI), 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:XLI) and includes further 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:XLI).

EU compliance

¹⁴¹ When the measure is not indicated specifically, the cited provision is from Act 2005:CLXXXIII.

The legal framework, in harmony with the Act on national assets (1.2.1), 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 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:XLI).

Public interest
and State
involvement
clauses and
rules

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 governing the ownership and control of the State in railway undertakings on the market is somewhat 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, establish that they are responsible for their own operation (Arts. 11(7), 19(1)). Legislation also places these undertakings under an obligation to operate according annual plans, which are put up for public consultation, and the obligation 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.

A mixed
market

While at the level of general policy directions expressed in regulation the protection of public interest 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

Problematic
provisions

under Art. 3/B(4) empowering the responsible minister, without laying down rules for the exercise of the discretionary powers available to him, to subsidise from the State budget network operators holds the risk of enabling arbitrary and disproportionate State intervention in the already limited market for infrastructure operation. While subjecting economic activities related to railway transport services to obtaining a 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 using instead 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 seem 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 recognise 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) concerning the operation of service premises leave doubts as to whether the market creation intentions are genuine and whether new participants have a real opportunity to enter the market. In the market of integrated railway undertakings seem, the limitations introduced 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 limited
markets

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, their regulation pays attention to ensuring that EU obligations are observed. The 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)).¹⁴²

Long-term
agreements in
the market

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 thus accepted 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:XLI). In principle, achieving this objective is ensured by the general regulatory obligations on awarding concessions and on competitive and transparent tendering (Arts. 23(2) and 23(3), 2012:XLI). The different public service financing clauses regulated should, in principle, ensure that

Public service
provision

¹⁴² See Decision Vj-22/2005 of the Competition Council and judgment Kfv. II.37. 442/2009/12 in the connected judicial review case. The Competition Council decided that the *MÁV Zrt.* (Hungarian State Railways), a dominant undertaking on the railway market, infringed the provisions on the prohibition of abuse of a dominant position as laid down in Hungarian and in EU law. It found that *MÁV*, which had a dominant position not only in the upstream market of access to the railway network but also in the downstream market of transporting bulk goods (freight transport market), had abused its dominant position, firstly, by causing unreasonable additional costs to its competitors in the freight transport market, secondly, by hindering, impeding and delaying access to non-public industrial railway tracks, and, thirdly, by concluding long-term transport agreements, containing exclusivity clauses, with the most significant bulk-shippers, thereby foreclosing the access of new entrants to a significant part of the freight transport market. Therefore, *MÁV*, by abusing its dominant position, undermined, in an unjustified manner, market opening in the freight transport market and the position of new private railway entrants in that market. A fine of 1 billion HUF was imposed. In judicial review, the second and the third violations were upheld.

competition and market opportunities are not damaged by State intervention (Arts. 30(2), 25(6), 2012:XLI).

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 matters of governance 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 justifiable on grounds of procedural efficiency and seem to be in balance with the interest of protecting the rights of the defence. The specific 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 raise issues under EU law. The restrictive clauses on electronic administration and correspondence (Art. 80/C(3)) may be similarly problematic 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/E, 79/F, 81). The use of the discretionary powers available is, however, only regulated in connection with the monitoring and supervision procedures on railway safety and technical adequacy, which introduced a number of considerations which need to be taken into account in formulating the final decision (Art. 81(4)).

An overall
adequate
administrative
environment

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 by rail.

The market for passenger transport services by rail.

The market for related services and connected service premises.

The Act on railways, 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)).¹⁴³ The responsible minister determines network

¹⁴³ See the infringement case initiated in 2014 concerning the independence of the national railway safety authority, MEMO-14-537.

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 operation of (national, regional, suburban, communal, and local) railway undertakings falls under an operating license (Art. 1).

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 after 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 railway 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 for 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)).

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 prioritised 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 prioritised 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 chief executive is a trustworthy person in the meaning of the Civil Code (Art. 2 Regulation 45/2006).

The railway undertaking applying for a national license must be in a 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, subject to meeting the technical and operational conditions laid down in legislation and the safety requirements regarding railway personnel, railway vehicles, and the internal organisation of the railway company (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 organisations under a technical license may participate as a certification organisation in activities relating to the use and maintenance of railway vehicles. These organisations 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 the separation 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 undertaking 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 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, 2012:XLI)

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 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 that were issued with an operating license for this purpose in Hungary, railway undertakings established in an EEA Member State for the purpose of international passenger transport services and which were issued with an operating license, and to railway undertakings established in a third State on the basis of an international agreement or under an agreement 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 rail, 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), 2012:XLI).

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, 2012:XLI).

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), 2012:XLI).

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), 2012:XLI).

Competitive and transparent tendering clause: the tendering process must be executed in compliance with the principles of fair competition and transparency (Art. 23(3), 2012:XLI).

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), 2012:XLI).

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), 2012:XLI)

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 conditions until the decision is taken, or for a maximum period of 1 year. (Art. 29(2), 2012:XLI).

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), 2012:XLI)

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 conditions laid down in legislation ((1)-(6)) (Art. 29(7), 2012:XLI).

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), 2012:XLI).

The public service compensation must be determined in the public service contract following the provisions of Regulation 1370/2007/EC in the following way (Art. 30(4), 2012:XLI).

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 organisation 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), 2012:XLI).

Compliance clause: the public service compensation must be paid following Regulation 1370/2007/EC (Art. 30(3), 2012:XLI).

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), 2012:XLI).

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), 2012:XLI).

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), 2012:XLI).

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), 2012:XLI).

The railway undertakings affected must pay an equal amount of public service compensation (Art. 48(2), 2012:XLI).

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), 2012:XLI).

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), 2012:XLI).

The public service compensation obligation must not threaten the economic viability of the railway undertaking concerned (Art. 48(4), 2012:XLI).

The Commission must be provided information on such compensation arrangements (Art. 48(5), 2012:XLI).

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 public finances, by the mayor on the basis of an authorisation from the local council, or by the transport organiser appointed in legislation (Art. 25(1), 2012:XLI).

The length of the public service contract: as stated in Art. 4(3)-(4) Regulation 1370/2007/EC (Art. 25(1), 2012:XLI).

The modification of the public service contract: as stated in Art. 4(3)-(4) Regulation 1370/2007/EC (Art. 25(1), 2012:XLI).

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), 2012:XLI).

The public service contract may only be terminated in the cases and under the circumstances regulated by the contract (Art. 25(7), 2012:XLI).

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), 2012:XLI).

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), 2012:XLI).

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 that meets the conditions laid down in statute and only after obtaining the consent of the organisation responsible for the delivery of the public service in question (Art. 25(7), 2012:XLI).

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) 2012:XLI),

- 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), 2012:XLI).

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), 2012:XLI).

In case the revenues are collected by a transport organiser, the system of public service fees is determined in the contract governing the discharging of tasks (Art. 31(2), 2012:XLI).

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), 2012:XLI).

The fee structure regulated in the public service contract must ensure (Art. 31(1), 2012:XLI)

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

The compensation 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), 2012:XLI).

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), 2012:XLI).

This form of compensation is excluded when (Art. 33(4), 2012:XLI)

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)).

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

Long-term framework agreements 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 amortisation 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)). In this, the following factors must be 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 (Art. 67/G(2))

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 realised without the fee increase.

3.2.1.8.2.4 Rebates from usage fees

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 their 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 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, modernisation 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 from 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));
- on the legal grounds and amount of other financing of railway lines of national relevance from the State budget (Art. 28(5));
- on 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));

and 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 modernisation (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)).

3.2.1.12 Financing through EUROFIMA

In a published government decree, a guarantee can be provided for EUROFIMA financing obtained for 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)).

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 (*újrafelvétel*) (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, no right of appeal is provided 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 (*újrafelvétel*) 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:XLI).

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 in their temporal dimension (Art. 81(5)) and in the amounts charged.

3.2.2 Transport by road

The Hungarian road transport market is regulated by Act 1988:I on transport by road and Act 2012:XLI on passenger transport services.¹⁴⁴ In principle, the measures, which ensure the local application of the EU road transport regulations, establish an open and liberalised 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 interest 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. The legal provisions governing market entry 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)) ensures an easy access to the Hungarian market.

The regulatory framework operates consciously with EU compliance clauses (Article 49, 1988:I and Art. 52, 2012:XLI: general EU compliance clause), rules on public service contracts (Art. 25(1), 2012:XLI), tendering rules (Arts. 24(3)-(4) and 24(6), 2012:XLI) and with State aid/public service compensation clauses which declare and aim to ensure that the relevant EU rules are observed (Art. 21(3), 2012:XLI, 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)). 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:XLI) 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:XLI and Art. 19(1), Act 1988:I).

An adequate
regulatory
framework

Market access
ensured

EU compliance

¹⁴⁴ When the measure is not indicated specifically, the cited provision is from 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 ownership or similar rights. State or public ownership is the main principle for the ownership of public roads (Art. 32(1)). The asset management of national public roads is the near exclusive task of a State body (Arts. 32(6) and 33(1)). State or other public ownership and State or other public involvement in public service parking services indicate limited commercial opportunities in this segment of the market (Art. 9/D(8)). The collection of road usage fees is regulated as a State task (Art. 33/A(6)). Another important indication is the limited regulation of road construction and operation activities under a concession (Arts. 9/B and 9/C). 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)) and the 'NIF clause' (Art. 29(1)), 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:XLI).

State
involvement
clauses and
rules

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 thus accepted raises the possibility of offering 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:XLI). In principle, achieving this objective is ensured by the general regulatory obligations on awarding concessions and on competitive and transparent tendering (Arts. 23(2) and 23(3), 2012:XLI). The different public service financing clauses regulated should, in principle, ensure that competition and market opportunities are not damaged by State intervention (Arts. 30(2), 25(6), 2012:XLI).

Public service
provision

The administrative environment of the Hungarian market for road transport services, in general, serves the needs of an open competitive market where

An overall
adequate
administrative
environment

equal access and equal treatment is offered to market participants. From the perspective of EU obligations, it may be problematic, however, that the electronic administration of licensing is not provided as a general rule (Art. 19(1)(4)) and that tachograph card applications must be submitted in person (Art. 44/A(9)). There may be issues with the exclusion of the right of appeal 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, 2012:XLI)

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 information-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)

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)

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. (Art. 23).

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)).

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

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)).

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)).

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)).

The local council acts as the contractor for certain locally relevant construction works carried out on public roads Art. 29(1)).

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)).

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)).

3.2.2.6 Rules on the asset management of public roads

The asset manager of public roads is (Art. 33(1))

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.

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 are subject to obtaining a route license (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)

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)). These services must be provided as determined in the public timetable (Art. 19(3)) and on the basis of 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 undermine their 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 applicable 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 by of track-based public transport services

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 undermine their 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 having regard to 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 the rules of that Regulation (Art. 44(1)).

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 a 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), 2012:XLI).

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, 2012:XLI).

3.2.2.8.1.2 The public service contract

The domestic passenger transport services – with exceptions (e.g., replacement bus services and cabotage) must be provided on the basis of a public service contract (Art. 23(1), 2012:XLI).

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), 2012:XLI).

Competitive and transparent tendering clause: the tendering process must be executed in compliance with the principles of fair competition and transparency (Art. 23(3), 2012:XLI).

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), 2012:XLI).

3.2.2.8.1.3 The public service obligation

A public service obligation may be ordered or maintained when (Art. 29(1), 2012:XLI)

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), 2012:XLI).

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), 2012:XLI).

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 conditions laid down in legislation ((1)-(6)) (Art. 29(7), 2012:XLI).

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), 2012:XLI).

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), 2012:XLI).

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 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 organisation responsible for the delivery of public services, with regards the economic monitoring of public service delivery and to the justified interest of the service provider to maintaining 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), 2012:XLI).

Compliance clause: the public service compensation must be paid following Regulation 1370/2007/EC (Art. 30(3), 2012:XLI).

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), 2012:XLI).

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), 2012:XLI).

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), 2012:XLI).

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 public finances, by the mayor on the basis of an authorisation from the local council, or by the transport organiser appointed in legislation (Art. 25(1), 2012:XLI).

The length of the public service contract: as stated in Art. 4(3)-(4) Regulation 1370/2007/EC (Art. 25(1), 2012:XLI).

The modification of the public service contract: as stated in Art. 4(3)-(4) Regulation 1370/2007/EC (Art. 25(1), 2012:XLI).

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), 2012:XLI).

The public service contract may only be terminated in the cases and under the circumstances regulated by the contract (Art. 25(7), 2012:XLI).

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), 2012:XLI).

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), 2012:XLI).

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 that meets the conditions laid down in statute and only after obtaining the consent of the organisation responsible for the delivery of the public service in question (Art. 25(7), 2012:XLI).

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), 2012:XLI),

- 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), 2012:XLI).

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), 2012:XLI).

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), 2012:XLI).

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), 2012:XLI).

The fee structure regulated in the public service contract must ensure (Art. 31(1), 2012:XLI)

- 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

The compensation 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), 2012:XLI).

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), 2012:XLI).

This form of compensation is excluded when (Art. 33(4), 2012:XLI)

- 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

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. (Art. 9/B).

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)).

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

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)*

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*

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 (Art. 9/D(4)). The public service provider is entitled to incomes which cover at least the costs of the provision of its services. (Art. 9/D(6)).

3.2.2.8.2.2.3 *Public service parking services on national public roads (Art. 9/D(8))*

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, which

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 provision constitutes a private law relationship between the user and the service provider (Art. 9/D(9)).

The asset manager of State-owned public roads may conclude a public service contract – which must be published on-line – with the undertakings determined in legislation (Art. 9/D(10)).

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)).

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)).

3.2.2.9.1 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)). The road usage fees collected must be used for purposes of road regeneration and development (Art. 33/A(5)). The fees are collected by the National Toll Payment Service (NTPS) (*NÚSZ: Nemzeti Útdíjfizetési Szolgáltató Zrt.*), which contracts for this purpose with the CTDC) Art. 33/A(6)).

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)).

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)).

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) (Art. 17).

Monitoring and supervision (compliance with the applicable rules on road transport) (Art. 44).

Monitoring and supervision (working time of drivers) (Art. 44/A) (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: XLI on passenger transport services.¹⁴⁵ In principle, the measures establish an open and liberalised 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 interest 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. The legal provisions governing market entry 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 to an extent more than 50 per cent in Hungarian or Community ownership. The other problematic requirement concerns the restriction that 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 an EU compliance clause (Art. 90: 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. It, thereby, has the right to declare the available waterways on these waters (Art. 69). The operation, asset management and maintenance of State-owned waters is, as a principle, the task of the water management authorities (Art. 3, Act 1995: LVII on water management). Concerning infrastructure development activities, a NIF clause was put into place which

Market access
ensured

Hungarian
ownership and
Hungarian
seat
requirements

State
involvement
clauses and
rules

¹⁴⁵ When the measure is not indicated specifically, the cited provision is from Act 2000: XLII.

reserves certain activities in this market for the NIF 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 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.

Concerning the administrative environment, the clause excluding the electronic submission of applications in procedures before the waterways transport authority may raise problems (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;

based on 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 themselves, 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, regulating the training and professional requirements of shipping personnel, health and safety regulation, environmental protection regulation, and accident prevention regulation (Art. 2(1)).

3.2.3.3.4 Licensed activities (Art. 51)

The carrying out of shipping activity is subject to obtaining an operating (shipping) license, which determines the activity and area where shipping can be carried out, and the conditions of carrying out the shipping activity. The licensing obligation does not apply to

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)).

Hungarian or Community ownership clause: 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, or

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 that

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)) that
 - the person concerned has no previous criminal record,
 - was not excluded under criminal jurisdiction from driving a vessel,
 - was 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 under legislation 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 a license for public shipping activity, 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.

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.

Administrative obligations of operators of vessels:

- the obligation of keep a passenger record, in case of shipping at sea and of cross-border operation of inland passenger transport vessels (Art. 21);
- 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).

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).

3.2.3.5.2 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:XLI 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 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)).

3.2.3.6.2 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 prioritised 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)).

3.2.3.6.3 The operation and maintenance of State-owned waters

Under Act 1995:LVII on water management, the asset management of State-owned waters and water facilities and the operation, maintenance and development of State-owned water facilities are the tasks of the water management authorities (Art. 3(2)). The costs of operating and maintaining State-owned waters and water facilities are covered from the State budget to the extent necessitated by the public interest (Art. 7(1)). The costs of activities (e.g., works on waters, establishing water facilities) exceeding the

extent necessitated by the public interest must be covered by the applicant (Art. 8(1)).

The operation of State-owned public water facilities may be subject to a concession granted to an economic operator (Art. 10). The activities carried out under the concession agreement must comply with the relevant planning documents and the environmental and water management requirements (Art. 11(3)). The facility in question will be operated by a concession company; there is no need to form a concession company when the concession holder is an economic operator established by the State or the local council, owned in majority by the State or the local council, for the operation of the public facility in question.

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 of the State, 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 liberalised 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 consideration 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. The legal provisions governing market entry do not involve directly discriminatory provisions and provisions which would unduly hinder the access of EEA economic operators to the Hungarian market.

The Hungarian regulatory regime operates with a robust 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 the obtaining of licenses for carrying out other commercial activities in the context of cross-border services carried out on the basis of the free movement of services (Art. 20/B(1)). It also 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)).

There are a few areas within the Hungarian air transport market where State directly participates. 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). The operation of

Market access
ensured

Robust
licensing
regime

Limited State
involvement

Budapest Liszt Ferenc International Airport is subject to a number of limitations ensuring control in the public interest (Art. 45).

Concerning the administrative environment, it may raise problems that 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 EU compliance clauses ((Art. 74/A: general compliance clause) concerning civil aviation incidents (Arts. 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 regulate explicitly 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, and the European Aviation Agency (Art. 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 same EU measure (Arts. 23(5)).

EU compliance

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, the coordination of State-tasks concerning air transport and administer air transport, maintaining 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 reserved 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 and 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, the persons concerned has no prior criminal record, or has not been subject to criminal proceedings or a criminal judgment prohibiting the exercise of aviation or aviation-related activities;
- the sufficient organisation, personnel, and owned or permanently leased equipment, as stated in legislation, 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 decisions restricting or prohibiting the carrying out of aviation activity or an 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 operators may obtain an aviation license on the basis of an international treaty or reciprocity (Art. 23(2)).

Customs compliance clause: 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. Alternatively, 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 as testifying 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. Alternatively, 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 permit testifies the professional suitability of its 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 obtaining a compulsory 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 as (Art 5): available for civil aviation, limitedly available for civil aviation, where civil aviation is prohibited, dangerous airspace, airspace available for supersonic aviation, and where 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 authorisation 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, or in case of aircraft not subject to registration obligations, the diver 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)).

The application of the consumer protection requirements of Regulation 1008/2008/EC are ensured by a specific compliance clause (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)).

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, the operator of airports, or by the air traffic control service provider, or must be provided under a contract concluded with a safety service provider (Art. 65/A(1)).

The operation of aviation safety services is subject to an operating license issued by the aviation authority (Art. 65/A(2)).

The application of EU legislation concerning civil aviation incidents and concerning the evaluation of civil aviation incidents and the identification of aviation safety risks is ensured by specific compliance clauses (Arts. 65/A(3) and 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 needs to set up 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 under a decision of the police authority, against which there is no right of appeal and which enter into force and are enforceable upon communication (Art. 67(5)-(6)).

The costs of aviation security are covered – as determined in legislation – together by 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 HUF.

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 aircrafts is subject to the payment of a fee determined by the airport operator. The fee must be available in a prior publication. (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, which has to take into account the requirements of equal treatment and transparency and which must have regard to the costs incurred with the services provided (Art. 41(2)).

The use of non-public airports may be authorised by the airport operator. The operator of civil non-public airports may charge usage fees in its own discretion. The fees must be available in a prior publication. (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 expenditure.

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

Procedures before the aviation authorities are governed by objective administrative deadlines (Art. 3(20)-(2d)).

Procedures before the aviation authorities are subject to the payment of an administrative service fee (Art. 2(3)).

There is not appeal in the administrative procedure against certain decisions of the aviation authority as indicated by legislation (i.e., 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 be withdrawn by the aviation authority on grounds of requirements 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)).

In administrative procedures dealing with decisions delivered under Regulation 847/2004/EC concerning the exercise of limited aviation rights the right of appeal is excluded (Art. 3/D(2)).

Electronic correspondence between the applicant and the aviation authority is excluded 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 liberalised 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 2008:XL 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 in the sector, but these, on a general level, are supported either by public interest considerations or by considerations relating to the nature of the economic activities in question (e.g., Arts. 81-83 on infrastructure development, Art. 114(16) on issuing a license to branches, Art. 117-118 on the individual conditions for issuing licenses).

The promotion of new market entries and ensuring their effective presence in the market are key objectives of the legal framework. 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. The legal provisions governing market entry do not involve directly discriminatory provisions and provisions which would unduly hinder the access of EEA economic operators to the Hungarian market. However, the requirement of being established as a public undertaking applicable to the issuing of certain licenses (Arts. 114(13) and 117(1)), may raise issues under EU law. The may hold true for the conditions imposed – mainly in the public interest – as regards the licensing of Hungarian branches (Art. 114(6)).

The regulatory framework operates consciously with EU compliance clauses (Art. 159: general EU compliance clause; Art. 1: harmonisation with EU obligations indicated as 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 laid down for price regulation (Art.

An adequate
regulatory
framework

Market access
ensured

EU compliance

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 contains detailed cooperation obligations for the Hungarian regulator with the European Commission and other European regulators.

The Hungarian natural gas market, as it now stands, is characterised by robust State involvement delimiting market mechanisms and competition. Certain provisions enable the State to act under rather broad discretionary powers, such as Arts. 81-83 concerning infrastructure development. The State is the exclusive owner of natural gas emergency reserve storage facilities (Art. 124/B). Their purchase was prepared by giving the State prioritised pre-emption rights over all natural gas storage facilities, including emergency reserve storage facilities (Art. 124/A). In terms of direct interventions with the market, the act provides broad powers to the State to interfere, predominantly in the interest of non-market policy objectives. Furthermore, 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). Also, the State enjoys extensive powers of price regulation (Arts. 103 and 106). While these powers are subject to an extensive list of requirements aiming to ensure that they are exercised in harmony with EU requirements (Arts. 105 and 107), when exercised they may 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 and the explicit obligation to inform consumers on the impact of the price freeze on prices (e.g., Art. 108/A).

State
involvement
clauses and
rules

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*

Natural gas emergency reserve storage facilities may only be in the exclusive direct or indirect majority ownership of the Hungarian State (Art. 124/B).

3.3.1.5 *Rules on infrastructure development*

Infrastructure development in the natural gas market must be carried out on the basis of 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, imposes an obligation on 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, imposes an obligation on 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 specifically for the constructing of 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 itself (Art. 83/A).

Exemptions (Art. 85(1)) from the price regulations, the access obligations and from the separation obligations may be awarded for the development of new infrastructure (the construction of new cross-border pipelines, 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))), on the condition that

the new infrastructure will increase competition in supply, enhance the security of supply, and increase the effective operation of the natural gas system;

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 will be 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 also 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 the sale of (Art. 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 natural gas storage facilities, real estate and ownership rights (Art. 124/A(5)):

- they may take place 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.

The prior approval of the regulator must be obtained for transactions involving 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 (Art. 141)*

Natural gas traders are obliged to offer for sale to universal service providers their non-contracted natural gas resources (for future time-periods after 2011)

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 sector-specific surtax imposed under Act 2010:XCIV must have no impact on the price determined.

Universal service providers are at liberty to decide on whether to conclude such contracts.

3.3.1.8.2 Public service wholesaler traders (Art. 141/C)

Public service wholesalers without a universal service license are obliged 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)

at a price which meets the regulated price, but it is lower than that price in at least one component, which 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 (Art. 141/G)

The natural gas storage license holder is obliged under legislation to offer for sale for the purpose of supplying universal service providers the 120 million m3 reclassified cushion gas in its ownership. In case the offer is not accepted, the natural gas in question can be sold in the market in compliance with the provisions of the conditions of business (at a time determined by the responsible minister).

3.3.1.8.4 Former public service wholesale traders (Art. 141/J)

The former public service wholesale trader, which does not have a universal service provision license, is obliged to offer for sale for the purpose of supplying universal service provider its non-contracted natural gas resources (for a future time-period)

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*

Access provided under negotiation to natural gas storage facilities must be ensured (Art. 74(2)). The introduction of negotiated access is, however, subject to a decision by the regulator having regard to the development of actual competition in the storage market (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 activities 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 those for pipeline construction, are issued without a temporal restriction (Art. 114(2)).

The conditions for granting the license include that (Art. 114)

the conditions laid down in legislation are met;

the financial and economic conditions laid down in legislation are met;

in case of a license for transmission system operation, the unbundling requirements for transmission system operators are met;

the operator has the financial, economic, technical, environmental, IT, telecommunications conditions and equipment required by law for the continuous, long-term performance of its activities, it has the necessary personnel, and it meets the conditions necessary to carry out activities in the natural gas industry;

the operator is not subject to an insolvency or a liquidation procedure;

operating licenses of the operator were not withdrawn in the previous 10 years by the regulator for causes occurred in its duty of care.

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 branch 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 an EU/EEA branch is subject to the conditions that (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 assume unlimited responsibility for the obligations undertaken by the branch;

the license, supporting declaration or acknowledgement of the home regulator concerning the establishment of the branch 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 license for universal service provision (Art. 117(2)).

The natural gas distributor may not have another operating license apart from a 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)).

Grating 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, unless (Art. 67(1))

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 those capacities.

In case of a refusal from the transmission system operator or the distributor, the regulator may, on application, decide to establish the obligation to enable connection for access 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 and unjustifiable restrictions, arbitrary practices must be excluded, and its conditions must not jeopardise the security and quality of supply (Art. 76(4)). The reserved capacities are available for use upon the payment of a system usage fee (Art. 76(1)).

The system operator in its decision refusing or suspending 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 of the suspension (Art. 77(4)-(5)).

In case the refusal or the suspension was illegal, the regulator applies the legal remedies regulated in legislation and imposes the obligation on 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, it must be non-discriminatory, and it 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 distribution pipelines in its operation (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) must be carried out according to the conditions of business and following 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 an emergency reserve storage license under an obligation of long-term storage (Art. 27/A(2)-(3)).

3.3.1.11.6 Natural gas trading

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 operating license for natural gas trading, enabling the complete and direct supply of users, may be issued to Hungarian established one-person companies and companies, Hungarian branches, cooperatives, or to European public companies, and to EU and EEA citizens which carry out natural gas trading activities in the State of their citizenship, or to companies registered in an EU or EEA Member State, where they carry out natural gas trading activities, provided that the latter categories of persons meet the conditions laid down in Hungarian legislation, are able to establish that the conditions have been met, and ensure their continuous availability in Hungary at least through an address for service (Art. 28(3)).

The operating license for natural gas trading, enabling only restricted trading activities not involving the direct supply of users, may be issued to EU and EEA citizens which carry out natural gas trading activities in the State of their citizenship, or to companies registered in an EU or EEA Member State, where they carry out natural trading activities, provided that they meet the conditions laid down in Hungarian legislation, are able to establish that the conditions have been met, and ensure their continuous availability in Hungary at least through an address for service (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 in legislation (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 service (Art. 34(1)).

The license holder is under an obligation to supply natural gas to users according to the service packages advertised 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 include natural gas trade, natural gas storage, natural gas distribution, one-stop-shop capacity trade, and specifically for 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

The 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 (up to the amount necessary supply universal service provision);

the consumer price of PB gas supplied in pipelines and in storage containers, and 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 (Art. 105(4))

- must comply with the requirements of transparency, openness and proportionality;
- 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 according 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 restrictions which follow from Art. 104(1) (Art. 104(8)-(9)):

- 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;
- prices lower than the regulated price may only be introduced without discrimination and they must be publicised prior to their introduction.

The conditions of introducing regulated prices (Art. 104(2)-(6)):

- 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 explicitly;
- it will form part of contracts concluded prior to its introduction.

The regulatory cycle for price regulation is a minimum 2 and a maximum 6 year period for the 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 framework for the upcoming regulatory cycle

Under Regulation 8/2016 from the Energy and Public Utilities Regulator (adopted to comply with the relevant EU directives) (for the 4 year regulatory cycle starting from 1 January 2017), the general principles of fees regulation include ensuring coherence among the different fees and between the fees and the conditions governing their application, the principle of lowest cost, and the principle of taking into account the justified costs of the network license holder (Art. 3(1)).

Further principles include the taking into account of fees established in the previous regulatory cycle and in the previous years of the same regulatory

cycle and the avoidance of introducing larger changes from one year to the next having regard to the continuous and balance nature of fees regulation (Art. 3(2)).

In regulating the fees, efforts must be made to ensure that the network license holders (Art. 3(3))

are motivated to improve the effectiveness of their management;

become motivated to comply with the applicable quality requirements;

become motivated, in the interest of increasing the security of supply, to carry out the necessary network development activities;

cease to oppose the activities by consumers to increase energy efficiency;

the risks taken by them do not supersede the reasonable level in the given economic circumstances;

act with foresight in making their economic and business decisions.

3.3.1.11.10.4 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)).

3.3.1.11.10.5 Further regulatory powers

The responsible minister is provided further regulatory powers (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.

3.3.1.11.10.6 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)).

3.3.1.11.10.7 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 operation according to the principle of lowest cost, and that it takes into account the benefits gained from subsequent connections by 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 on infrastructure development necessary for connecting to the system (Art. 108(3)).

3.3.1.11.10.8 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) 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 (Arts. 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 of 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 liberalised 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 Act 2007:LXXXVI 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 applicable in the relevant administrative procedures also provide an indication of the openness of the Hungarian market (Art. 168(7)). 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 interest considerations or by considerations relating to the nature of economic activities in question.

Fostering new entries to the market and the establishment of new capacities and infrastructure are declared objectives of the legal framework. 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. The legal provisions governing market entry do not involve directly discriminatory provisions and provisions which would unduly hinder the access of EEA economic operators to the Hungarian market. However, the requirement of being established in a particular company law form for the issuing of certain licenses (Arts. 87 and 89) may be raise questions under EU law.

The regulatory framework operates consciously with EU compliance clauses (preamble: compliance with EU law as an objective; 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 laid down for price regulation (Art. 142 and Art. 143, for universal services). The coapplication provisions in

An adequate
regulatory
framework

Market access
ensured

EU compliance

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 degree of State involvement capable of delimiting market mechanisms and competition. As indicated by the legal framework, the appetite for State intervention has been lesser than in the natural gas market. The basic tenet for State intervention follows from recognising the safe and secure operation of the electricity market as a public interest objective (Art. 4/A). The State enjoys extensive powers of price regulation (Arts. 140 and 142/B). While these powers are subject to an extensive list of requirements aiming to ensure that they are exercised in harmony with EU requirements (Art. 142), when exercised 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).

State
involvement
clauses and
rules

3.3.2.2 *The markets*

Electricity production.

Transmission system operation.

Electricity distribution.

Public lighting.

Electricity trading.

Electricity storage.

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 objective (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 (Art. 56(1))

- on the basis of connection and network usage contracts;
- according to the quality determined in legislation and in the conditions of business;
- and on the basis of transparent, comparable, rational and demand-responsive financial and technical conditions.

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)).

After connection, the system user 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, must not enable abusive practices, may not involve unjustified restrictions, and they 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. Their availability does 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, the reduction, or the 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, the reduction, or the 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 the network license holder in a decision to enable access to the network (Art. 36(8)).

3.3.2.7.3 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 the ceasing electricity production.

Transmission system operation.

Electricity distribution.

Electricity trading.

Electricity storage.

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 the conditions laid down in legislation (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;

- the license may be refused in the specific case when the operator of the organised electricity market, carries out other licensed activities as prohibited by Art. 55(5) (Art. 89(2a)),
- the license may also be refused in connection with the Hungarian operation of branches when (Art. 89(3))
 - they carry out other licensed activities prohibited by the act,
 - 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 branch,
 - the applicant does not declare that it will bear full liability for the obligations entered into by the branch,
 - the applicant does not produce the authorisation, approval, or recognition of the regulator of the home State

concerning the establishment of the branch,

- the central administration of the applicant is not in the State where its seat is located.

the application contradicts the relevant considerations 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 liquidation 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 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 and the safety of electricity 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 Hungarian established one-person companies and companies, Hungarian branches, cooperatives, or to European public companies, and to EU and EEA citizens which carry out electricity trading activities in the State of their citizenship, or to companies registered in an EU or EEA Member State, where they carry out electricity trading activities, provided that the latter categories of persons meet the conditions laid down in Hungarian legislation, are able to establish that the conditions have been met, and ensure their continuous availability in Hungary at least through an address for service (Art. 88(1)).

The operating license for electricity trading, enabling only restricted trading activities not involving the direct supply of users, may be issued to EU and EEA citizens which carry out electricity trading activities in the State of their citizenship, or to companies registered in an EU or EEA Member State, where they carry out electricity trading activities, provided that they meet the conditions laid down in Hungarian legislation, are able to establish that the conditions have been met, and ensure their continuous availability in Hungary at least through an address for service, and to Hungarian established one-person companies and companies, cooperatives, or to European public companies, which meet the conditions laid down in legislation (Art. 88(2)(3)).

The operating license for the organised electricity market may be issued to a public corporation, or to the branch 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 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 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).

3.3.2.7.3.1 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 a 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 a preliminary license or on the basis of a 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 must be obtained in compliance with the applicable legislative provisions for the expanding of power stations, the increasing of its performance, the suspension of electricity production, and for the ceasing electricity production (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, on its own business risk, to establish new electricity production capacities subject to meeting the applicable legislative requirements (Art. 7(1)).

The regulator may publish an open call for establishing new capacities 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 (Art. 8).

3.3.2.8.2 Transmission system operation

Transmission system operation is subject to an operating license (Art. 23).

Transmission system operators are obliged to carry out their 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 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 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).

Electricity distribution license holders are obliged to carry out their tasks in a transparent manner, without undue influence, and in compliance with 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 transaction does not qualify as electricity trading (Art. 32(3)-(4)).

3.3.2.8.4 Public lighting (Arts. 34, 34/A)

Public lighting services are either carried out, upon the payment of a public lighting distribution fee, by the organisation obliged in legislation to provide public lighting, or by the operating license holder.

3.3.2.8.5 Electricity trading

Electricity trading may only be carried out under an electricity trading license and in compliance with the conditions laid down in legislation (Art. 46(1)).

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 the obligation to supply and to contract to supply electricity based on the demand from users 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)).

As a main rule, the universal service license holder is subject to the rights and obligations of the electricity trader (Art. 46(2)).

3.3.2.8.7 The operation of the organised electricity market

The operation of the organised electricity market is subject to an operating license (Art. 53(1)), and 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 responsible minister in regulation (Art. 140(2)).

The usage fees of the electricity system are determined in regulation by the regulator within the framework determined in 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 it 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 it 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 usage 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 according 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. 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 for the system usage fee lasts 4 years (Art. 142/A).

The system usage fees determined by the regulator

- must be regarded as the maximum prices charged, and
- 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 principles of price regulation include (Art. 141) that

- 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, and 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

3.3.2.8.8.4 The framework for the upcoming regulatory cycle

Under Regulation 7/2016 from the Energy and Public Utilities Regulator (adopted to comply with the relevant EU directives) (for the 4 year regulatory cycle starting from 1 January 2017), the general principles of fees regulation include ensuring coherence among the different fees and between the fees and the conditions governing their application, the principle of lowest cost, and the principle of taking into account the justified costs of the network license holder (Art. 3(1)).

Further principles include the taking into account of fees established in the previous regulatory cycle and in the previous years of the same regulatory cycle and the avoidance of introducing larger changes from one year to the next having regard to the continuous and balance nature of fees regulation (Art. 3(2)).

In regulating the fees, efforts must be made to ensure that the network license holders (Art. 3(3))

are motivated to improve the effectiveness of their management;

become motivated to comply with the applicable quality requirements;

become motivated, in the interest of increasing the security of supply, to carry out the necessary network development activities;

cease to oppose the activities by consumers to increase energy efficiency;

the risks taken by them do not supersede the reasonable level in the given economic circumstances;

act with foresight in making their economic and business decisions;

are motivated to develop smart networks.

3.3.2.8.8.5 Further regulatory powers

The responsible minister is provided further regulatory powers (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.

3.3.2.8.8.6 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 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, and
- prices lower than the regulated price may only be introduced without discrimination and they must be publicised prior to their introduction (Art. 143(5)).

3.3.2.8.8.7 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 promotes operation according to the principle of lowest cost, and that it takes into account the benefits gained from subsequent connections by 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 on the infrastructure development necessary for enabling connections 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).

The 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)), include

- the suspension of contracts to supply users;
- the restriction of supply to users;
- determining the rights and obligations of license holders;
- determining 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 instances, 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 decisions 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 liberalised 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 Act 2005:XVIII 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. The legal provisions governing market entry 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 as determined either by the local council or by the responsible minister (Art. 6(2)). The considerations which must be taken into account under legislation ensure, in principle, that the market is not damaged unduly by State intervention and that 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

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 license and an operating license from the regulator (Art. 4).

Local councils 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 operations (Arts. 14(4) and 15(1)).

The operating license for supply is issued on application. It entitles its holder to supply in the determined service area. (Art. 16(1)-(2)).

Both of these operating licenses are valid without temporal restrictions (Art. 15(2) and 16(3)).

The two licences must be issued in separate procedures as separate licences (Art. 17).

The construction, the extension, and the 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 are 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 producer and the supplier are obliged to contract for the capacity necessary for the security of supply, either annually and for longer-term (for another 2 years after the expiry of the 1 year contract) (Art. 35).

There is a statutory obligation to contract in a public service 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 concerning costs and prices (Art. 57(2)).

The following considerations must also be taken into account (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 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)).

In regard the prices determined by the minister,

- 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 market for postal services

The Hungarian market for postal services is regulated in Act 2012:CLIX on postal services. The measure establishes a market which is in part liberalised and in the domain of universal postal service delivery is operated by the State-monopoly postal service provider. The predominantly public service nature of the market follows primarily from the broad scope provided in legislation for the delivery of universal postal services. Only the most important legal provisions are included in this legal mapping report.

3.4.1 Overview of the legal and regulatory environment

Under the act, the agenda for the liberalisation of the postal services market is pursued in parallel with the objective of securing the provision of universal postal services by means of direct State involvement and presence in the market. The liberalised (non-reserved) segments of the market operate as open markets where market entry is subject either to the obtaining of a license (Art. 11(1)) (here, service license) – for example, in the case of replacement postal services, or to the notification of the postal authority (Art. 10(1)) – in the case of non-replacement postal services. Universal postal services are delivered by the State-owned universal service provider upon appointment by the State (Art. 14(1)). All providers must register with the postal authority (Art. 3(1)).

A partly open market

At the level of legislative provisions, the liberalised segments of the Hungarian postal services market provide equal access and equal opportunities to EEA economic operators. The objective of objective, proportionate, transparent and non-discriminatory regulation of the market is repeatedly stated in Act 2012:CLIX (Arts. 18(2), 18(5) and 19(1)). The substantive and the procedural rules relating to licensing, notification and registration are transparent and reasonable. The legal provisions governing market entry 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 universal postal service market operates under explicit obligations for the State to consider the possibility of its liberalisation (Arts. 18 and 64), which could give ground to an obligation for the State to publish an open call for the future operation of that market (Art. 18(3)-(4)). The universal service provider is also subject to obligations of operational efficiency (Art. 14(8)) and non-discrimination in its commercial operation (Art. 14(9)). The principles of price regulation of universal postal services (Arts. 17(1) and 17(2)) were introduced to ensure a balancing between the relevant commercial and universal service considerations. The clause requiring the starting of negotiations in good faith (Art. 33(1)) was introduced to ensure

A regulated universal service market

the access to the postal network of the universal service provider by another public service provider.

State involvement in the market for universal postal services is based, primarily, on declaring the provision of universal postal services as a State task (Art. 14(1)), which is discharged by the Hungarian Post (*Magyar Posta Zrt.*) as the appointed universal postal service provider (Art. 18(1)). The exclusive rights clause concerning the delivery of official documents (Art. 30) emphasises the overlap between State functions and the delivery of postal services. The clause enabling contracting for the provision of universal postal services with so called partner operators (Art. 14(1a)) does not really challenge the market position of the State-owned universal service provider. The clause concerning the involvement through contracts of financial service providers in the delivery of universal postal services (Art. 27/A) offers commercial opportunities in the financial services rather than in the postal services market. The State development of the postal service network clause (Art. 14(3)) reserves the State, or at least places under State control a considerable segment of the domestic postal services market. Determining the method of calculating prices for certain universal services is reserved for the responsible minister (Art. 17(3)). The provisions concerning the provision of additional public service tasks by the universal service provider (Art. 33) not only emphasise the public interest nature of universal postal services but they also ensure district revenue streams for and an influence over the relevant public service markets by the appointed universal service provider.

The regulatory framework operates consciously with EU compliance clauses (preamble: compliance with EU law as an objective; Art. 79(1): general EU compliance clause). It contains a specific clause regarding certain of its provisions which subjects their entry into force to securing a confirmatory decision from the European Commission (Art. 76(2)). The recognition in Art. 6(1) that universal postal services may constitute services of general economic interest indicates that the applicable EU principles were taken into account. The EU State aid clause (Art. 79(2)) declaring that the act contains State aid covered by Article 106(2) TFEU and the EU public service compensation framework suggests the same; that declaration alone, however, does not guarantee compliance of the aids provided with EU law.

Heavy State
involvement

EU compliance

3.4.2 The markets

Universal postal services.

Postal services replacing universal postal services.

Postal services not replacing universal postal services

The legislative framework also distinguishes partial, full and complex postal services, and separates postal services from non-postal services.

3.4.3 The activities carried out in the Hungarian postal service market

State activities.

Regulatory activities.

Licensed activities.

Notified activities.

The provision of universal postal services.

3.4.3.1 State activities

State activities include the development of national postal policy, the provision of the necessary conditions for its implementation, the provision of universal postal services, the implementation of government, national security, justice and defence interests in the postal sector, the effective operation of State institutions relating to postal services, and the compensation of the unfair financial burdens of the universal postal service provider (Arts. 59-60).

3.4.3.2 Regulatory activities

Regulatory activities include the monitoring of the state of universal postal service provision and taking the measures necessary to ensure the provision of universal postal services, regulating the method of determining prices for the delivery of postal assignments not heavier than 50g and of official documents, operating the notification, licensing and registration system for postal service providers, and the monitoring and supervision of postal service providers (Arts. 61-62).

3.4.3.3 Licensed activities

The provision of replacement postal services is subject to obtaining a service license from the postal authority (Art. 11(1)).

3.4.3.4 *Notified activities*

The provision of non-replacement postal services is subject to the notification of the postal authority (Art. 10(1)).

3.4.4 **The universal postal services clause**

Universal postal services are postal services which qualify as services of general economic interest serving public needs which must be provided to all users in the entire territory of the country (Art. 6(1)).

Universal postal services include (Art. 6(2)-(3))

domestic or international non-registered postal items under 2 kg;

domestic or international postal packages under 20 kg;

domestic or international postal assignments containing scripts for the visually impaired;

official documents.

The universal service provider can be obliged in the public service contract for universal postal service delivery to provide other extra services (Art. 6(3)).

The universal service provider may offer in its general terms of agreement extra services beyond the universal service provision (Art. 6(4)).

3.4.5 **The replacement services clause**

Postal services replacing universal postal services are postal services which do not qualify as non-replacement services and which are not provided under a universal service obligation (Art. 7(1)).

Replacement postal services must be provided either under the applicable general terms of agreement or under an individual agreement containing clauses different from those in the public service contract for universal postal service delivery, or in the applicable general terms of agreement (Art. 7(2)).

3.4.6 The non-replacement services clause

Postal services not replacing universal postal services include the following added-value postal services (Art. 8(1))

courier postal services;

express postal service;

international EMS services;

postal services which include at least one special extra service representing a significant added value.

These services may only cover postal items which are individually identified and registered, and are delivered to the person (door-to-door) or with the use of an identification code (Art. 8(2)).

3.4.7 The market for postal service intermediaries

Postal service providers are entitled to rely in the provision of their services on a postal service intermediary. The postal service intermediary discharges its tasks in the name of the postal service provider, to its benefit, and under its responsibility. The contract between the postal service provider and the intermediary may qualify as a concession contract when the intermediary discharges its tasks on its own economic risk. (Art. 36).

3.4.8 Unbundling (financial)

The postal service provider must maintain a separate accounting of its incomes from postal service activities and from other activities. The universal postal service provider must separate the accounting of its incomes, costs and expenditures relating to its services concerning official documents. The universal postal service provider must separate the accounting of its incomes, costs and expenditures relating to the provision of universal postal services, replacement postal services, and to services subject to notification. The licensed postal service provider must separate the accounting of its incomes, costs and expenditures relating licensed postal services and services subject to notification. The universal postal service provider must separate the accounting of its incomes, costs and expenditures relating to its services concerning postal items and official documents not heavier than 50g. (Art. 58).

3.4.9 Entry conditions in the Hungarian market for postal services

The right and obligation to provide postal services is constituted by the notification of the postal authority, by registration following the issuing of the

service license by the postal authority, or upon appointment for the delivery of the universal service under legislation (Art. 9(2)).

3.4.9.1 Legal form and establishment

Non-replacement postal services can be provided by any economic operator (Art. 9(1)).

Replacement postal services can only be provided by Hungarian established public companies or limited liability companies, or by companies established in another Member State of the European Union which have and has a registered office in Hungary (Art. 9(1)).

Universal postal services, under the current legal framework, are provided by the universal postal service provider appointed by the State (Art. 14(1)).

3.4.9.2 Notification

Non-replacement postal services must be notified to the postal authority for the purpose of their registration 45 days before the commencing of operations (Art. 10(1)).

Registration will be denied by the postal authority in case (Art. 10(6))

the economic operator concerned is not listed by the tax authority among the undertakings not having outstanding public payment obligations;

the economic operator is unable to establish that it has settled labour relations;

it can be established on the basis of the available data that the notified postal service falls under a licensing obligation.

3.4.9.3 Licensing

Replacement postal services are subject to a license issued by the postal authority (Art. 11(1)).

Licenses are limited to the geographical area indicated in the license application (Art. 11(2)).

The license is issued for an undetermined amount of time (Art. 12(7)).

The license may only be issued in case (Art. 11(4))

the prudent operation of the service provider is ensured,

- prudent operation is ensured when (Art. 11(5))
 - it is established that the service provider is capable of providing the required services,
 - its labour relations are settled,
 - it has secured the pecuniary security required under legislation which is able to cover the interim actions taken in case of departure from the market and the damages caused by non-performed services,

the personal and material conditions of service delivery are ensured, and

the general terms of agreement comply with the applicable requirements laid down in legislation.

The material conditions include the minimum necessary and suitable service premises, customer service points, customer relations premises, vehicle fleet and technical equipment. The contracts concluded with a postal service provider concerning access to its network must also be taken into account. (Art. 11(8)).

The license application must include, in particular, the description of the technological processes necessary for the normal operation services, the operational model describing the carrying on of postal services, the network access agreements concluded with another postal service provider, the description of the quality management system and the plan for continuous operation, the description of its internal organisation and areas of responsibilities, the declaration concerning compliance with the employee ratio number laid down in legislation, and the certification concerning the availability of the pecuniary security required under legislation (Art. 12(1)).

3.4.10 The universal postal service

The provision of universal postal services is a State task (Art. 14(1)).

It is discharged by way of the universal postal service provider appointed by the State (Art. 14(1)).

The Hungarian Post (*Magyar Posta Zrt.*) is the appointed universal postal service provider until 31 December 2020 (Art. 18(1)).

The delivery of universal postal services is based on a public service contract for universal postal service delivery concluded between the responsible minister and the universal postal service provider (Art. 14(2)).

The compulsory postal services discharged by the universal postal service provider may only be determined by the Act on postal services or by the public service contract for universal postal service delivery (Art. 14(7)).

The development clause

Because of the public interest nature of postal services, the development of the postal service network in the interest of the delivery of the universal postal service forms part of general territorial development tasks discharged by the State, which may use for this purpose the financial instruments identified in the act on territorial development or may provide monetary subsidies (Art. 14(3)).

The efficiency clause

The universal postal service must be delivered by the universal postal service operator most effectively and with the lowest possible net costs (Art. 14(8)).

The non-discrimination clause

The delivery of universal postal services must comply with the requirement of equal treatment and universal postal services must be provided to users under the same contractual conditions (Art. 14(9)).

The contracted universal service provision clause

The universal postal service provider may contract with other operators which do not qualify as postal service providers (partner operators) concerning the delivery of universal postal services subject to the requirement that the activities carried out as part of the delivery of universal postal services will be carried out by the universal postal service provider (Art. 14(1a)).

Partner operators may be obliged to use particular image components and may be obliged to suspend their contractual operation when universal service delivery is suspended or limited (Art. 14(1b)).

The contractual operation of partner operators supplementing the delivery of the universal postal service is performed in the name of the partner operator, but the postal authority is notified of the contracting out and the tasks carried out under the contract (Art. 14(1c)).

The partner operator carries out its activities as a postal service operator by virtue of the contract concluded and becomes entitled to

carry out the postal services identified in the contract (Art. 14(1d)).

The activities carried out by the partner operator under the contract forms part of the universal postal services delivered by the universal postal service provider (Art. 14(1e)).

The contract concluded with the partner operator cannot jeopardise the delivery of universal postal services (Art. 14(1e)).

The universal postal service provider is responsible for the contractual operation of partner operators and for the enforcement of the applicable quality requirements with regards to their operation (Art. 14(1e)).

3.4.10.1 The obligation to consider liberalisation

The future operation of the universal postal service market in Hungary concerning the period after 2020 will be decided by the responsible minister on the basis of the comprehensive review produced by the postal authority and in compliance with the requirements of objectivity, transparency, non-discrimination, proportionality and of the at least possible degree of market distortion (Art. 18(2)). In case the review of the postal authority supports the liberalisation of the universal postal service market, an open call for the operation of that market must be published (Art. 18(3)). In case the review of the postal authority supports a differentiated liberalisation of the universal postal service market, the open call must be published accordingly (Art. 18(4)). The open call must be transparent and non-discriminatory, the detailed rules of which must be laid down in regulation by the responsible minister (Art. 18(5)). In case the conditions are not suitable for liberalisation through an open call, the postal authority recommends the extension of the public service contract for universal postal service delivery (Art. 18(6)).

The postal authority reports to Parliament bi-annually concerning the development of the liberalised postal market, especially on the question of access to the postal network, and makes recommendations as to the fostering of effective competition in the market by way of ensuring access to certain components of the universal postal service network, or by means of ensuring equal and transparent access to services provided under the framework of universal postal service delivery (Art. 63).

3.4.10.2 Access to universal postal services

The access to universal postal services as ensured by the universal postal service provider must meet the demands of users (Art. 16(1)).

The clearance and delivery of postal items as part of universal postal service delivery must be made available in every locality (Art. 16(2)).

3.4.10.3 The price of universal postal services

The price of universal postal services must be determined having regard to the following (Art. 17(1)).

The general principle

Prices must be based on the costs of service delivery, and must, thereby, foster effective service delivery.

The determination of prices must be transparent, the prices must be non-discriminatory and they must be affordable for users, and they must ensure that the universal postal service is accessible irrespective of the geographical location of users.

The equal price clause

Prices for the same categories of universal postal services must be the same in the entire territory of the country irrespective of the geographical location of the delivery of those services (Art. 17(2)).

Regulated price clause

The method of determining prices for the delivery of postal items not heavier than 50g and of official documents is regulated by the responsible minister (Art. 17(3)).

3.4.10.4 The compensation of unfair financial burdens

The universal service provider is entitled to have its unfair financial burdens compensated (Art. 29(1)).

Unfair financial burdens are defined as the circumstance when the net costs of the universal postal service provider exceed 1 per cent of the costs incurred in connection with universal postal service delivery (Art. 77(1)).

The net cost of universal postal services are the costs incurred in the delivery of those services, when calculating which account must be taken of the advantages realised by the service provider, including non-material and market advantages, the right to a reasonable profit, and the interest of fostering the achievement of cost efficiency in the operation of the universal postal service (Art. 21(1)).

The universal service provider may receive compensation for its unfair financial burdens arising in the context of the delivery of the universal postal service from the Account Supporting the Universal Postal Service established under legislation, or, in case this form of compensation is

ineffective, the responsible minister examines the possibilities of avoiding such burdens or for compensating them more effectively. These include the possibility of imposing, for the purpose of ensuring the continuous operation of universal postal services, further obligations on licensed postal service providers (Art. 18(7)).

3.4.10.5 The public service contract (for universal postal services)

The public service contract for the delivery of universal postal services is concluded in compliance with the requirements of transparency, proportionality and non-discrimination, and having regard to the capacities of the State budget (Art. 19(1)).

The public service contract for universal postal service delivery is concluded for the time interval of the appointment of the universal postal service provider (Art. 19(4)).

The provisions of the public service contract which affect the users of the universal postal service must be published on the website of the universal service provider and must be included in its general terms of agreement (Art. 19(7)).

3.4.10.6 Rules on the operation of the universal postal service market

The obligation to negotiate with licensed postal service providers

The universal service provider is obliged to start negotiating in good faith with licensed postal service providers that intend to use the network of the universal service provider for the delivery of their own services (Art. 27(1)).

The equal treatment of non-replacement postal service providers

The universal postal service provider is obliged to treat in its business relations the providers of non-replacement postal services without discrimination, having regard to the nature of the business relationship (Art. 27(2)).

Contracting with financial service providers

The universal postal service provider may contract with financial service providers for the delivery of certain postal services in settlements with a population less than 10.000 (Art. 27/A).

Exclusive rights clause

The universal postal service provider has exclusive obligations and rights in the Hungarian territory as regards postal services discharged in connection with official documents. The decisions and documentation of public bodies and other bodies determined in legislation, when their delivery attracts legal consequences determined in legislation, may only be delivered as official documents under the exclusive rights of the universal postal service provider. (Art. 30).

3.4.10.7 *The provision of connected public services*

The universal service provider is obliged to start negotiating in good faith in case it is proposed that another public service or service of general economic interest is provided using the postal network of the universal service provider (Art. 33(1)). Such public services include, in particular (Art. 33(2))

the payment of pensions and other public pecuniary entitlements;

the provision of other payment services;

access to electronic public administration services;

access to other electronic public administration services, or the promotion of the development of digital culture.

The universal service provider is under an obligation to contract for the provision of another public service or service of general economic interest through its network, in case the proposal is made by the responsible minister or the head of the organisation responsible for the delivery of that public service, provided that (Art. 33(4))

the delivery of the proposed public service does not jeopardise of the provision of the universal postal service or another public service, and

the revenue gained from the provision of that public service covers the costs of its delivery and a reasonable profit capable of guaranteeing its sustainable operation and which exceeds the costs of amortisation.

3.4.10.8 *The limitation or suspension of universal postal services*

The limitation or suspension of the provision of universal postal services is only permitted on specific general interest grounds, including defence,

national security, public health and public security, or in the case of a *vis maior* or a strike (Art. 34).

3.4.11 The administrative environment

Electronic correspondence clause: correspondence between the postal authority and service providers takes place exclusively electronically (Art. 65(2)).

3.5 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 which is characterised by increasing State- and other public ownership in certain segments. Only the most important legal provisions are included in this legal mapping report.

3.5.1 Overview of the legal and regulatory environment

Under the act, the Hungarian waste market is populated by 'economic operators' which are afforded access to the main segments of that market, including collection, recovery, disposal, trading, brokering, and transport. The term 'economic operator' covers 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 branches and other forms of cross-border 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 of local councils, and as a result of crucial legislative changes the delivery of waste management public services has in effect been renationalised. The core provision is Art. 81 which holds that only economic operators in the direct or indirect majority ownership of the State or local councils may receive a license to carry out waste management public services. The presence of non-State market participants is, however, ensured by the possibility of these economic operators of selecting, in a public procurement procedure, sub-contractors for the delivery of public services (Art. 41(3)). Moreover, in the market for waste treatment services, in case the public service operator does not have adequate waste treatment facilities, an explicit obligation is provided to transfer the waste collected to a licensed waste management operator (Art. 42(2)).

A relatively open market created by regulation

State (public) duties and State (public) ownership

3.5.2 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.

3.5.3 The activities carried out in the Hungarian market for waste

State activities.

Regulatory activities.

Licensed activities.

Notified activities.

3.5.3.1 State activities

3.5.3.1.1 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 plans (Art. 74). The programmes and the regional plans are drawn up for a 7 year period.

3.5.3.1.2 The organisation of waste management public services

At national level, the State is obliged to manage waste management public services carried out as 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 organisation which advises the government on the subsidies provided for waste management public services, the geographical targeting of service areas, and the regulation of waste management public 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 organisation, which is a

registered company owned by the State and forms part of the portfolio of the Hungarian Asset Management Inc. (*Magyar Nemzeti Vagyongazdálkodó Zrt.*).

3.5.3.1.3 *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 the waste management public service operator, and conclude, following a tendering process, the public service contract with that operator. (Art. 33.).

3.5.3.2 *Regulatory activities*

Regulatory activities 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 waste management public 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)).

3.5.3.3 *Licensed activities*

Waste management services can be carried out subject to a waste management license (Arts. 12-14) and to a classification license (Art. 34), obtaining which latter is a condition for concluding a public service contract with the economic operator concerned.

3.5.3.4 *Notified activities*

Trading and brokering with waste is subject to an obligation of notification and registration (Art. 13).

3.5.4 The rules on ownership

The classification license may only be issued to an economic operator authorised to provide waste management public services, in which the State, a local council or an association of local councils 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).

3.5.5 Waste management as a public service obligation

Waste management public services cover operations comprising part of the statutory public service. The public service encompasses inter alia the collection, transport and treatment of waste and the operation of the related

waste management facilities. The tasks and competences are allocated to the national and local (municipal) levels.

The minimal level of waste management public 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 waste management public services;

the operation waste management facilities required for waste management public services;

administration.

3.5.5.1 Restriction on public service operators

Apart from waste management public services, public service operators are not allowed to pursue further waste management activities for which a waste management license or registration is required (Art. 42).

3.5.6 Entry conditions in the Hungarian waste management market

3.5.6.1 '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 term '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 organisations, forest management associations, law firms, private pension funds etc..

3.5.6.2 The license

The carrying out of waste management activities is subject to obtaining a waste management license or may be subject to registration. The carrying out of waste management public 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).

3.5.6.2.1 The classification license

Waste management public 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 authorised to provide waste management public 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).

3.5.6.2.2 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).

3.5.6.2.3 The waste recovery license

Waste recovery operations are subject to obtaining a waste management license (Art. 15).

3.5.6.2.4 The waste disposal license

Waste disposal operations are subject to obtaining a waste management license (Art. 17).

3.5.6.2.5 The waste transportation license

Waste transportation is subject to obtaining a waste management license. Certain waste transportation actives (e.g., collection of selected waste at stores, supermarkets) are not subject to licensing (Art. 14).

3.5.6.3 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). Operators are allowed to purchase, sell, transport and mediate waste falling within the scope of waste management public services exclusively on behalf of the public service operator, with the exception when they provider for the treatment of such waste (Art. 13).

3.5.7 The conditions for providing services in the Hungarian market for waste management

3.5.7.1 The public service contract

Waste management public 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.

3.5.7.2 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 public service fee (Art. 46)

- 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 waste management public 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 waste management public 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.

3.5.7.3 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).

3.5.7.4 The principle of cost efficiency

Waste management public services must be organised so as to meet the requirement of cost-effectiveness in realising the relevant 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' bearing in mind the level of the related costs. (Art. 3(1g)).

The principle of cost effectiveness enjoys priority over the requirement of reasonable profit allowed in the public service compensation offered to undertakings under a public service obligation (Art. 3(2)).

3.5.7.5 The prohibition of cross-subsidisation

The amount of the fee charged for waste management public services must be calculated so as to cover the justified costs and expenses of providing waste management public services wholly, while allowing the public service operator to make a reasonable profit from that activity. However, the determining of reasonable profit must not entail covering the costs and expenses of other economic activities outside of waste management public services. (Art. 3(1h)).

3.6 Public water supply and water utilities

The Hungarian market for public water supply and water utilities is regulated by Act 2011:CCIX on water utility public services which implemented Directive 2000/60/EC establishing a framework for Community action in the field of water policy. It regulates a market with strong public service obligations, and where market opportunities are severely restricted by extensive State- and other public ownership. Only the most important legal provisions are included in this legal mapping report.

3.6.1 Overview of the legal and regulatory environment

The provisions introduced, with a 5 year transitional period, by Act 2001:CCIX fundamentally changed the market. State- and other public ownership were reinstated, State responsibility for public service provision was reinforced, and State involvement in the market was augmented (Art. 5). With the exception of the concessions available for water utility public service provision and the undertakings providing 'out-sourced' services, it operates as a closed market with entry severely restricted by the rules on State- and other public ownership. Technical modifications in the legal framework, especially those concerning the so called 'customer equivalent' index, stimulated concentration in the market and led to a drastic reduction in the number of market participants (from 400 to 40) (Art. 37/A).

A closed public market created by regulation

3.6.2 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.

3.6.3 The activities carried out in the Hungarian market of public water supply and water utilities

State (and local council) activities.

Regulatory activities.

Licensed activities.

3.6.3.1 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 under legislation as a public task. Local councils and, exceptionally, the State are not only entitled but also obliged to provide customers water utility public services (Art. 1(1c)).

Local councils are provided with the fundamental competences regarding public water utilities operating in their geographical area. The State's competences are limited to the water utilities owned exclusively, or at least in 50 per cent by the State (Art. 9(1)).

3.6.3.2 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 public water utility service providers (Art. 5/A). It also acts as a consumer protection authority in certain domains (Art. 5/E).

3.6.3.3 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).

3.6.4 The rules on ownership

Act 2011:CCIX prioritises State or other public ownership in connection with public water utilities and with undertakings providing public water utility services. Public water utilities, as defined by the act, are owned exclusively by the State or/and local councils. Water utilities can be classified, on request, as a 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 into the public water supply network are not regarded as public utilities under legislation. (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 also in exclusive State-ownership, or in the exclusive ownership of the local council which bears the responsibility for organising the public service in question.

The legal framework, however, recognises the possibility of public water utility services being provided under a concession (Arts. 27-28) 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)) provides further that this undertaking must operate as a 'transparent company'.

The requirement of transparency is met by companies holding legal personality, when

their ownership structure and the real owner (a natural person) can be identified;

the company has tax residence in EU, EEA, OECD Member States, or in a third country, which has a double taxation treaty with Hungary;

it is not classified as a 'controlled foreign company' under 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) meets all the above three requirements.

The legal framework enables the contracted public water utility service provider to outsource certain of its activities (e.g., daily operation of water utilities, customer service etc.) to undertakings which qualify as a 'transparent company' as defined in Act 2011:CXCVI on national assets. The State and/or local councils must own directly or indirectly the qualified majority of the shares in 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)).

3.6.5 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. These operating contracts are approved in the operating license issued by the regulator. (Art. 15).

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 jointly by them (Art. 16(6a)). They can establish and own, exclusively or in joint ownership with the State and/or local councils, other service provider companies (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 following, as a main rule, 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, the repairing of public water utilities, the operation of customer

services, meter reading, the collection of fees, supervising consumer premises, and the replacing of primary water-meters. Out-sourced activities may be carried out by companies classified as 'transparent company' only. (Art. 45(5)).

3.6.6 Entry conditions in the Hungarian market for public water supply and water utility services

3.6.6.1 The service provider license

The service provider license is a specific classification license qualifying the applicant as a 'water public service provider'. It can be requested, on application, only by limited liability companies (*korlátolt felelősségű társaság*) and by public companies (*zártkörűen működő részvénytársaság*). (Art. 37).

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 sustainable and long-term public water supply, or the applicant possesses neither the technological assets and equipment nor the human and financial resources necessary to provide such services;

the applicant is under insolvency or liquidation procedure;

an earlier license of the applicant or its predecessor company was, in the previous 10 years, withdrawn as a result of circumstances within its control.

As a general rule, the modification or the withdrawal of the license must not lead to the impairment of the supply safety or quality (Art. 37/A(8)).

3.6.6.2 The operating license

The operating license can be requested by 'public water service provider' companies in possession of a service provider license. The operating license authorises as well as obliges the 'public water service provider' company to provide under exclusive rights 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 in the application does not meet the requirements laid down in legislation and the implementing legal provisions relating to the operating area and the structure of the public water supply;

the applicant does not meet the requirements laid down in legislation and in the implementing legal provisions;

minimum level of the so called 'customer equivalent' – derived from all operating licenses held by the applicant, including the license procedures in progress – is not met.

The regulator cannot refuse applications from undertakings which possess an effective service provider license obtained before 31 December 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 must not lead to the impairment of the supply safety or quality (Art. 37/A(8)).

3.7 Mining

The Hungarian mining industry is regulated by Act 1993:XLVIII on mining which provides a general regulatory framework for all mining activities – in the broadest sense. The provisions specifying regulatory and technical details are found in Government Decree 203/1998. These measures, in principle, provide for an open Hungarian mining sector. Only the most important legal provisions are included in this legal mapping report.

3.7.1 Overview of the legal and regulatory environment

Mining is, in principle, an open sector in the Hungarian economy. The dynamics of the market are, however, heavily affected 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 by means of concession agreements (Art. 8). The restrictions imposed under legislation 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 with regulators in other EU Member States in cases having a cross-border dimension (Art. 42/V(1)).

Market access
ensured

EU compliance

3.7.2 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 non-mining activities 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, the operation and the closure of mineral borrow pits for 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, and manual gold washing are not covered by the act.

3.7.3 Mining concessions

The following raw material 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 with the determining of the concession area (Art. 9(1)), which is followed by a public tender procedure (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 spent (Art. 12(1)).

Concession rights are transferable by contract subject to the approval of the responsible minister. In such an instance, 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 under the entire duration of the concession agreement (Art. 13(1)).

Mining concession holders must pay to the State a mining royalty at 16 per cent of the income generated (Art. 20(1)). The concession holder automatically acquires property rights over the extracted mineral raw materials or geothermal energy (Art. 3(1)).

3.7.4 The national security clause

Mining permits may be 'denied or withdrawn for the reason of national security in case of a business organisation owned by non-EU citizens or non-EU countries' (Art. 22/A(7)).

3.8 Agricultural and forestry land

The market for agricultural and forestry land in Hungary is regulated by Act 2013:CXXII on the trading of agricultural and forestry land. The act 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 then existing legal framework 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 were not Hungarian nationals, or who did not habitually reside in Hungary.¹⁴⁶ The derogation was extended for a further 3 years in 2011.

3.8.1 Overview of the legal and regulatory environment

The 2013 act, replacing the previous provisions, introduced a restrictive regime for the acquisition and use of land. While meeting the relevant legal obligations in EU law was clearly a priority for the act, the changes implemented in the legal and regulatory environment restricted the market raising issues under EU law. The infringement procedure, which was brought before the Court of Justice in June 2016, addressed the violation of the principle of legal certainty, the right to property, and of the acquired rights of investors which occurred, mainly, as caused by the circumstances of introducing the new legal provisions.¹⁴⁷ 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, and the categorical termination under legislation of land lease contracts concluded before July 1994. The more recent infringement procedure initiated in March 2016 deals with the ban introduced in the 2013 act on the acquisition of land by legal persons and the obligation imposed on buyers to farm the land themselves.¹⁴⁸

The restrictive regulation of the acquisition of the ownership of land by natural persons (Art. 10), as well as the limitations on plot sizes, in the light of the jurisprudence of the EU Court of Justice, does not raise issues under

A restrictive
legal
framework

Problematic
ban on legal
persons

¹⁴⁶ The derogation did not extend to EU citizens who intended 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. The application of the derogation was subject to meeting the principle of equal treatment, and prior authorisation processes for the acquisition of land were subjected to the general requirements 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.

¹⁴⁷ IP-16-2102. There are two preliminary ruling cases referred by Hungarian courts to the Court of Justice on this matter, which are registered as Case C-52/16, SEGRO, (OJ 2016/C 133/22) and Case C-113/16, Horvath, (OJ 2016/C 211/30).

¹⁴⁸ IP-16-1827.

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 negative assessment of the restrictions 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 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), are unlikely to raise problems under EU law. 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 2013 act.¹⁴⁹ 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', because of its broad scope, may be problematic under EU law, which demands 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 on 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 free movement of capital and freedom of establishment,¹⁵⁰ their ability to exercise their powers 'on the basis of known facts and to their 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 rather general, thus potentially far-reaching, 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

The administrative environment is generally acceptable

¹⁴⁹ Decision 17/2015, ABH 2015, 773.

¹⁵⁰ *ibid.* declared that their contribution is indirect and is of private law nature.

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 not particularly reassuring. The act had to undergo improvements already following the decision of the Constitutional Court which annulled the provisions concerning the powers of active and passive veto (former Art. 27(2)) on account of the violation of the requirements of objective assessment and effective legal redress.¹⁵¹

3.8.2 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).

The concept of farmers 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).

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)).

¹⁵¹ *ibid.*

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.

3.8.3 Acquisition by gift

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)).

3.8.4 Administrative approval

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).

3.8.5 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 by 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 no 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 the acquiring of agricultural land (Art. 14(2)).

3.8.6 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 held 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 held 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)).

3.8.7 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 had its residence or centre of 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 had 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 their validity and ability to enter into force (Art. 23(1)).

The authority refuses to approve the contract 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 regarding the exercise of pre-emption rights were violated.

The agricultural authority needs to obtain a position statement from the local land committee concerning the refusal or the approval of the declarations issues in the acquisition contract concerning 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 to its best knowledge, having regard especially to the fact (Art. 24(2))

whether the acquisition contract is suitable for the circumvention 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 effect, 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.

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 under this act to acquire the ownership of land

3.8.8 The obligation and transfer of usage

The owner may only transfer the usage of land to the natural or legal person identified in the act, and for the purposes, in the manner, and to the extent also defined in the act (Art. 38(1)).

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, unless it covers (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 no outstanding payment obligations relating to the use of land (Art. 42(3)).

The limitations on the size of land acquired for ownership also 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).

Leasehold contracts 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).

3.8.9 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 legislation (Art. 60(1)). In such cases, the entire contract is void (Art. 60(3)).

Compliance with the statutory provisions is controlled by the agricultural authority (Arts. 62-64).

3.9 The health care sector

The Hungarian health care sector, including the market for health care services is regulated by multiple legislative provisions (Act 1997:CLIV on health care; Act 1991: XI on the powers of health care authorities and the procedures before them; Act 2006:CXXXII on the development of the health care system; Act 1997:LXXXIII on health care services provided under compulsory health insurance; Act 2003:LXXXIV on the different forms of carrying out health care services; Government Decree 96/2003 on the general conditions of providing health care services and on the procedure for obtaining operating licenses).¹⁵² They establish a health care sector where the State bears primarily responsibility, as declared in legislation, for the delivery of health care services, State- and other forms of public ownership are dominant, the majority of services are provided as public services, and where the achievement of the related public health policy objectives is ensured by direct State involvement in the form of establishing, maintaining and financing the health care infrastructure. The market and market operators are not, however, excluded. Only the most important legal provisions are included in this report.

3.9.1 Overview of the legal and regulatory environment

The Hungarian health care sector is populated by so called 'health care providers' which provide under an operating license (Art. 108(1)), or in some circumstances upon notifying the health care authority (Art. 108/A(1)) either health care public services, or health care services in a competitive market environment. Health care professionals are obliged to register in an operating registry (Art. 108/A(1)). In principle, the sector accommodates under legislation different health care providers operating in different ownership constructions and in different operating forms funded from different – public and private – sources (Arts. 1(d) and 2(4)). At the level of legislative provisions, the segments of the Hungarian health care sector operated as competitive markets provide equal access and equal opportunities to EEA economic operators. Art. 2 holds as a general principle that equal conditions are provided for health care providers irrespective of their ownership and operating form. The substantive and the procedural rules relating to licensing, notification and registration are transparent and reasonable. The legal provisions governing market entry do not involve directly discriminatory provisions and provisions which would unduly hinder the access of EEA economic operators to the Hungarian market.

The Hungarian health care sector remains to be dominated by robust State and other public (local council) presence and by the influence of significant

Access to the
sector ensured

Robust direct
State
involvement

¹⁵² When the measure is not indicated specifically, the cited provision is from Act 1997:CLIV.

public interest considerations. Public health protection and the operation of the health care system are regulated not only as a public task (Arts. 143-152), but also as the responsibility of the State (Art. 141). The majority of health care services are provided as health care public services by public health care providers which are financed by the State (Act 2006:CXXXII). The possibility of contracting by health care providers with other health care providers for the delivery of health care public services opens somewhat the sector (Art. 2(1), Act 2006:CXXXII). A centralisation of the sector under State-ownership and maintenance was prepared by Arts. 1/B-1/J, Act 2006:CXXXII which enabled to the transfer from local governments of public health care services and the related institutions, assets and debt to State management and ownership. The operation of the sector is evidently subjected to achieving the relevant public interest objectives, which are of outstanding social importance, such as the improvement of health, ensuring equal opportunities by way of providing access to health care, protecting the dignity, identity, self-determination and other rights of patients, realising concrete public health policy objectives, promoting advances in biomedical research (Art. 1), and such as providing equal opportunities in obtaining health care services and maintaining institutional adaptability capable of reflecting demands and the offer of therapies (Art. 2). The most fundamental rights of patients regulated in Arts. 6-8 indicate the particular burdens faced by health care providers in this sector.

The general EU compliance clause is provided in Art. 247(6). In certain areas, such as the recognition of professional qualifications as part of the personal conditions of providing health care services (Art. 110), detailed regulation was introduced to ensure compliance with the applicable EU rules.

EU compliance

3.9.2 The different segments of the Hungarian health care sector

Health care public services.

Health care services.

Health care services are the services defined in Act 1997:CLIV (Art. 2, Government Decree 96/2003).

Health care public services are health care services financed in part or completely from the State budget or from the National Health Insurance Fund (Act 2006:CXXXII and Art. 2, Government Decree 96/2003).

3.9.3 The different health care services provided

Emergency services (Art. 77).

Out of hours services, with contribution from the National Ambulance Services (Art. 93).

Preventive medicine (Arts. 79-80).

Basic health care provision (Art. 88).

Specialised health care provision (Arts. 89-92).

Ambulance services, including the transportation of patients under medical supervision (Art. 94).

Transportation of patients (Art. 97).

Care services (Art. 98).

Health care services covering special health care needs (Art. 98/A).

Hospice care services (Art. 99).

Rehabilitation care services (Art. 100).

The supply of medical appliances (Art. 100).

The supply of medical devices (Art. 101).

The provision of pharmaceuticals (Art. 102).

The provision of blood services (Art. 223).

Psychotherapy and clinical psychology (Art. 103).

Non-conventional therapies (Art. 104).

Other health care provision, including subsidiary health care services (Art. 105).

Expert activities carried out as part of health care provision (Art. 106), including the determining of the suitability to work and the measuring of the state of health, damage to health and of the suitability to work.

The operation, under a license, of bath and climatic health institutions by a health care provider or partial health care provider (Art. 240).

3.9.4 The activities carried out in the Hungarian health care sector

State activities.

Local council activities.

Regulatory activities.

Activities by health insurers.

Licensed activities.

Notified activities.

3.9.4.1 *State activities*

State activities involve the organisation and management of health care (Art. 143), the determination and execution of health policy (Arts. 145 and 147), and the preparation and execution of regional health development plans (Art. 146).

3.9.4.2 *Local council activities*

Local council activities (Art. 152) include the operation of local council-owned or maintained health care services, and the preparation and execution of local health development plans.

3.9.4.3 *Regulatory activities*

Regulatory activities (Art. 150) involve administering education, training and further training in health care, determining professional standards concerning health care services, supporting and coordinating scientific research, managing the necessary registers and information systems, professional supervision, managing national health care institutions and State-owned or maintained health care services, overseeing the pharmaceutical, medical appliances and medical devices markets, and determining the system of quality assurance in health care.

3.9.4.4 *Activities by health insurers*

Health insurers (Art. 154) contract for the capacity necessary for the delivery of health care services, and finance and monitor the services provided.

3.9.4.5 *Licensed activities*

As a main rule, the provision of health care services may only be commenced and continued subject to obtaining a license from the responsible health care authority and according to the license obtained (Art. 108(1) and Art. 6, Government Decree 96/2003).

3.9.4.6 *Notified activities*

The provision of certain health care services may be commenced and continued upon notification to the health care authority, following registration with that authority (Art. 108/A(1)).

3.9.5 The responsibility of the State

The State bears responsibility for the state of health of the population, especially for making it possible for communities and individuals to protect and develop, or to restore, when that is possible, their state of health (Art. 141(1)).

State responsibility involves, among others (Art. 141(2)-(4)): ensuring the suitable operation of the health care system, ensuring the operation of the system of health insurance, protecting human dignity and self-determination in the health care context, determining and executing public health policy, supporting and organising medical research, and financing the provision of health care services.

3.9.6 Responsibility for the provision of health care public services

Responsibility for the provision health care public services is with the local council, the State, or with the organisation made responsible (Art. 1/A, Act 2006:CXXXII).

3.9.7 The right to health care

Every patient has a right to life saving medical interventions, to medical interventions which prevent serious or permanent health damage, or relieve pain, or lower suffering (Art. 6).

Every patient has a right, as determined by legislation, of access to adequate, continuously available treatment justified by his health status in compliance with the requirement of equal treatment (Art. 7(1)). Adequate treatment entails the provision of therapies according to the applicable professional and ethical rules and guidelines (Art. 7(2)). Continuously available treatment refers to therapies access to which is ensured by the health care system for 24 hours every day (Art. 7(2)).

Patients have the right to choose the health care provider and the health care professional on the basis of their health status as justified by professional considerations, unless it is excluded on professional grounds, on grounds of expediency, or on the basis of their entitlement to health care (Art. 8).

3.9.8 Ambulance services

Providing and organising the conditions for providing ambulance services are State tasks (Art. 96(1)).

Ambulance services are provided either by the National Ambulance Service, or by other licensed organisations as determined in their operating license and in the cooperation agreement concluded with the National Ambulance Service (Art. 96(2)).

3.9.9 Transportation of patients

The transportation of patients (unsupervised transportation to enable access to health care) is a health care service provided under a license, provided that the access of the patient concerned to health care cannot be ensured by other means. It is coordinated by the National Ambulance Service as determined in legislation and in the cooperation agreements concluded with the licensed patient transportation organisations. (Art. 97).

3.9.10 The provision of blood services

The provision of blood services is a health care and social task. Its aim is to provide blood and blood products for medical interventions, or to enable the therapeutic use of blood products. The provision of blood services is a State task discharged by the State blood services. It does not involve the sale of blood products in public pharmacies. (Art. 223).

3.9.11 Entry conditions in the Hungarian health care sector

3.9.11.1 The general clause

Everyone is entitled in Hungary, subject to meeting the applicable requirements laid down in legislation, to obtain the professional qualifications necessary for the provision of health care services and to provide, in the selected form and according to his possibilities, health care services (Art. 3(1), Act 2003:LXXXIV).

3.9.11.2 The forms of carrying out health care services

Health care services may be provided in the following forms: as self-employed activity, as a one-person undertaking, as a member of a one-person undertaking, as a member of a company, in civil service, in State employment, under an employment contract, under a service relationship, as an ordained member of a church, or as a volunteer (Art. 7(2), Act 2003:LXXXIV).

Health care professionals in a self-employed capacity are entitled to provide within their professional competences health care services on the basis of a contract with any health care provider. The health care professional acts in the name of the health care provider concerned. This is not subject to obtaining an operating license or compulsory liability insurance, unless the latter is required by the health care provider. One-person undertakings may also be contracted for the delivery of health care services in a self-employed capacity, which, however, cannot operate as a health care provider and may only carry out the registered health care service personally. (Art. 8(1)-(5), Act 2003:LXXXIV).

Health care professionals, registered in the operating registry, are entitled, having obtained the necessary licenses, to operate as health care providers, in their own name and under their own responsibility, in the form of a one-person undertaking. With the exception of those excluded by legislation and those which are assigned by legislation to a certain health care provider, all health care services can be provided by one-person health care undertakings. (Art. 10, Act 2003:LXXXIV).

Health care professionals, registered in the operating registry, are entitled, having obtained the necessary licenses, to provide health care services as members of a company – including both companies with and without legal personality – in the name and under the responsibility of that company (Art. 11(1), Act 2003:LXXXIV).

3.9.11.3 Licensing

The carrying out of the licensing procedure is subject to the payment of an administrative service fee (Art. 108(5)).

Licenses to provide health care services may only be issued when the applicant has liability insurance to cover the damages caused during the provision of health care services. In case the liability insurance is cancelled, the license is withdrawn by the health care authority unless a new liability insurance is secured with another insurer (Art. 108(2)).

3.9.11.4 Notification

Notified health care services (Art. 108/A(2)) are

services provided exclusively under a contribution contract as regulated in the legislation governing the general conditions of providing health care services,

such services may be carried out only in the forms specified in Act 2003:LXXXIV on certain questions of health care provision and exclusively in the form of personal service provision.

Notified health care services may be provided without compulsory liability insurance in the case such services are allowed to operate under the responsibility of the health care provider (Art. 108/A(4)).

3.9.11.5 Material and personal conditions

Material conditions include the material conditions necessary for the provision of health care services. The service provider must also comply with the requirements governing the conditions of work in a health care context. (Art. 109).

Personal conditions include (Art. 110)

the ability to provide health care services individually or under supervision (professional training and qualifications requirement, and registration in operations register),

- for individuals unregistered in the operations register that have professional qualifications which may be recognised in Hungary, with the purpose of obtaining the necessary training, an operating license may be issued in justified circumstances to carry out certain professional activities at a certain place of operation and in a certain time period (the actual recognition of the professional qualifications obtained in another State is not necessary);
- for individuals, having obtained, after finishing higher education, qualifications in traditional Chinese medicine at least 5 years before submitting the application, an operating license may be issued to carry out the professional activities covered by the qualifications in a certain time period (the actual recognition of the qualifications obtained is not necessary);
- individuals, without the necessary professional qualifications, may participate in their own medical treatment, or in the medical treatment of another person which person has given his consent to this end;
- individuals entitled to free movement and residence under EU law (Art. 110(10)), that either have professional qualifications which may be recognised in Hungary, or have professional qualifications which may not be recognised in Hungary but can

prove that 5 years before notification in Hungary have worked regularly for at least 3 years in a position in health care service provision requiring notification in another EEA Member State, are entitled to provide upon notification to the health care authority health care services, subject to the condition that they do not exercise their right of establishment under EU law and have been providing such services in another EEA Member State as established in that State. The provision of health care services in a non-EEA Member State must also be considered as being relevant in the notification procedure.

3.9.12 Health care public services

3.9.12.1 Financing

Health care services financed through the compulsory health insurance system are provided by health care providers under a financing agreement with the State health insurer (Art. 9, Act 1997:LXXXIII). Health care providers financed under a financing agreement from the National Health Insurance Fund cannot charge a fee for the health care services provided (Art. 9/B, Act 1997:LXXXIII).

3.9.12.2 Contracting out

Health care providers are entitled to contract with other health care service providers for the provision of health care public services (Art. 2(1), Act 2006:CXXXII) (an agreement on the fulfilment of health care provision obligations, or a health care provision contract). This does not affect the obligations and the responsibilities of the health care provider for the delivery of contracted health care services (Art. 2(2)).

The health care provision contract (Art. 2/A) establishes an obligation for the health care provider to provide on a continuous basis and in accordance with the applicable professional rules the health care public services identified.

The contract is concluded for an indeterminate amount of time; in case the parties agree on a contract for a determinate amount of time, it cannot be shorter than two years (Art. 2/B(1)). The rights and obligations regulated in the contract cannot be transferred to a third party or to further parties (Art. 2/B(2)).

The health care provision contract cannot be concluded with a health provider which (Art. 2/C)

is subject to insolvency, liquidation or winding up procedures;

has registered outstanding taxation, customs or national insurance payment obligations;

is subject to the criminal sanctions applicable to legal persons;

had been party to a previous health care provision contract which was, however, terminated for the breach of contractual obligations.

The health care provider must provide a pecuniary security as determined in the health care provision contract (Art. 2/D).

3.10 The social services sector

The Hungarian social services sector, including the market for social services, is regulated by Act 1993:III on social services. The detailed rules on entry and operation are provided by Government Regulation 369/2013 on the registration and supervision of social service providers and by Regulation of the Minister for Social and Family Affairs 1/2000 on the tasks of social institutions providing personal care and the conditions of their operation.¹⁵³ These measures establish a social care sector where local councils and the State bear primarily responsibility for the delivery of social services, State and local council maintained service providers and social institutions are the dominant actors, the overwhelming majority of social services are provided as public services, and where the achievement of the related constitutional and social policy objectives are ensured by direct State and local council involvement in the form of maintaining, operating and financing the social care infrastructure. The market and market operators are not, however, excluded completely. Only the most important legal provisions are included in this report.

3.10.1 Overview of the legal and regulatory environment

The Hungarian social services sector is populated by so called ‘social service providers’ and ‘social institutions’ which provide following registration in the service registry (Art. 92/K) what is defined in legislation as personal care social services. These actors are either local council or State maintained, or they are maintained by a church or a non-State maintainer (Arts. 56 and 120). In principle, providers of social services under Act 1993:III, irrespective of the identity of their maintainer, are entitled to State financing to cover their activities (Art. 58/A). At the level of legislative provisions, the contracted out segment of the sector, which does not exclude the participation of commercial social service providers, provide equal access and equal opportunities to EEA operators. The substantive and the procedural rules relating to registration are transparent and reasonable. The legal provisions governing market entry do not involve directly discriminatory provisions and provisions which would unduly hinder the access of EEA economic operators to the Hungarian market.

The Hungarian social services sector is characterised by robust local council and State presence and by the influence of significant public interest considerations. Arts. 1 and 2 identify the provision of social services as a State and local council task. The cover fees chargeable for the provision of social services – including the possibility of fee reductions on social grounds – are subject to detailed regulation (Arts. 114-115). The possibility of church

Access to the
sector ensured

Robust direct
State
involvement

¹⁵³ When the measure is not indicated specifically, the cited provision is from Act 1993:III.

or non-State organisations providing social services is, however, accepted, and the State and local councils are allowed to contract with such maintainers for the delivery of social services (Arts. 56 and 120). Their access is affected by the possibility of charging an entry fee for providing access to certain capacities in the social care infrastructure (Art. 117/C). The provision of extra social services in exchange for the payment of an extra fee is also recognised (Art. 119/A). The operation of the sector is evidently subjected to the achievement of public interest consideration of outstanding importance, such as the protection of social rights, ensuring social security, realising social solidarity and giving effect to the value of taking responsibility for others (Preamble). Art. 3 of Regulation 1/2000 provides that the human and citizens' rights of persons receiving personal care must be protected.

The general EU compliance clause is provided in Art. 141. Government regulation 369/2013 contains a clause declaring the compliance of its provisions with the EU Services Directive (Art. 51).

EU compliance

3.10.2 The different segments of the Hungarian social services sector

Social services (personal care) provided by local councils or the State.

Social services (personal care) provided by church or non-State maintainers.

3.10.3 The different social services provided

The social services provided are either basic or specialised social services.

Basic social services include (Art. 57(1))

- rural administrators;
- meal service;
- home help;
- family assistance;
- community care;
- supporting services;
- street social services;
- day care.

Specialised social services are provided by (Art. 57(2))

- care institutions;
- rehabilitation institutions;
- care homes;
- temporary care homes;
- organisations providing supported living services;
- other specialised care institutions.

3.10.4 Local council and State presence

The delivery of social services (personal care) is the task of local councils and the State (Arts. 1 and 2).

Personal care, which includes basic and specialised social services, is provided by the State or the local council (Art. 56(1)).

Social cooperatives are excluded from providing personal care social services (Art. 58/A(3)).

3.10.5 Local council and State obligations

Local councils are obliged to provide the following social services (Art. 86): family assistance, meal service, home help, social services depending on the number of residents, and enabling access to other social services.

The State is obliged (Art. 87) to provide specialised social in larger cities, in the capital and at county level services through the maintainer body appointed in legislation.

The local council may discharge its obligations through (Art. 91(1))

- the maintaining of a social service provider or a social institution;
- participation in a local council partnership established for the purpose of maintaining a social service provider or a social institution;
- an agreement concluded with the maintainer of a social service provider or a social institution for the purpose of taking over from the local council the delivery of social services, or by means of a social service delivery contract concluded.

The maintainer body appointed in legislation by the State may discharge its obligations through (Art. 91(2))

- the maintaining of a social service provider or a social institution;
- an agreement concluded with the maintainer of a social service provider or a social institution for the purpose of taking over the delivery of social services, or a social service delivery contract concluded.

3.10.6 The obligations of the maintainer (State, church and other)

The maintainer ensures the conditions of the continuous operation of the social institution (Art. 92(A)).

The maintainer of a social institution providing personal care (Arts. 92/B and 92/C)

- determines the institutional cover fee charged;
- supervises the lawful operation of the institution;
- approves the internal regulations of the institution;
- supervises and assesses the professional work of the institution;
- ensures training and further training for staff;
- prepares a service planning framework;
- where applicable, determines the capacities which may only be available in exchange for an entry fee.

In case the maintainer of a church- or non-State maintained social institution providing live-in services fails to observe the applicable legislation, the licensing authority initiates the partial suspension of the State financing made available (Art. 92/C(5)-(6)). The suspended financing will be paid out when the cause of the suspension is successfully addressed (Art. 92/C(7)).

3.10.7 Limitations on the number of persons in care

Care institutions, rehabilitation institutions and temporary care homes may only provide for the care of a minimum of 10 and a maximum of 150 persons (Art. 57(3)).

The persons cared for in social institutions must not exceed, on any day, 110 per cent (in case of day care institutions) and 105 per cent (in case of live-in institutions) of the number registered in the service registry. In annual average, that number must not exceed 100 per cent of the registered number. (Art. 92/K(5)).

3.10.8 Organisational framework

Institutions providing social services may operate in a single or in an integrated organisational structure, the latter combining different service types and institutional forms (Art. 85/B).

3.10.9 Financing from the State budget

Social service providers registered in the service registry, the church maintainer providing social services through a social institution, and the non-State maintainer, as determined in the act of the State budget, are entitled to receive financing from the State budget to cover the social services provided (Art. 58/A(1)).

As a condition of eligibility for State financing, the new social service provider, the new social institution, the new social service, the new number of persons given care, the new task allocation, and the new care places must be accepted explicitly as being covered by the financing system established under legislation having regard to the territorial allocation of social services (Art. 58(A(2))).

This acceptance of State financing coverage is not required in case of (Art. 58/A(2b))

- social service providers and social institutions maintained by bodies appointed in legislation to carry on the maintainer tasks of the State;
- family assistance and child welfare services;
- street social services;
- low-benchmark services provided to people with addiction;
- supported living.

The acceptance of State financing coverage must be given irrespective of the capacities affected in case of (Art. 58/A(2c))

- State-maintained social service providers and social institutions carrying on compulsory local council tasks;
- social service providers and social institutions receiving financing from the EU, the Swiss Fund, the EEA Fund, the Norway Fund or the State budget secured in an open call for funding.

The application of church and non-State maintainers for State financing must be submitted to the Treasury which proceeds as the first instance and the second instance public authority in the application process (Art. 58/A(4) and(7)).

3.10.10 Entry conditions in the Hungarian social services sector

Any maintainer may provide social services in Hungary, in case they comply with the applicable conditions laid down legislation and the social service provider or the social institution maintained is registered in the service registry (Art. 92/K(1)).

The provision of social services is subject to registration in the service registry (Art. 92/K(1)).

The license holder will be registered in the service registry in case it complies with the conditions laid down in legislation (Art. 22, 369/2013).

The sectoral identifier is the identification mark of the license holder issued to the license holder (Art. 7, 369/2013).

The license holder may commence operations, as a main rule, after the entry into force of its registration in the service registry (Art. 8, 369/2013).

As a main rule, registration is given for an indeterminate amount of time (Art. 9, 369/2013).

Electronic administration

Registration in the service registry (the application, the declarations, the documentations attached) is electronically administered, and the decisions taken are communicated electronically (Art. 92/K(4d)). Applications must be submitted in the electronic formula made available online (Art. 15, 369/2013). In most procedures, an e-representative may proceed in the interest of the applicant (Art. 16, 369/2013).

General operating conditions (Art. 5(1), 1/2000)

These include

- registration in the service registry;
- an establishing charter, if it is a public body financed from the State budget;
- a professional programme;
- the required internal regulations.

In case of church or non-State maintainers, the organisational and operating rules must contain (Art. 5/B, 1/2000)

- the description of the organisation of the institution;
- an organisation graph;
- the organisational form in case multiple services are provided;
- the identification of organisation units and their tasks;
- the rules of cooperation between organisational units.

Liability insurance

Maintainers of non-state maintained social institutions must continuously hold a liability insurance covering the damages caused under the scope of their activities (Art. 5/C, 1/2000).

Basic personal conditions (Art. 6, 1/2000)

The persons directly providing personal care must have professional qualifications. In institutions providing basic care, this must be at least 50 per cent of total staff. In institutions providing day care or live-in services, this must be at least 80 per cent of total staff. In institutions providing family assistance or child welfare services, this must be 100 per cent of total staff.

Basic material conditions (Art. 4, 1/2000)

The institution providing personal care must

- be easily approachable by public transportation;
- have buildings which are accessible to all;
- have furniture and other equipment which suit the needs of the persons in care;
- have private care rooms, waiting rooms and separate administrative space, in case it is a family assistance or child welfare institution.

Basic professional conditions (Art. 7, 1/2000)

The provider of personal care must prepare a care plan. This can be a personal care plan, a personal rehabilitation plan, or a personal development plan.

3.10.11 The cover fee

In the absence of legislative provisions to the contrary, personal social care services incur a cover fee (Art. 114(1)).

Personal care is provided free of charge to those without an income and, in case of live-in social services, does not have an asset which may be offered as a security for the care provided (Art. 114(3)).

The institutional cover fee is the fee charged for the social service provided in personal care which cannot exceed the costs of the service (Art. 115(1)).

The personal cover fee is determined and included in the agreement concluded with the service recipient. It must not exceed the institutional cover fee. (Art. 115(2)).

The person concerned may in writing undertake the obligation to pay a personal cover fee equal to the institutional cover fee (Art. 117/B).

The personal cover fee for basic social services is determined on the basis of the regular monthly income of the person concerned (Arts. 116-117).

The personal cover fee can be reduced or its payment can be exempted, as determined by the maintainer, when required by the financial circumstances of the person concerned (Art. 115(3)).

The provision of the following social services does not incur the payment of a fee (Art. 115/A): rural administrator, meal service at public kitchens, family assistance, community care, street social services, day care for the homeless, and care at night shelters.

3.10.12 The entry fee

In institutions established for long-term live-in care, the maintainer determines the capacities access to which is subject to the payment of an entry fee. In church- and non-State maintained institutions, such capacities may not exceed 50 per cent of the registered capacities of the institution. The maximum entry fee chargeable is 8 million HUF. In case of an obligation to provide social services, the services cannot be denied from the person concerned in the event of his inability to pay the entry fee. In case the care provided is ceased within 3 years after moving into the institution, a proportionate amount of the entry fee must be paid back to the successors of the person concerned, or to the third person or his successor, if the fee was paid by a third person. The entry fee must be spent by the maintainer on the operation or the development of its social institutions. (Art. 117/C)

3.10.13 Further fees

No further fees may be charged beyond the cover fee and the entry fee (Art. 119/A(1)).

In institutions established for long-term live-in care, the person concerned may request in writing, or the contract concluded between him and the institution may provide for the delivery of extra services, the surplus costs of which must be covered by him. The income thus received must be spent on the extra services provided (Art. 119/A(2)).

3.10.14 Contracted social services

Local councils, the partnership of local councils, or the government or a State body may provide social services or other related services in a social service delivery contract concluded with a church or other non-State organisation, or with a church or non-State maintainer (Art. 120).

3.10.15 Contracting out certain services

The maintainer of social institutions providing personal care, or the director of an independently managed social institution may – in a contract concluded for a maximum of 5 years – contract out certain of the services provided as its task. Such services are, in particular, washing, cleaning, catering, accounting, maintenance, the operation of signalling devices in case of signal-secured home care, and some ancillary services connected to family assistance and child welfare. (Art. 122/A)

The State maintainer or the director of an independently managed social institution publishes, in the locally usual way and in a national newspaper, an open call for the delivery of the contracted out services (Art. 122/C).

3.11 The education sector

3.11.1 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 prioritises State involvement in the provision of what is essentially a public service, 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.

3.11.1.1 *The overview of the legal and regulatory environment of the sector*

The public education sector in Hungary, as regulated currently at statutory level, is characterised by a robust State presence not only in regulation and financing, but also in terms of institution maintenance and the actual provision of education services (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 giving the frame of public education are centrally regulated, the quality framework for public education service delivery is set up and operated by the State, and State bodies enjoy extensive supervisory powers (Arts. 3(9) and 5). The production, publishing and supply of public education textbooks is reserved in legislation for a State monopoly (2.1.2).

The possibility for non-State established and maintained public education, including commercial service provision is, however, explicitly recognised (Arts. 31-33). The framework for establishing and maintaining non-State established public 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 under the principle of mutual recognition (Art. 90). The mutual recognition principle is, however, confined by the clause in Art. 90(1) enabling the rejection of recognition in case the operation of the education institution violates the Fundamental Law, which clause seems to be overly broad in its formulation and allow rather broad discretionary powers to the responsible minister.

Entry to the public education 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 concerning public

Robust State involvement

A margin for non-State, commercial, and independent services

Overall reasonable and objective regulatory burdens

education service delivery imposed in Art. 3(5) seems unproblematic under EU law. The act contains a general EU compliance clause in Art. 100.

3.11.1.2 *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, and 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)).

3.11.1.2.1 *Independent public education*

The responsible minister may establish or authorise the establishment of independent 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 pedagogical 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. The financing of surplus 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. They must obtain an operating license from the responsible minister upon the application of the representative of the institution or the organisation maintaining the institution. (Art. 9(10)).

3.11.1.3 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.

3.11.1.4 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)).

3.11.1.5 The entry conditions in the Hungarian education sector

3.11.1.5.1 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 education establishments may also be established and maintained by local councils (Art. 2(4)).

3.11.1.5.2 The registration

Public education institutions are established upon their registration in the registry of public education institutions (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 their 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)).

3.11.1.5.3 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 their 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 requirements laid down in legislation;

the institution does not 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 an 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.

3.11.1.5.4 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)).

3.11.1.5.5 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.

3.11.1.5.6 The conditions of delivering tasks in public education

3.11.1.5.6.1 The development and education programme and plan

Pre-school education institutions must prepare a pre-school development programme on the basis of the national basic pre-school development programme (Art. 5(2)).

The primary and secondary school framework development and education plans are prepared on the basis of the national basic development and educational plan, 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)).

3.11.1.5.6.2 The material and personal conditions

The delivery of tasks by a public education institution is subject to meeting the following conditions (Art. 22(1)).

It has a permanent seat of operation and it has the premises necessary for the delivery of tasks.

It has permanent personnel sufficient to discharge its tasks.

It has the necessary financial instruments to carry out the tasks.

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));

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)).

3.11.1.5.6.3 Rules on non-State (private and church) established public education institutions

Non-State public education institutions may be operated and may organise their activities under rules different from the general rules laid down in legislation (Art. 31(1)).

They 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 legislation.

In case a private public education institution undertakes, in an agreement, public service tasks, it will be eligible for State funding to cover its operation. In this instance, it will be subject to the provisions on the compulsory admission of children. (Art. 33(1)).

3.11.1.5.7 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 funding 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)).

3.11.1.5.8 International/cross-border provisions

3.11.1.5.8.1 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 contravenes 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 apply 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)).

3.11.1.5.8.2 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 their establishment (Art. 90(4)).

3.11.2 The vocational training sector

The Hungarian vocational training sector is regulated by Act 2011:CLXXXVII on vocational training. The measure establishes a sector which prioritises State involvement in the provision of what is essentially a public service task of robust employment and economic policy relevance. The participation of non-State actors is reserved for the practical training aspect of vocational training aiming to enhance its quality and the employability of students obtaining qualifications. Only the most important legal provisions are included in this legal mapping report.

3.11.2.1 Overview of the legal and regulatory environment

The vocational training sector, as regulated by Act 2011:CLXXXVII, is characterised by near exclusive State presence in the regulation, administration, maintaining and in the operating of vocational training. The sector, as stated in the preamble of the act, is regulated on the basis of strong public interest considerations, such as the requirement of equal treatment, employment and economic policy considerations, the output requirements of flexibility and employability, and the giving effect to the constitutional rights to education and work. The requirement of equal treatment serves as a core cross-cutting principle which must be observed in every aspect of vocational training (Art. 1(2)).

State presence ensures that State-financed school-based vocational training, as regulated in the act, is available free of charge (Art. 29). It is regulated as a State task that it ensures, free of charge, in the framework of school-based vocational training the obtaining of the first and the second State-recognised vocational qualification (Art. 1(1)). At the level of principles, the State, in discharging this task, must have regard to the requirements of effectiveness, professionalism, a high degree of quality, and of equal access (Art. 1(4)). Practical training within the vocational training programme is the domain where non-State entities may take part in the sector (Art. 4(4)).

The general EU compliance clause is provided in Art. 93.

3.11.2.2 The sector

Vocational training is provided by vocational training schools or by entities other than vocational training schools, such as State adult education institutions or other professional training institutions governed by the Act on adult education (Art. 4(1)(2)).

Vocational training provided within the framework of adult education is provided, as a main rule, by the State maintained vocational training school (Art. 33(2)).

A closed
sector

State-recognised vocational training and foundational vocational training (*megalapozó ágazati szakgimnáziumi képzés*), in a State-financed school-based form, may only be provided by (Art. 4/A(2))

vocational training schools maintained by the State maintaining body;

vocational training schools established and maintained by the responsible minister specified in legislation or by the minister responsible for vocational training;

agricultural vocational training schools maintained by a non-State maintainer on the basis of a vocational training agreement.

Integration

Vocational training schools operate in the framework of regional integrated vocational training centres. The responsible minister may establish a maximum of 3 training centres in individual counties and a maximum of 10 training centres in the capitol area. (Arts. 4(3) and 4/B).

Practical training

Subject to meeting requirements laid down in legislation, self-employed persons or companies may provide practical training within a vocational training programme without maintaining a vocational training school (Art. 4(4)).

Qualifications

Vocational qualifications recognised by the State are listed in the National Vocational Registry (Art. 6(1)).

3.11.2.3 Practical training

Students of vocational training undertake practical training as determined in the training framework plan (Art. 35(1)).

Practical training is provided by the practical training organiser (Art. 36).

The practical training of students of vocational training institutions providing school-based training with their seat in Hungary may be based on a pupillage contract (Art. 42(1)). Pupillage contracts may be offered by a practical training organiser undertaking or other organisations which is

registered in the registry of practical training providers operated by the local chamber of commerce (Art. 43(1)). Other organisations include (Art. 43(2))

institutions operating as bodies financed from the State budget;

foundations, associations, church legal persons, and institutions maintained by such organisations;

- these providing vocational training in health care, health technologies, social work, pedagogy, fine and applied arts, sound, film and theatre technology, and defence.

Further, such institutions include the vocational training schools maintained by the responsible minister in areas, such as agriculture, forestry, food industry, and fisheries, provided that practical training is provided by training units which produce to the market.

3.11.2.3.1 Registration obligation

Registration in the registry of practical training providers is available to undertakings and other eligible organisations which meet the personal and material conditions laid down in legislation and undertake the obligation to apply the relevant vocational training framework programme (Art. 43(4)). The procedure of registration is subject to the general principles applicable to administrative procedures (Art. 45).

3.11.2.3.2 Supervision

The provision of practical training within the vocational training framework programme is subject to the supervision of the relevant chamber of commerce under the rules applicable to administrative procedures (Art. 60(1)).

3.11.2.3.3 Financing

Vocational training provided by vocational training schools, including practical training provided by them, is financed from the State budget and from the contribution of the maintainer. The practical training provided by other practical training organisers is financed by the organiser concerned subject to the provisions laid down in legislation. (Art. 84(1)).

Practical training organisers obliged to pay vocational training contribution may not receive funding from the State budget. Other organisers which, wholly or in part, exempt from the payment of vocational training contribution may receive funding from the State budget or have its expenses reimbursed by the vocational training provider financed from State resources. (Art. 84(3)(4)).

3.11.3 The adult education sector

The adult education sector is regulated by Act 2013:LXXVII on adult education and Government Regulation 393/2013.¹⁵⁴ The measures establish a sector which under a broad range of public interest objectives enables the participation of both State- and non-State maintained adult education providers. The public service components of the sector receive State and/or EU training subsidies. Only the most important legal provisions are included in this legal mapping report.

3.11.3.1 Overview of the legal and regulatory environment

The adult education sector, as regulated by Act 2013:LXXVII, is populated by State and non-State adult education providers which operate under robust public interest considerations. As declared by the act, adult education should enable individuals to keep up with technological and other developments, increase their employability, and it should allow them to lead successful and better lives. Regulatory intervention in the sector is also justified by ensuring the better organisation of and higher quality and delivery in adult education provision.

The sector is affected by the considerable breadth of training and education activities being exempted from the sector, the carrying out of the majority of which is reserved for public actors (Art. 1(5)). The sector is divided into subsidised and non-subsidised adult education, the former of which may be subjected to additional restrictions and obligations in the public interest (Art. 23). Economic opportunities in the sector are also affected by the clause prohibiting the contracting out of adult education activities (Art. 3(1a)). Controversially under EU law, the cross-border provision of adult education services is subjected to the general licensing requirements of the act (Art 3(3)).

The general EU compliance clause is provided in Art. 34.

3.11.3.2 The sector

The participants in the sector are legal persons, one person companies, self-employed professionals, and public education institutions maintained by the State maintainer under the Act on public education, which carry on adult education activities (Art. 1(1)(c)).

A mixed sector

State
involvement
and other
restrictions

¹⁵⁴ When the measure is not indicated specifically, the cited provision is from Act 2013:LXXVII.

Adult education activities include non-school based education activities which may be (Art. 1(2)(3))

vocational training leading to a qualification recognised by the State;
other State subsidised vocational training;
subsidised general, other and combined language education;
other education activities;
non-subsidised other vocational training;
non-subsidised general, other and combined language education.

The following activities do not form part of the adult education sector (Art. 1(5)).

The training of defence, detention facility, policing and disaster management personnel.

Training provided by adult education providers when it does not qualify as adult education.

Assessment and testing provided by adult education providers for State-recognised qualifications and State-recognised language certifications.

Education by church legal persons and institutions established and maintained by church legal persons, except when they carry out adult education activities under legislation;

The training of civil servants under legislation.

Professional training in health care.

Teacher training.

Training provided in the exercise of official authority.

Training provided in the framework of the compulsory public activities of a State adult education institution

The training of the judiciary and judicial personnel.

The training of justice personnel.

Training in public procurement.

Professional training in social services.

3.11.3.3 Entry to the sector

Adult education activities are subject to obtaining a license, which will be provided when the requirements laid down in legislation have are met (Art. 3(1)).

Contracting out excluded

Licensed adult education institutions must carry out their adult education activities themselves and cannot contract out those activities to other persons (Art. 3(1a)).

Licensing cross-border service provision

The general licensing requirements are applicable to the cross-border provision of adult education services under EU law (Art. 3(3)).

3.11.3.3.1 Licensing

License applications must be submitted to the responsible authority which proceeds in the basis of the general rules applicable to administrative procedures (Art. 3(2)). The licensing procedure is subject to the payment of an administrative fee (Art. 3(4)). An obligation of electronic correspondence is applicable in licensing procedures and in appeal procedures against licensing decisions (Art. 3(9)).

Licensed adult education service providers are registered in an electronic registry (Art. 5).

Licenses are issued provided that the applicant (Art. 10(1))

- has an approved adult education programme;
- meets the necessary personal and material conditions;
- operates a quality assurance system;
- has a customer relations and complaints-system.

3.11.3.3.2 The conditions of operation

The following conditions of operation must be met (Art. 11(1)).

Adult education activities must be carried out in accordance with the training programme prepared.

An adult education contract must be concluded with every participant of adult education.

The information obligations laid down in legislation must be met.

The quality goals must be reviewed annually.

Participant satisfaction must be measured.

A tutor assessment system must be operated.

A system for the preliminary assessment of knowledge must be operated.

The documentation obligations laid down in legislation must be met.

The supplementary adult education activities, as demanded by the subsidising partner, the applicant or the participant, must be provided.

In case practical training needs to be provided, the participation of adult education participants in practical training must be ensured as required by legislation.

An adult education information system must be provided.

A customer- and a complaints-system must be operated.

A quality assurance system must be operated as required by legislation.

Practical training clause

In case the practical training required by legislation cannot be provided by the adult education provider, it must conclude an agreement for this purpose with a practical training provider (Art. 11(2)).

Religious exemption

When licensing adult education institutions maintained by religious communities, the content of divinity and religious studies subjects cannot be assessed in the licensing process (Art. 11(4)).

3.11.3.4 *Subsidised adult education*

Subsidies for adult education may be provided from the central State budget and from the vocational training contribution available for the training of own employees. (Art. 23(1)).

Subsidised adult education is available to non-Hungarian citizens that are either EU citizens, third-State nationals with a right to reside in Hungary, and persons provided protection under asylum law (Art. 23(3)).

Subsidised adult education provided in the context of training for underprivileged citizens, training for communal (public) work, and for employment in social cooperatives may be reserved in the regulation of the responsible minister for State maintained adult education institutions (Art. 23(4)).

Subsidised adult education, when required by a government regulation, may have to be provided together with course in a basic digital training (Art. 23(5)).

Subsidisation from the National Employment Fund and from EU resources of adult education provided to increase employability is regulated in separate legislative instruments (Art. 25).

3.11.3.5 *The pecuniary security*

The adult education institution must have, for the entire duration of its activities and for 6 months after the ceasing of its operations, the pecuniary security available to secure the repayment of advances in case of non-delivery of the contracted adult education services. The use and the termination of the pecuniary security are subject to the consent of the adult education authority. The pecuniary security can be either an insurance agreement or a pecuniary deposit. (Art. 18, Government Regulation 393/2013).

The pecuniary security is fixed at 2 per cent of the net annual income of the adult education institution, at least a minimum of 500.000 HUF (Art. 19, Government Regulation 393/2013).

3.11.4 Higher education

The Hungarian higher education sector is regulated by Act 2011:CCIV on the national higher education system.¹⁵⁵ The measure establishes a sector which prioritises 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.

3.11.4.1 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 regulation and financing, but also in terms of institution maintenance and the actual provision of higher education services. 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 the 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 recognised (Art. 4(1)). The framework for establishing and maintaining independent higher education institutions is 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 are 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 to obtaining an operating license (Art. 7). Cross-border provisions are available for higher education institutions recognised and licensed in their home State (Art. 7(1)(2), Government Decree 87/2015). The cross-border provision of higher education services from another Member State is also recognised (Art. 7(3), Government Decree 87/2015). The material, personnel and quality requirements do not

Strong State involvement

A margin for non-State, commercial, and foreign-established services

Reasonable and objective regulatory burdens

¹⁵⁵ When the measure is not indicated specifically, the cited provision is from Act 2011:CCIV.

impose unreasonable or unjustifiable burdens on education service providers. The act contains a general EU compliance clause (Art. 118) and a number of specific compliance clauses regarding 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 regarding the mutual recognition 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 State (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 characterises 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 as a matter of finding employment in Hungary after finishing their studies. This latter are highly problematic from the perspective of the EU free movement provisions. The violation of these obligations, which are undertaken in a written declaration at the beginning of higher education studies, entails a penalty of paying back the scholarship (the State funding) received. The clauses introducing flexibility as to the application and enforcement of the obligations may just ensure the proportionality under EU law of the potential restriction on the right of Hungarian citizens of free movement in the EU.

A Hungarian employment obligation and penalties for graduates

3.11.4.2 The sectors

- Domestic public higher education.
- Domestic commercial higher education.
- Higher education services in another State.

3.11.4.3 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)).

3.11.4.4 *Competition law clause*

The transformation of higher education institutions does not fall under the scope of Hungarian competition law (Art. 5(3)).

3.11.4.5 *The entry conditions in the Hungarian higher education sector*

3.11.4.5.1 *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 legislation (Art. 6(1)).

3.11.4.5.2 *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 a body financed from the State budget);

a national minority council (public higher education institutions operated as a body financed from the State budget);

the legal person of a 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.

3.11.4.5.3 *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 their activities in case the personal, material, organisation and financial instruments necessary for a continuous operation, and the necessary institutional documents are at their disposal (Art. 6(3)).

The higher education institution is created by the act of State recognition (Art. 6(4)).

It may commence its operation when it receives, on application, its operational license, it is registered, and Parliament decided on its State recognition (Art. 6(5)).

3.11.4.5.4 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 condition 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 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)).

3.11.4.5.4.1 The registration and licensing of foreign higher education institutions

The registration and licensing application for the operation of foreign higher education institutions in Hungary and the registration application for the study programme provided in Hungary must establish, for the purpose of operating in Hungary, that the home State legal requirements have been met, the home State licenses have been obtained, and the necessary institutional and maintainer decisions have been secured. The license provided in the home State for operation as a State-recognised higher education institution must also be disclosed. (Art. 7(1)(2), Government Decree 87/2015).

Higher education providers, which fall under the scope of the EU's free movement of services as provided by Act 2009:LXXVI on the general rules of commencing and continuing activities in the service economy, must register their higher education activities provided on the basis of a cross-border provision of services. The registration application must contain the documents listed under Art. 7(1)(2) and must establish that the conditions of Art. 76(1) of the Act on higher education are met. (Art. 7(3). Government Decree 87/2015).

3.11.4.5.5 The types of higher education institutions

Higher education institutions established under Hungarian legislation 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 in accordance with Hungarian law 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.

3.11.4.5.6 Special statuses granted for higher education institutions

The responsible minister for the purpose of achieving strategic national aims may appoint a higher education institution as an institution 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 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 thus selected may receive further financing from the responsible minister (Art. 10(4)).

3.11.4.5.7 Community higher education centres

Community higher education centres are organisations operated outside the seat of the higher education institution, which do not qualify as higher education institutions, but are licensed to carry out higher education activities within the strict framework of the license obtained. They operate on the basis of an agreement concluded with the cooperating higher education institution and provide the material conditions of higher education activities as provided by the staff of the higher education institution involved. (Art. 108(23a)).

The registration and licensing of community higher education institutions must be requested jointly by the organisation concerned and the cooperating higher education institution within 30 days after signing the cooperation agreement. The study programme provided by the cooperating higher education institution must also be registered. The responsible minister's prior consent must also be obtained. (Art. 4/A(1)(2), Government Decree 87/2015).

The cooperation agreement must include, in particular, the mechanisms of cooperation and the division of tasks and responsibilities, the division of financial resources and costs between the parties, the conditions of terminating the agreement subject to the requirement that students must be allowed to finish their study programme, and the commitment of the community higher education centre concerning the financial resources available to ensure long-term and sustainable operation. (Art. 4/A(3), Government Decree 87/2015).

3.11.4.5.8 Dual-programmes in higher education

In the areas of higher education in technology, informatics, agriculture, science or economics and business studies, higher education institutions may organise undergraduate and postgraduate study programmes on the basis of teaching framework programme which includes practical training, as determined by the Dual-programmes Board, at an organisation approved by that Board (Art. 108(1a)). Practical training offered by dual-programmes may be provided by the higher education institution concerned, the undertaking established by the higher education institution, or by an external training provider (Art. 44). Participation in the practical training is based on a student employment contract (Arts. 17-18/B, Government Decree 230/2012).

3.11.4.5.9 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)).

3.11.4.6 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, or in a time period which at maximum is one and a half times longer than the time period regulated in legislation;

within the 20 years after 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 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 their 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 they do 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 they do not maintain the employment relationship regulated above or do not work as self-employed in Hungary as determined above (payback obligation in case of violating the Hungarian employment obligation).

The divinity studies exemption clause: students participating in degree programmes in divinity studies are exempt from the Hungarian employment obligation and the payback obligation concerning a violation of the Hungarian employment obligation, and the payback obligation concerning the delayed finishing of studies may only be applied with the special requirements of such programmes fully taken into account (Art. 48/B(4)).

The obligations of the State clause: 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).

Students receiving full- or partial State scholarship must at the time of their enrolment in a higher education institution make a written declaration that they undertake the obligations relating to the State scholarship system (Art. 48/D(2)).

The rules on the payback obligation:

- the payback obligation is determined in a decision (Art. 48/P);
- the payment must be made 30 days after the decision becomes final (Art. 48/P);
- the payback obligation can be taken over by another person (Art. 48/P);
- 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).

3.11.4.6.1 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 being paid, or

the period when job seekers allowance is being paid.

The time constraint and the payback obligation in case of overstepping the time constraint do not apply to female students that give 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 in case of (Art. 48/N(1)-(2)) studies spent in a foreign higher education institution, or for studies in adult education leading to the obtaining of a foreign language certificate.

The payback obligation in case of overstepping the time constraint is not enforced, upon application, with regards 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 is not enforced, upon application, with regards 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 are not enforced, fully or in part, upon application, with regards 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 causes (Art. 48/O(2)).

3.11.4.7 State financing

State financing is available to State-established higher education institutions, and, subject to an agreement with the government, to church-established and private higher education institutions (Art. 84(3)).

3.11.4.8 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)).

Their operation and management is subject to meeting the relevant provisions laid down in legislation (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)).

3.11.4.9 International/cross-border provisions

3.11.4.9.1 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)).

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 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 institutions (Art. 76(7)).

3.11.4.9.1.1 EEA-established higher education institutions

The rules applicable to foreign-established higher education institutions apply to higher education institutions 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 an 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 registration with 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 higher education institution 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 such programmes. (Art. 77(4)).

3.11.4.9.2 Rules on the operation of Hungarian higher education institutions abroad

Hungarian higher education institutions may operate abroad subject to the rules laid down in a government regulation, as registered by the education authority, and provided that their operation is compatible with the legal order of the host State (Art. 78(1)). The responsible minister may provide subsidies to support such operations (Art. 78(2)).

3.11.4.9.3 Rules on joint degree programmes by a Hungarian and a foreign-established higher education institution

Joint degree programmes may be operated under 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 of which 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)).

3.11.4.9.4 Rules on the participation of Hungarian citizens in higher education abroad

The participation of Hungarian citizens in higher education abroad is not subject to an authorisation (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 undertaking studies at Hungarian higher education institutions (Art. 79(4)).

3.11.4.10 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 compliance supervision by the responsible minister (Art. 66(1)).

In the licensing process 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 by the education authority, but it is not bound by it. The applicant must pay an administrative service fee. (Art. 67).

3.12 Financial services

3.12.1 The market for services provided by financial institutions

The Hungarian market for services provided by financial institutions is regulated by Act 2013: CCXXXVIII on credit institutions and financial undertakings. In principle, the measure establishes an open but closely regulated market where competition prevails. Only the most important legal provisions are included in this legal mapping report.

3.12.1.1 Overview of the legal and regulatory environment

In general, at the level of statutory provisions the Hungarian market for services provided by financial institutions operates as an open market which provides equal access and equal opportunities for EEA economic operators. The legal rules explicitly provide for the cross-border provision of such services and entry to the Hungarian market through cross-border establishment. The legal framework contains numerous restrictions concerning the carrying out of economic activities, but these, on a general level, are supported either by public interest considerations or by considerations relating to the nature of economic activities in the sector. The State investment clause in Art. 13(3) restricts such interventions to instances strictly justified in the public interest.

**Market access
ensured**

As a norm, carrying out economic activities in the Hungarian market (market entry) is subject to the obtaining of a license from the supervisory authority, 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. Entry to the Hungarian market is also made possible, as required by the relevant provision of EU law, by means of a cross-border provision of services or of cross-border establishment. The legal provisions governing market entry do not involve directly discriminatory provisions and provisions which would unduly hinder the access of EEA economic operators to the Hungarian market.

**Cross-border
access
ensured**

The Hungarian regulatory regime operates with a robust licensing system. Licenses are issued to economic operators established in Hungary. Economic operators established in other Member States are able to provide services in Hungary on the basis of the license issued by the supervisory authority of the home Member State in the form of a cross-border delivery of services or by means of cross-border establishment.

**Robust
licensing
regime**

The regulatory framework operates consciously with EU compliance clauses ((Art. 305: general compliance clause) (Art. 97: compliance clause concerning Regulation 575/2013/EU)). In Art. 6, key definitions are provided explicitly on the basis of the relevant provisions of Regulation 575/2013/EU. The relevant capital puffer requirements are established in a similar way (Art. 86-96). There are a number of provisions which regulate explicitly the

EU compliance

instances in which the coapplication of the relevant EU rules (Regulation 575/2013/EU) is necessary (Arts. 103, 105/A, 106, 108(10)(11), Art. 114(11), 115, 116, 122, 123, 124, 177, 298-302). Art. 289 regulates the execution of the relevant rules of Regulation 575/2013/EU. Evidently, a considerable number of legal rules were introduced with the purpose of facilitating the application of the mutual recognition principle or of giving effect to the freedom to provide cross-border services or to carry out economic activities in the Hungarian market through cross-border establishment (Arts. 29, 36-37, 37/A, 38-39, 40-42, 59, 61, 64, 173, 174-176, 182, 199, 199/A).

3.12.1.2 The market

The main market participants are financial institutions, which are either credit institutions or financial undertakings. Financial intermediaries are also present in the market.

3.12.1.3 The State investment clause

In case the State executes the increase of the starting capital through the issuing of new shares, this transaction may be carried out by providing State bonds in the particular case when the insolvency of the credit institution would seriously jeopardise the economic interest of the country or a larger region, or would seriously jeopardise the prudent operation of the bank system, and insolvency, or the winding up of the credit institution may only be prevented by the direct intervention of the State (Art. 13(3)).

3.12.1.4 Restriction on investment in real estate

Total investment by a credit institution in real estate must not exceed 5 per cent of its regulatory capital (Art. 101).

3.12.1.5 Other restrictions on investment

Total direct and indirect investment by a credit institution – calculated on net value – must not exceed 100 per cent of its regulatory capital (Art. 102(1)). The following are not included in calculating the level of investment: investment acquired for no longer than 3 years for the purpose of reducing or averting losses resulting from the provision of financial services, shares acquired in the Garantiqa Loan Guarantee public company, securities representing loan relationships, and the amount which was deducted from the capital when calculating the regulatory capital of the credit institution (Art. 102(2)).

Credit institutions, with the exception of obtaining membership under the permission of the supervisory authority in a European Economic Interest Grouping, must not acquire ownership or obtain membership in a company for the debts of which it may hold unlimited responsibility (Art. 102(3)).

3.12.1.6 *Market entry*

3.12.1.6.1 *Licensing*

Undertakings established (having their registered seat) in another EEA Member State may only provide financial services and supplementary financial services in Hungary through a branch or by means of a cross-border provision of services (Art. 4(1)(4)).

The provision of financial services and supplementary financial services by a Hungarian branch or through a cross-border provision of services, which is licensed by the home Member State supervisory authority, is not subject to obtaining a license from the Hungarian supervisory authority (Art. 5(1)).

The establishment of the Hungarian branch of a credit institution which has its registered seat in another EEA Member State is not subject to obtaining a license (Art. 14(4)).

The establishment of a credit institution operated in the form of a branch in another EEA Member State is not subject to obtaining a license from the supervisory authority (Art. 14(3)).

The establishment of the Hungarian branch of a financial undertaking which has its registered seat in another EEA Member State is not subject to obtaining a license, provided that the financial undertaking is the subsidiary or the jointly controlled undertaking of another credit institution which has its registered seat in the same EEA Member State as the registered seat of the financial undertaking, or the financial undertaking is the subsidiary or the jointly controlled undertaking of another financial undertaking which has its registered seat in the same EEA Member State as the registered seat of the financial undertaking and has its registered seat in the same EEA Member State as the registered seat of the subsidiary, and carries out its activities in the EEA Member State where its seat is registered, the parent company has at least 90 per cent of the voting rights, the parent company provides the confirmation of the home EEA Member State supervisory authority that it discharges the management of the financial undertaking prudently and with care, the parent company – with the consent of the home EEA Member State supervisory authority – undertakes joint and several responsibility for the liabilities of the financial undertaking, and the financial undertaking is subject to joint supervision with the parent company (Art. 15(4)).

3.12.1.6.2 *Institutional form*

Financial services may only be provided by financial institutions, which are either credit institutions or financial undertakings (Art. 7(1)(2)).

3.12.1.6.2.1 *Credit institutions*

The collection of deposit, the accepting of other repayable monetary assets from the public, and money exchange activities are activities reserved for credit institutions (Art. 8(2)).

Credit institutions can operate in the form of a bank, a specialised credit institution, or a cooperative credit institution operating in the form of a public company or a cooperative. Cooperative credit institutions can operate in the form of a bank, a specialised credit institution, a banking cooperative, or a credit cooperative. (Art. 8(3)).

Only banks may be licensed to carry on every financial services listed in legislation (Art. 8(4)).

Specialised credit institutions may not be licensed to carry on every financial service listed in legislation (Art. 8(5)).

Cooperative credit institutions operating in the form of a cooperative can carry on financial services, supplementary financial services, and all other financial services permitted for credit institutions (Art. 8(6)). A credit cooperation may only carry on the licensed financial services among its own members (Art. 8(8)).

3.12.1.6.2.2 Financial undertakings

Financial undertakings are financial institutions which, with the exception of certain activities, are entitled to provide one or more financial services, or operate a payment system. Financial holdings are also financial undertakings. (Art. 9(1)).

Financial agent activities in the inter-bank market may only be carried out by a financial undertaking as an exclusive activity (Art. 9(2)).

The Hungarian branch of a foreign financial undertaking may only carry out the activities determined in legislation, provided that it is licensed to carry out such activities by the home State supervisory authority (Art. 9(3)).

3.12.1.6.2.3 Financial intermediaries

Financial intermediary services cover the dependent and independent intermediation of financial and payment services (Art. 10).

3.12.1.6.3 Legal form

Banks and specialised credit institutions may operate as public companies or as a branch in Hungary (Art. 11(1)).

Cooperative credit institutions may operate as cooperatives or as public companies operating as banks or specialised credit institutions (Art. 11(1)).

Financial undertakings may operate as public companies, cooperatives, foundations, or as a branch in Hungary (Art. 11(1)).

Any legal person or self-employed person may carry on financial service intermediary activities (Art. 11(4)).

Multiple special services intermediaries may operate as public companies, limited liability companies or as cooperatives (Art. 11(5)).

3.12.1.6.3.1 Main office requirement

Financial undertakings and mortgage credit intermediaries, when their registered seat is in Hungary, must establish their main office in Hungary (Art. 11(3)).

3.12.1.6.4 Starting capital requirements

The minimum starting capital requirement for banks (and for financial holdings (Art. 12(7))) is 2 billion HUF, for cooperative credit institutions, when operated as a cooperative, is 300 million HUF (Art. 12(1)).

This requirement does not apply to credit institutions operated as members of the Integration Organisation (Art. 12(2)).

Specialised credit institutions may be established subject to the minimum starting capital requirement laid down in legislation (Art. 12(3)).

The minimum starting capital for financial undertakings, with the exception of financial holdings and financial undertakings operating a payment system, is 50 million HUF (Art. 12(4)).

The minimum starting capital for financial undertakings operating a payment system is 500 million HUF (Art. 12(8)).

The minimum capital requirement for multiple special services intermediaries is 50 million HUF (Art. 12(10)).

3.12.1.7 Provisions on cross-border establishment and the cross-border provision of services

3.12.1.7.1 Outgoing establishment

The establishment by a credit institution of a branch in another EEA Member State is subject to notifying the supervisory authority (Art. 36(1)).

In case the management structure and the financial situation of the notifying credit institution meet the applicable legislative requirements, the supervisory authority informs, together with the notifying credit institution, within 3 months after receiving the notification the supervisory authority of the host EEA Member State (Art. 36(3)). In case the supervisory authority declines to inform the host EEA Member State supervisory authority, it issues a decision in that regard, within 3 months after receiving the notification, to the notifying credit institution (Art. 36(5)). The branch can be established and can commence operation after the information of the host EEA Member State supervisory authority, or after the expiry of the 2 month deadline available to the supervisory authority to act (Art. 36(6)). The supervisory authority informs the supervisory authority of the other EEA Member State when the operating license of the credit institution concerned was withdrawn (Art. 36(8)).

Similar rules apply to the establishment of a branch in another EEA Member State by an Art. 15(4) financial undertaking with the difference that the supervisory authority has to inform the supervisory authority of the other EEA Member State when the operating license of the credit institution

concerned was withdrawn and when the financial undertaking does not meet the conditions laid down in Art. 15(4)) (Art. 37).

Similar rules apply to the establishment of a branch in another EEA Member State by a financial intermediary service provider providing mortgage credit intermediation services (Art. 37/A). The financial intermediary service provider is entitled to provide intermediary services in another EEA Member State through a branch only when it meets the conditions laid down in Art. 15(4) (Art. 37/A(2)). The notification of the host EEA Member State supervisory authority must take place within 1 month after receiving the notification which must identify the financial institutions with which the intermediary service provider has contracted (Art. 37/A(4)). The branch can be established and can commence operation 1 month after receiving the information of the supervisory authority (Art. 37/A(5)).

3.12.1.7.2 Outgoing service provision

Credit institutions intending to provide financial services or supplementary financial services on a cross-border basis, on the first such occasion, must, prior to commencing operations, notify the supervisory authority of the activity carried out in the other EEA Member State (Art. 40(1)). The supervisory authority informs, together with the notifying credit institution, within 1 month after receiving the notification, the supervisory authority of the host EEA Member State (Art. 40(2)). The provision of services in the other EEA Member State can be commenced after receiving the information from the supervisory authority (Art. 40(3)).

The cross-border provision of services in another EEA Member State by a financial undertaking is subject to meeting the establishment requirements laid down in Art. 15(4) (Art. 41(1)). On the first such occasion, the financial undertaking must, prior to commencing operations, notify the supervisory authority of the activities carried out (the services provided) in the other EEA Member State (Art. 41(2)). The supervisory authority informs, together with the notifying financial undertaking, within 1 month after receiving the notification, the supervisory authority of the host EEA Member State of the activities planned in that State (Art. 41(3)). The provision of services in the other EEA Member State can be commenced after receiving the information from the supervisory authority (Art. 41(5)). In case the financial undertaking no longer complies with Art. 15(4) requirements, the supervisory authority informs the supervisory authority of the host EEA Member State (Art. 41(6)). The refusal to inform the supervisory authority of the host Member State must be taken in an administrative decision, which decision may only be issued when the requirements in Art. 15(4) are not met (Art. 41(7)). Similar rules apply to the cross-border provision of mortgage intermediary services (Art. 41/A).

3.12.1.7.3 Systematically important branches

The branch established by a credit institution with its registered seat in Hungary in another EEA Member State may be classified, on request by the host EEA Member State supervisory authority, by the supervisory authorities concerned as a systematically important branch (Art. 38(1)).

The supervisory authority, on the basis of justified reasons developed having regard to the relevant legislative requirements, may request the supervisory authority of the other EEA Member State for classifying jointly the Hungarian branch of credit institution with its registered seat in another EEA Member State as a systematically important branch (Art. 38(2)).

The requirements taken into account when establishing the justified reasons necessary for classifying a branch as systematically important are the following (Art. 38(3)).

The market share of the branch expressed in the deposit holdings in the given EEA Member State exceeds 2 per cent.

The size and relevance of the branch expressed in customer numbers in the banking or financial system of the given EEA Member State.

The classification takes place in a multilateral procedure in which the supervisory authority cooperates with the supervisory authority of the other EEA Member State (Art. 38(4)).

In case of Hungarian branches, when the multilateral procedure closes, within 2 months after the delivery of the request, without the making of a decision, the supervisory authority, within another 2 months, may take a decision on the question having regard to the opinion and objections of the supervisory authority of the other EEA Member State expressed in the multilateral procedure (Art. 38(5)). This decision is communicated to the supervisory authorities of the other affected EEA Member States (Art. 38(6)).

The joint classification and the decision taken by the supervisory authority of another EEA Member State classifying the branch as systematically important are directly applicable and enforceable in Hungary (Art. 38(7)).

The supervisory authority of the other EEA Member State is informed by the supervisory authority in case the credit institution with its registered seat in Hungary, which has established a systematically important branch in another EEA Member State, of any information concerning unfavourable developments which may affect the credit institution severely, or when it subjects the credit institution to exceptional measures (Art. 39).

3.12.1.7.4 Cross-border administrative tasks

The supervisory authority requests the prior opinion of the supervisory authority of the other EEA Member State when the credit institution to be established is the branch of an investment company, credit institution or insurance company with its registered seat in that EEA Member State, is the

branch of the parent company of an investment company, credit institution or insurance company with its registered seat in that EEA Member State, or when the natural or legal person having controlling influence has controlling influence in an investment company, credit institution or insurance company with its registered seat in that EEA Member State (Art. 29).

In case the supervisory authority of another EEA Member State informs the supervisory authority that a financial institution or mortgage intermediary service provider registered there opens a branch in Hungary or plans to carry out cross-border services in Hungary, the supervisory authority informs the financial institution and the mortgage intermediary service provider of domestic legal requirements relating to the protection of clients (Art. 42).

3.12.1.7.5 Special rules concerning insolvency or liquidation procedures against credit institutions involved in cross-border establishment or a cross-border provision of services

Special insolvency or liquidation procedure rules are applicable to credit institutions which establish a branch in another EEA Member State, or provide cross-border services, and to the branch of a credit institution established in a third State when that credit institution has branches in at least two EEA Member States (Art. 59).

Insolvency or liquidation procedures cannot be brought against the Hungarian branch of a credit institution established in another EEA Member State (Art. 61).

The supervisory authority must inform immediately the supervisory authority of another EEA Member State where the credit institution under insolvency or liquidation proceedings operates a branch or where it provides cross-border services (Art. 64(1)). The decision on initiating insolvency or liquidation procedures must also be published of the Official Journal of the EU, and at least two national newspapers in the host EEA Member State (Art. 64(2)).

3.12.2 The cooperative banking services market

The Hungarian market for cooperative banking services is regulated by Act 2013:CXXXV on the integration of cooperative credit institutions. The measure fundamentally restructured the market by imposing, with a view to addressing market inefficiencies, an obligation on cooperative credit institutions to integrate under a central body called Integration Organisation (Art. 1(2)) which was given far-reaching competences to regulate and police the conduct of market participants. Only the most important legal provisions are included in this legal mapping report.

3.12.2.1 Overview of the legal and regulatory environment

The new market created Act 2013:CXXXV established an integrated structure for the operation of market participants. Cooperative banking services may only be offered by members of the Integration Organisation subject to the rules, the monitoring powers, and the sanctioning competences of the Integration Organisation and the so called Central Bank. At the level of legislative provisions, the Hungarian market provide equal access and equal opportunities to EEA economic operators, the applicable substantive and procedural rules are transparent and reasonable, and market entry is not subject to directly discriminatory provisions. However, on the whole, the restrictions imposed, and certain of the detailed provisions, may inconvenience the access of newcomers to the Hungarian cooperative banking sector. The Hungarian incumbent, *Takarékbank Zrt.*, was secured privileged treatment when it was appointed, by legislation, as the first Central Bank of the integration (Art. 19(4)).

Apart from imposing in regulation the obligation of integration for market participants, State intervention also took the form of direct capital investment from State assets in the newly restructured sector. The Hungarian Development Bank, which is a member of the Integration Organisation by virtue of legislation (Art. 3(1)), provided, in part, the starting asset of the new integrated structure for cooperative banking in Hungary (Art. 4(1)(2)). This direct investment by the Hungarian Development Bank led to the State acquiring (ownership) rights and positions in the market, which was secured, as declared by the preamble of Act 2013:CXXXV, in compliance with Hungary's 'international obligations' having regard, in particular, to the private market investor principle.

The general basis for State involvement was provided by the objective stated in Art. 1/A(a) concerning the establishment of the bank of rural Hungary which operates under the principle of joint and several responsibility and which is capable of securing, under a professional central management, the effective and efficient operation of cooperative banking services. State ownership in the sector was justified, as declared by the preamble, by the interests of securing the modernisation, professionalisation

Market access
with
contestable
conditions

Direct State
involvement

The grounds
of State
involvement

and transformation of the sector and of preventing the reversal by market forces of the changes implemented. The preamble states that the position acquired by the State in the market may (only) be offered for sale in case State ownership is no longer required to preserve the new integrated structure.

The restructuring of the market took place with strong emphasis on EU compliance which was identified as a specific regulatory objective besides addressing market inefficiencies in the sector (Art. 1/A(h)). The specific compliance clause in Art. 1(5) states explicitly that the integration of the sector enjoys the exemption provided under Art. 10 of Regulation 575/2013/EU.

EU compliance

3.12.2.2 The market

The main market participants are banking cooperatives, credit cooperatives and credit institutions, which, any time before the entry into force of the new provisions, were transformed from operating cooperatives to public companies without losing their connection to the cooperative banking market (they continued to operate as members of a cooperative banking association).

3.12.2.3 The integration obligation

Cooperative credit institutions are members of the Integration Organisation and are shareholders of the Central Bank, which latter is also member of the Integration Organisation (Art. 1(3)).

Cooperative credit institutions may only operate as members of an Integration Organisation and they must continuously comply with their particular obligations laid down in legislation (Art. 17/H(1)).

The Integration Organisation, the Central Bank and the cooperative credit institutions are responsibly jointly and severally for every obligation undertaken irrespective of its date (Art. 1(4)).

With the entry into force of Act 2013:CXXXV, cooperative credit institutions with an operating license, the *Takarékbank Zrt.*, and the Hungarian Development Bank become members of the Integration Organisation. From this date, until its leaving the integration or the suspension of its powers, the *Takarékbank Zrt.* serves as the Central Bank of the integration (Art. 19(4)).

3.12.2.4 The starting asset (State ownership)

The starting asset of the Integration Organisation is, in part, the contribution made by the Hungarian Development Bank at 1 billion HUF and, in part, the assets acquired by succession from the cooperative banking capital security funds the operation of which was discontinued after integration (Art. 4(1)(2)).

3.12.2.5 Market entry

Membership in the Integration Organisation is open to cooperative credit institutions (compulsory for them) and to other persons and organisations (Art. 3(1)).

Other persons and organisations must make a preliminary declaration for undertaking the obligation towards the Central Bank of acquiring its shares as specified by the Integration Organisation, adopt a charter or an establishing document in compliance with the relevant legal provisions, and declare their intention to become a member to the Integration Organisation. Their membership must be approved by the directors of the Central Bank and by the supervisory authority, they must comply with the accession regulations established by the Integration Organisation, and their application must be confirmed in a decision taken by the Integration organisation. (Art. 3(1)(2)).

Decisions on accession or expulsion decisions must be delivered within 15 days after their submission (Art. 11(6)).

The operating license

The operating license issued to cooperative banking service providers may only be maintained in case they continuously maintain their membership in the Integration Organisation and remains the owner of the share of the Central Bank as specified by the Integration Organisation (Art. 3(1)(3)).

The membership fee

Members of the Integration Organisation, with the exception of the Hungarian Development Bank, are required to pay an annual membership fee (Art. 4(3)).

3.12.2.5.1 Legal form

Cooperative credit institutions may be established in the form of a credit cooperative, a cooperative savings bank, or a public company (Art. 17/D(1)). Banks and credit institutions operating in the form of a public company may request their accession in the Integration Organisation, in case they meet the requirements laid down in legislation, their accession complies with the accession regulations of the Integration Organisation, the Central Bank provides its prior approval, and the supervisory authority approves the accession (Art. 17/D(1)).

3.12.2.5.2 Particular establishment conditions

Cooperative credit institutions operating in the form of a cooperative can be established by a minimum of 200 members, and such institutions may continue to operate with at least 200 members (Art. 17/E(1)).

The direct and indirect ownership in the registered capital of a cooperative credit institution operating in the form of a cooperative by a single owner, with the exception of the Hungarian State, Hungarian Development Bank, the Integration Organisation, or the National Deposit Insurance Fund, cannot be higher than 15 per cent (Art. 17/F(2)).

Members of cooperative credit institutions can be natural and legal persons. In cooperative credit institutions operating in the form of a cooperative, the ratio of legal person members cannot be higher than 1/3 of all members (Art. 17/F(3)).

3.12.2.6 The conditions of operation

3.12.2.6.1 The powers of the Integration Organisation and the Central Bank

The Integration Organisation is endowed with the following powers.

The adoption of general regulations concerning the operation of its members (Art. 11(1)).

The adoption of the relevant directives concerning the operation of its members (Art. 11(1a)).

Deciding on the accession of cooperative credit institutions to and their expulsion from the Integration Organisation (Art. 11(2)).

Monitoring the solvency and capital level of the Central Bank and of member cooperative credit institutions (Art. 11(3)).

Issuing reasoned orders to the Central Bank and to member cooperative credit institutions concerning compliance with the relevant rules (Art. 11(3)).

Suspending the chief executives of the Central Bank and of member cooperative credit institutions, in case they fail to comply with earlier issued orders, or fail to operate according to the applicable rules (Art. 11(3a)(a)).

Suspending the membership of, or expelling the member cooperative credit institutions, in case they fail to comply with earlier issued orders, or fail to operate according to the applicable rules (Art. 11(3a)(b)).

Suspending the chief executives of member cooperative credit institutions, or removing them from their position, or appointing temporary chief executives, in case the member cooperative credit institution is in a state of emergency (Art. 11(3c)(a)).

Suspending the membership of, or expelling the member cooperative

credit institution in case it is in a state of emergency (Art. 11(3c)(b)).

Approving the appointment of chief executives of member cooperative banking service providers (Art. 11(3d)).

The Central Bank is endowed with the following powers.

The Central Bank is entitled to examine the assets held and the obligations undertaken by member cooperative credit institutions (Art. 15(13)).

To ensure their prudent operation, the acquisition of ownership in other undertakings or other legal persons, and the sale of such ownerships by a member cooperative credit institutions is subject to the prior approval of the Central Bank in case the value or the price of the assets in question exceed 0.1 per cent of the guaranteeing capital of the integration (Art. 15(14)).

In order to secure compliance with the applicable legal rules and regulations, in case the Integration Organisation fails to exercise its similar competences, the Central Bank can issue an order against the member cooperative credit institution, which must comply with that order. The member cooperative credit institution provider can notify the Integration Organisation of its objections against the order, which can modify or annul the order. (Art. 15(3)).

3.12.2.6.2 Judicial protection against the powers of the Integration Organisation and the Central Bank

The orders and decisions of the Integration Organisation can be challenged by the Central Bank or a member cooperative credit institution before a court of law, when it is the addressee of the measure in question, on the ground that they do not comply with the relevant requirements laid down in law or in regulation. The legal challenge does not suspend the enforcement of the order or the decision. (Art. 15(16)).

The lawfulness of the order of the Central Bank under Art. 15(3) can be challenged by the member cooperative credit institution before a court of law as a matter of its compliance with the relevant legal rules and regulations. The legal challenge has no suspensory effect on the execution of the order. (Art. 15(3))

Other decisions and orders of the Central Bank are also subject to judicial control in the procedural available to challenge company decisions before a court of law (Art. 15(15)).

The Integration Organisation, the Central Bank and the member cooperative credit institutions can agree to take certain of these legal disputes to an arbitration panel (Art. 15(17)).

3.12.2.6.3 The assets of the Integration Organisation

The assets held by the Integration Organisation must not fall below 3 per cent of the value of all assets held by cooperative credit institutions and the Central Bank. There is an obligation to provide further assets in case the previous condition is not met. (Art. 3(4)).

The pecuniary assets of the Integration Organisation cannot be appropriated and they may only be used for purposes defined legislation. They must be placed either in the Central Bank or in subsidiaries owned completely by the Central Bank. (Art. 3(5)(6)).

3.12.2.6.4 Expulsion from the Integration Organisation

Member cooperative credit institutions may only be expelled from the Integration Organisation when none of the instruments available to the Integration Organisation is able to ensure that the service provider restores its immediate and continuous liquidity (Art. 11(3f)).

The expulsion of member cooperative credit institution is subject to obtaining a prior agreement by the supervisory authority (Art. 11(9)).

3.12.2.6.5 Acquisition powers of the Integration Organisation

In pursuance of objectives of institution-protection, in case the application of Art. 17/C instruments is unsuccessful, the Integration Organisation is obliged to acquire through capital increase ownership in the Central Bank or in the member cooperative credit institution concerned. The ownership thus acquired must be sold within 2 years. (Art. 11(4)).

3.12.2.6.6 Leaving the Integration Organisation

The Central Bank or the member cooperative credit institution may leave the Integration Organisation as provided in the relevant rules. They must apply, at least 60 days before notifying the Integration Organisation of their intention, for an establishment or operating license from the supervisory authority as if they were establishing a new credit institution. The membership of the Central Bank may only cease when its tasks and competences are taken over by the new Central Bank. (Art. 11(7)).

3.12.2.6.7 Withdrawing powers from the Central Bank

The Integration Organisation is entitled to withdraw its powers from the Central Bank and to appoint a credit institution as the new Central Bank, in the case when the Central Banks repeatedly or seriously violates its obligations concerning the integration of cooperative banking service providers, and it repeatedly fails to comply with the orders issued or the obligations laid down in the applicable regulations (Art. 11(10)).

3.12.2.6.8 The reacquisition of the shares of the Central Bank

In the case of the expulsion of the Central Bank, or the withdrawal of its powers, it is obliged, under a prior license issued by the supervisory authority, to purchase back the shares issued to member cooperative credit institutions (Art. 11(11)).

3.12.2.6.9 The restrictions on the shares of the Central Bank

The charter of the Central Bank may introduce rules, for the purpose of ensuring consolidation within the integration structure and protecting the interests of minority shareholders, concerning the common sale of its shares and restricting or excluding the acquisition of those shares by third parties (Art. 14(2)).

The shares of the Central Bank cannot be used in further transactions. They are held by the appointed depositary. (Art. 14(3)).

The shareholder of the Central Bank, with the exception of the Hungarian Development Bank, is unable to exercise its ownership rights and the related rights in case it fails to comply with the rules on capital requirement, the Central Bank shares held by it are burdened by rights of third parties, concluded prohibited credit and other related transactions, it failed to comply the orders given by the Integration Organisation or the Central Bank, its membership has been suspended, or its expulsion is in progress, or fails to comply with its statutory obligations (Art. 14(4)).

3.12.2.6.10 Exclusive rights

The member cooperative credit institutions keep their current account and their investment account with the Central Bank and invest their pecuniary assets not invested elsewhere in the products of the Central Bank (Art. 15(6)).

3.12.3 The insurance services market

The Hungarian market for insurance, reinsurance and the related services is regulated by Act 2014:LXXXVIII on insurance services. In principle, the measure establishes an open but closely regulated market where competition prevails. Only the most important legal provisions are included in this legal mapping report.

3.12.3.1 Overview of the legal and regulatory environment

In general, at the level of statutory provisions the Hungarian market for insurance services operates as an open market which provides equal access and equal opportunities for EEA economic operators. The legal rules explicitly provide for the cross-border provision of such services and entry to the Hungarian market through cross-border establishment. Direct State involvement in the market is reserved to a limited segment of the market with the purpose of addressing a particular market failure (Art. 2(1)(j)). The legal framework contains numerous restrictions concerning the carrying out of economic activities, but these, on a general level, are supported either by public interest considerations or by considerations relating to the nature of economic activities in the sector.

Market access
ensured

As a norm, carrying out economic activities in the Hungarian market for insurance services (market entry) is subject to the obtaining of a license or the notification of the supervisory authority, 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. Entry to the Hungarian market is also made possible, as required by the relevant provision of EU law, by means of a cross-border provision of services or of cross-border establishment. The legal provisions governing market entry do not involve directly discriminatory provisions and provisions which would unduly hinder the access of EEA economic operators to the Hungarian market.

Cross-border
access
ensured

The Hungarian regulatory regime operates with a robust licensing system. Licenses are issued to economic operators established in Hungary. A large number of technical and substantive activities in the market are subject to the requirement of obtaining a license from the supervisory authority. Economic operators established in other Member States are able to provide services in Hungary on the basis of the license issued by the supervisory authority of the home Member State in the form of a cross-border delivery of services or of cross-border establishment.

Robust
licensing
regime

The regulatory framework operates consciously with EU compliance clauses ((Art. 453: general compliance clause)(preamble: compliance with EU obligations as a regulatory objective)(preamble: statement that regulation must achieve the level in terms of regulatory principles, quality and security of market participants as demanded by EU law from the Member States)).

EU compliance

Art. 1(2) recognises explicitly the primacy of application of directly applicable EU legislation. Art. 282 offers a definition of cross-border establishment which brings the domestic concept in line with that in EU law. There are a number of provisions which regulate explicitly the instances in which the coapplication of the relevant EU rules (Directive 2009/138/EC) is necessary (Arts. 98, 100, 101(2), 103(4), 198(2), 199(1)). The prohibition of discrimination on the basis of sex is regulated apparently with close regard to the requirements as they follow from EU law (Art. 134). Evidently, a considerable number of legal rules were introduced with the purpose of facilitating the application of the mutual recognition principle or of giving effect to the freedom to provide cross-border services or to carry out economic activities in the Hungarian market through cross-border establishment (Arts. 41(1), 200-203, 256, 258, 279-280, 283, 284, 285, 286, 288-289, 422-427).

3.12.3.2 The markets

Insurance services.

Reinsurance services.

The sale of insurance.

Insurance intermediaries.

3.12.3.3 State-provided reinsurance services

Market-based reinsurance services are distinguished explicitly from reinsurance services provided by an economic operator in majority State ownership, or guaranteed completely by the State, which are provided, under legislation, under pressing public interest grounds, on a non-market basis, in compliance with EU State aid rules, including services the provision of which is justified by the market circumstance that the market does not offer adequate reinsurance cover (Art. 2(1)(j)).

3.12.3.4 Non-discrimination on the basis of sex

The processing, holding or using of data and information relating to the sex of the person concerned, or which bears relevance in that regard, does not violate the requirement of equal treatment when that affects only forward-looking provisioning, internal pricing introduced in connection with the price-monitoring of the composition of monetary assets, the pricing of reinsurance contracts, advertising activities, risk assessment activities carried out in connection with life, accident and health insurance contracts (Art. 134(1)).

Different treatment on the basis of sex does not violate the non-discrimination requirement when it concerns a difference which is connected

to sex and which is justified by reasons which are directly relevant for the insurance relationship, can be assessed individually and which refer to genuine differences, when it leads to positive discrimination as regards an individual client or groups of clients, provided that it does not lead to the discrimination of other persons or groups of persons which are in a comparable situation, or when it does not aim at excluding one of the sexes from access to a certain insurance product, especially when based on objective reasons the product is offered exclusively or primarily to that sex and the instruments used by the insurance service provider are suitable and necessary to achieve that aim (Art. 134(2)).

3.12.3.5 The principle of closed operation

The insurance service provider cannot carry out business activities apart from providing insurance and reinsurance services and directly related services, and insurance services may only be provided by insurance service providers. The same applies to reinsurance services with the exception that reinsurance services can be provided by both insurance and reinsurance service providers. (Art. 40(1)-(2)).

3.12.3.6 Market entry

3.12.3.6.1 Licensing

The provision of insurance and reinsurance services and directly related services in Hungary is subject to obtaining a license from the supervisory authority. In case of a cross-border delivery of services or services provided through a Hungarian branch, the services can be provided on the basis of the license issued by the supervisory authority of the home Member State. (Art. 41(1)).

Licenses are issued on the basis of the relevant legislation and having regard to the interests of clients and the obligations of the insurance service provider (Art. 137(4)).

The license issued in Hungary covers the provision of services in every Member State and enables the insurance or reinsurance service provider to carry on activities – either on a cross-border basis or through a branch - in other Member States (Art. 42(1)).

The licenses are issued for individual areas of insurance activities and for the areas in which in the insurance service provider is eligible to operate (Art. 44(1)).

The insurance service provider may extend its activities to risks not covered by its license, in case these risks are connected to the risks covered by its license, concern the asset insured under the license, are risks that are covered by the insurance contract concerning the risks covered by its license (Art. 47(1)).

The license application for establishing an insurance or reinsurance company will be rejected, especially when the registered office and main location of administration are not in the same State (Art. 241(1)(d)).

The establishing license enables the insurance or reinsurance company to carry out the activities necessary to prepare its establishment or any other directly connected activity (Art. 242).

The application for the operating license must be submitted within 90 days after the issuing of the establishing license. The establishing license is withdrawn if the above requirement is not complied with. (Art. 243).

The license application for establishing an insurance or reinsurance company will be rejected when the financial, operating, personnel and material conditions are not met and when the supervisory authority establishes that the applicant will not be able to comply with the relevant legislative provisions, or when its operation will jeopardise or violate the interests of the insured. (Art. 245)

3.12.3.6.1.1 Provisions on cross-border issues: general

When licensing the establishment of insurance or reinsurance service providers the supervisory authority requests the opinion of the relevant supervisory authority of another Member State when the service provider is the subsidiary of an investment company, a credit institution, or an insurance or reinsurance company established in another Member State, when it is the subsidiary of the parent company of an investment company, a credit institution, or an insurance or reinsurance company established in another Member State, or when the natural person or owner of the legal person having a controlling influence has controlling influence in an investment company, a credit institution, or an insurance or reinsurance company established in another Member State (Art. 240(1)).

The supervisory authority initiates consultations with the responsible supervisory authority of another Member State before taking a decision regarding the compliance of shareholders of another company belonging to the same group, and regarding the assessment whether the requirements concerning executive employees have been met (Art. 240(2)).

The supervisory authority, upon the request of the responsible supervisory authority of another Member State, provides the information regarding the compliance of shareholders and the executive employees meeting the relevant requirements which are likely to be relevant in the licensing process before that supervisory authority, and in the continuous monitoring of compliance with the operating requirements (Art. 240(3)).

3.12.3.6.1.2 Provisions on cross-border issues: employment of executives

In case of nationals of another Member State, the supervisory authority will accept extracts from the relevant registry of that State, or, in absence of such registry, equivalent official documents issued by the administrative authorities or courts of that State (Art. 254 (1)).

In case the official documents are not issued by the responsible Member State, they can be replaced by an oath, or, in Member States with no legal provisions regulating oaths, by a solemn declaration, both of which are taken before a court or public authority, or, where applicable, before public notary, in that Member State (Art. 254(2)).

The supervisory authority informs the responsible supervisory authorities in the Member States and the European Commission regarding the Hungarian authorities responsible for issuing the required official documents as regards Hungarian citizens or Hungarian established legal persons (Art. 254/A).

3.12.3.6.2 Notification

3.12.3.6.2.1 Outgoing: branch

Insurance companies with their registered office in Hungary must notify the supervisory authority of their intention to establish a branch in another Member State (Art. 279(1)).

The supervisory authority will inform the host Member State supervisory authority that the insurance company complies with the relevant legislation and the persons concerned have professional suitability and business trustworthiness and it issues in this document a certificate that the insurance company is able to cover the regulatory capital and the minimum capital requirements (Art. 279(3)(4)).

The supervisory authority informs the applicant insurance company, after receiving the information provided by the host State supervisory authority following the supervisory authority's earlier transmission of information, of the conditions having regard to which it may commence its operation in the form of a branch in the host Member State. The branch may be established and commence its operations after receiving the supervisory authority's information, or after the expiry of the 2 month deadline to provide that information. (Art. 280).

EU compliance clause (Art. 282)

Establishing a branch in another Member State also involves permanent presence in that Member State in the form of operating an office staffed by the employees of the insurance company concerned, or by an independent person empowered to represent the company concerned in the same way as a branch would be able.

3.12.3.6.2.2 Incoming: branch

Upon receiving the information from the home Member State supervisory authority regarding the establishment of a branch in Hungary, the supervisory authority informs, within 2 months, the home authority about the conditions of providing insurance services in Hungary in the form of a branch (Art. 283(1)).

The Hungarian branch may commence its operation after the delivery of the information transmitted by the Hungarian supervisory authority to the home Member State supervisory authority, or after the expiry of the 2 month deadline (Art. 283(2)).

3.12.3.6.2.3 Outgoing: provision of services

Insurance companies with their registered office in Hungary must notify in advance the supervisory authority, on the first such occasion, that it aims to provide cross-border insurance services in another Member State, and must indicate in the notification the risks planned to be undertaken in that State (Art. 284(1)).

Within 1 month after receiving the notification, the supervisory authority informs the supervisory authority of the other Member state regarding the licensed areas of activity by the insurance company concerned, the areas of activity planned to be covered in the host Member State, compliance with the requirements concerning the ability to cover the regulatory capital and the minimum capital requirements, and in case of compulsory liability insurance for motor vehicles the identity and the address of the claims representative operating in the Member State concerned and the declaration concerning the operation of the national insurance bureau and the national compensation account (Art. 284(2)).

The supervisory authority will decline to provide the information to the host Member State supervisory authority in case the insurance company concerned fails to comply with its notification obligation adequately, or when its management system and financial situation does not comply with the relevant legislative requirements (Art. 284(3)).

The supervisory authority determines the date of commencing operations in the other Member State, and notifies the home supervisory authority of that circumstance (Art. 284(5)). Operations may be commenced on the day following the date communicated by the supervisory authority to the insurance company concerned (Art. 285(1)).

3.12.3.6.2.4 Incoming: provision of services

Upon being informed by the home Member State supervisory authority regarding the cross-border provisions of services in Hungary, the supervisory authority informs the insurance company concerned regarding the applicable legislative provisions in Hungary (Art. 286).

3.12.3.6.2.5 Supervision

The supervisory authority is entitled to request non-regular information from the Hungarian branches of insurance companies having their registered seat in another Member State or from such insurance companies, regarding its provision of cross-border services in Hungary, with regards the contractual conditions applied and the related documentation so as to ensure that they comply with the legislative provisions governing insurance contracts (Art. 288).

In case the legislative provisions concerning the operation of Hungarian branches or the provision of cross-border services in Hungary are violated, or their operation does not comply with the relevant legal requirements, the supervisory authority obliges the branch or the insurance company concerned to cease the unlawful situation (Art. 289(1)).

In case the Hungarian branch or the insurance company concerned does not comply with the decision of the supervisory authority, it informs the home Member State supervisory authority and initiates the taking of the necessary steps (Art. 289(2)).

In case unlawful situation remains in place despite the steps taken by the home Member State supervisory authority, the supervisory authority, after informing the home authority, may apply the instruments specified, or may transfer the case to the European Supervisory Authority under regulation 1094/2010/EU (Art. 289(3)).

The supervisory authority may act directly in the case of a violation of the applicable Hungarian rules with the purpose of preventing the conclusion of new insurance contracts, provided that unlawful conduct poses a serious threat to the stability of the insurance market or to the interests of clients (Art. 283(4)).

In case the supervisory authority decides that the provision of insurance services in Hungary through a branch or through cross-border service provision threatens the financial stability of the insurance company concerned, it informs the supervisory authority of the home Member State (Art. 283(5)).

In case the home Member State supervisory authority withdraws the license of the insurance company and it informs the supervisory authority of this matter, the supervisory authority must take the necessary action so as to prevent the insurance company concerned from continuing its operations (Art. 283(6)). The supervisory authority publishes a notice on its website concerning the decision of the home Member State supervisory authority withdrawing the license of the insurance company concerned (Art. 283(6a)).

The supervisory authority of the home Member State, or the person empowered for this purpose by that authority, is entitled, after informing the supervisory authority, to supervise in Hungary the branch of or the cross-border provision of services by an insurance provider having its registered

seat in that Member State. Upon request by the home Member State supervisory authority, the supervisory authority is entitled to supervise on location such branches or cross-border provision of services, and to request information from the insurance company concerned. (Art. 290).

3.12.3.6.3 The registered office requirement

Insurance and reinsurance service providers with their registered office in Hungary must have their central office in Hungary (Art. 48).

3.12.3.6.4 Legal form

Insurance services can be provided in the following forms: public company, European company, cooperative, association, Hungarian branch of an insurance company with its seat of operation in another Member State, or branch of a third-State insurance company (Art. 6(1)).

Reinsurance services can be provided in the following forms: public company, European company, cooperative, Hungarian branch of an insurance company with its seat of operation in another Member State, or branch of a third-State insurance company (Art. 6(1)).

3.12.3.6.4.1 Insurance and reinsurance public companies

Insurance public companies are entitled to provide complete insurance services under the license obtained and to provide reinsurance services without obtaining a separate license covered by the insurance license (Art. 7(1)).

Reinsurance public companies are entitled to provide complete reinsurance services under the license obtained covering life-reinsurance services, non-life-reinsurance services or both (Art. 7(2)).

3.12.3.6.4.2 Insurance and reinsurance cooperatives

Insurance cooperatives are entitled to provide complete insurance services under the license obtained and to provide reinsurance services without obtaining a separate license covered by the insurance license (Art. 9(1)).

Reinsurance cooperatives are entitled to provide complete reinsurance services under the license obtained covering life-reinsurance services, non-life-reinsurance services or both (Art. 9(2)).

3.12.3.6.4.3 Mutual insurance associations

Mutual insurance associations provide prior determined insurance services on the basis of an insurance contract concluded with its own members in return to the payment of insurance fees (Art. 17(1)). They are entitled to provide complete insurance services under the license obtained and to provide reinsurance services without obtaining a separate license covered by the insurance license (Art. 20).

3.12.3.6.4.4 Hungarian branch of an insurance or reinsurance company with its registered office in another Member State

They are entitled to provide complete insurance services under the license obtained from the supervisory authority of the Member State of their seat of operation (Art. 35(1)-(2)).

The Hungarian branch of an insurance company with its seat of operation in another Member State is required to produce the documents proving the conclusion or the existence of the insurance contract, including the general terms of contract, in the Hungarian language (Art. 36(1)). This obligation does not apply to the Hungarian branch of a reinsurance company with its seat of operation in another Member State (Art. 36(3)).

3.12.3.6.4.5 Cross-border provision of insurance and reinsurance services

Insurance and reinsurance companies with their registered office in another Member States are entitled to provide insurance or reinsurance services in Hungary in the form of a cross-border provision of services (Art. 38(1)).

They are entitled to provide complete insurance or reinsurance services under the license obtained from the supervisory authority of the home Member State (Art. 38(2)-(3)).

Hungarian language requirement: the insurance contract and any relevant documentation must be provided in Hungarian (Art. 39(1)). The requirement does not apply to reinsurance services provided on a cross-border basis (Art. 39(3)).

3.12.3.7 *The conditions of operation*

3.12.3.7.1 Areas of activity of special importance

Insurance and reinsurance service providers must operate at least the following areas of activity of special importance: actuary activities, risk management activities including risk and regulatory capital assessment activities, compliance activities, and internal controlling activities (Art. 81).

3.12.3.7.2 Material conditions

When commencing its activities, the insurance or reinsurance public company must have the initial capital which will at least cover meeting the requirements concerning the adequate internal management system, the personal requirements concerning executive and other staff, the material conditions, and the requirement concerning the minimal security capital (Art. 93(1)).

The minimum value of the assets available to cover the setting up the administrative and business operations organisation is 100 million HUF with insurance or reinsurance public companies, 51 million HUF with insurance or reinsurance cooperatives, and 1 million HUF with mutual insurance associations (Art. 93(2)).

Further material conditions include (Art. 94(1))

operating an accounting system and registry in compliance with the applicable legislation;

operating a system for registration, data processing and data provision;

suitable technical, IT, office and security equipment and office space;

adequate internal regulations;

processes and systems for information flow and controls are available to reduce operating risks;

a plan to address emergency situations;

meeting the personal conditions of operation laid down in legislation;

meeting the management system requirement laid down in legislation;

transparent institutional framework.

3.12.3.7.3 The formation of insurance reserves

The insurance or reinsurance service provider must establish an insurance reserve covering its obligations under the insurance and reinsurance contracts concluded. The reserve must be calculated in a prudent, trustworthy and objective manner. (Art. 97).

Art. 98 coapplication provision: the Commission regulation issued under the Article 86 of the 2nd Solvency Directive (Directive 2009/138/EC).

3.12.3.7.4 The regulatory capital

The insurance or reinsurance service provider must have the regulatory capital necessary to cover the demands for regulatory capital (Art. 99).

Art. 100 coapplication provision: the Commission regulation issued under the Article 99 of the 2nd Solvency Directive.

3.12.3.7.5 The minimal capital requirement

The insurance or reinsurance service provider must have the basic regulatory capital necessary to cover the demands for capital (Art. 101(1)).

The minimal capital is the amount of capital underneath which the fulfilment of obligations undertaken in insurance contracts may be put to jeopardy (Art. 101(3)).

The minimal capital cannot be less than 25 per cent of the regulatory capital, but it must not exceed 45 per cent of the same (Art. 102(1)).

Art. 101(2) coapplication provision: the Commission regulation issued under the Article 130 of the 2nd Solvency Directive.

3.12.3.7.6 The investments made by insurance or reinsurance service providers

Insurance and reinsurance providers are entitled to a freedom of investment and make their investment decisions freely. These decisions are not subject to the consent of the supervisory authority, which is prevented to establish a regular reporting obligation for insurance and reinsurance providers on this matter. The decisions must be made under the requirements of prudent operation and maximum care (Art. 103).

Art. 103(4) coapplication provision: the Commission regulation issued under the Article 135 of the 2nd Solvency Directive.

In case the assets of the insurance or reinsurance service provider are managed by itself, it must employ in an employment law relationship a person for the management of the related activities that has no prior convictions, the necessary professional academic and professional qualifications, professional suitability and business trustworthiness, and has three years of experience in investment and asset management in a financial service provider (Art. 104/A).

The insurance or reinsurance provider must maintain a current payment account to manage its payments necessary for its continuous operation. The assets exceeding the payments necessary for its continuous operation which will be invested in financial instruments must be transferred to the investment account held by the depositary (Art. 104/B).

Investments in derivative financial instruments are permitted only for the purposes of reducing risks, or enhancing the effective management of the instruments. Investments into financial instruments not introduced to regulated markets must be limited to the level required by prudent operation. Investments must be diversified in a manner so that the excessive accumulation of risks and investment in regards a certain instrument, issuer, group of undertakings, or geographical area within the whole financial portfolio is avoided. Investments into instruments issued by a single issuer or a single group of issuers must not expose insurance service providers to an excessive concentration of risk. (Art. 106).

3.12.3.7.7 Transparency obligations

Insurance and reinsurance service providers must publish an annual report on their solvency and financial situation (Art. 108).

Insurance and reinsurance service providers must publish decisions issued by the supervisory authority regarding the violation of the applicable legislation. They are entitled to publish the reasons provided by the supervisory authority in the decision and the judicial decision delivered in the judicial review of that decision. (Art. 108/A).

3.12.3.8 The sale of insurance

The sale of insurance is not subject to a license (Art. 130(1)).

In case the insurance service provider notices that the sale of insurance and its circumstances violate the applicable legal provisions, it is obliged to make the necessary steps to ensure that lawful operation is restored (Art. 130(2)).

The following sales methods are prohibited (Art. 131): special advantages are offered to the disadvantage of other persons in the particular cases when the insured or the contracting party convinces another person to conclude the same or a similar insurance contract; investment of such kind is requested from the insured or the contracting party which can be transferred in part or completely to other persons that will have to be convinced to conclude the same or a similar insurance contract; when the purchase of the insurance is a condition for becoming involved in the sale of insurance for remuneration.

3.12.3.9 Insurance intermediaries

Insurance intermediary services may be provided by dependent or independent insurance intermediaries (Art. 329(1)).

In Hungary, insurance intermediary services may only be provided by insurance intermediaries registered as active in the insurance market in the registry of the supervisory authority (Art. 329(2)).

The insurance intermediary services may be provided in Hungary through a branch or through the cross-border provision of services when the person concerned is registered in the home Member State. Registration in the Hungarian registry is not necessary. (Art. 371).

Multiple agent and broker activities are subject to obtaining the license of the supervisory authority (Art. 413).

3.12.3.9.1 Cross-border provision of insurance intermediary services: outgoing

Insurance intermediaries registered in Hungary must notify in advance the supervisory authority, on the first such occasion, that it aims to provide its services through a branch or through the cross-border provision of services in another Member State (Art. 422(1)).

The supervisory authority, within 1 month after receiving the notification, informs the supervisory authority of the host Member State of the planned activities of the insurance intermediary (Art. 422(2)).

The supervisory authority informs the insurance intermediary concerned of the information provided by the host Member State supervisory authority regarding the legal conditions of providing that service in that Member State (Art. 422(4)).

The provision of services in another Member State may commence after the delivery of the information of the supervisory authority regarding the legal

conditions in the host Member State, or, in absence of such provision of information, after the expiry of the 1 month deadline to provide that information (Art. 422(5)).

3.12.3.9.2 Cross-border provision of insurance intermediary services: incoming

Upon being informed, on the first such occasion, by the home Member State supervisory authority regarding the cross-border provision of insurance intermediary services in Hungary, or the provision of such services through a Hungarian branch, the supervisory authority informs within 1 month after receiving the information the insurance intermediary concerned of the applicable Hungarian legislative provisions (Art. 423).

The supervisory authority is entitled to request non-regular information from the Hungarian branch of insurance companies having their registered seat in another Member State or from such insurance companies, regarding its provision of cross-border services in Hungary, in order to establish that the operation complies with the applicable legislative provisions (Art. 425).

In case the legislative provisions concerning the operation of Hungarian branches or the provision of cross-border services in Hungary are violated, or their operation does not comply with the relevant legal requirements, the supervisory authority obliges the Hungarian branch or the insurance intermediary concerned to cease the unlawful situation (Art. 426(1)).

In case the Hungarian branch or the insurance intermediary concerned does not comply with the decision of the supervisory authority, it informs the home Member State supervisory authority and initiates the taking of the necessary steps (Art. 426(2)).

In case the unlawful situation is not remedied, despite the steps taken by the home Member State supervisory authority, the supervisory authority, after informing the home authority, may apply the instruments specified (Art. 426(3)).

The supervisory authority may act directly in the case of a violation of the applicable Hungarian rules with the purpose of protecting the interests of clients, provided that unlawful conduct poses a serious threat to the interests of clients (Art. 426(4)).

In case the home Member State supervisory authority deletes the insurance intermediary from its registry and informs the supervisory authority of this matter, the supervisory authority must take the necessary action so as to prevent the insurance intermediary from continuing its operations (Art. 426(5)).

The supervisory authority of the home Member State, or the person empowered for this purpose by that authority, is entitled, after informing the supervisory authority, to supervise in Hungary the branch of or the cross-border provision of services (Art. 427(1)). Upon request by the home Member State supervisory authority, the supervisory authority is entitled to

supervise on location such branches or cross-border provision of services, and to request information from the insurance intermediary company concerned (Art. 427(3)).

3.12.3.9.3 The payment of the supervision fee

The insurance intermediary, including Hungarian branches, must pay a supervision fee to the supervisory authority (Art. 324).

3.12.4 The investment services market

The Hungarian market for investment services is regulated by Act 2007:CXXXVIII on investment undertakings. In principle, the measure establishes an open but closely regulated market where competition prevails. Only the most important legal provisions are included in this legal mapping report.

3.12.4.1 Overview of the legal and regulatory environment

In general, at the level of statutory provisions the Hungarian market for investment services operates as an open market which provides equal access and equal opportunities for EEA economic operators. The legal rules explicitly provide for the cross-border provision of such services and entry to the Hungarian market through cross-border establishment. The legal framework contains numerous restrictions concerning the carrying out of economic activities, but these, on a general level, are supported either by public interest considerations or by considerations relating to the nature of economic activities in the sector.

Market access
ensured

As a norm, carrying out economic activities in the Hungarian market (market entry) is subject to the obtaining of a license from the supervisory authority, 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. Entry to the Hungarian market is also made possible, as required by the relevant provision of EU law, by means of a cross-border provision of services or of cross-border establishment. The legal provisions governing market entry do not involve directly discriminatory provisions and provisions which would unduly hinder the access of EEA economic operators to the Hungarian market.

Cross-border
access
ensured

The Hungarian regulatory regime operates with a robust licensing system. Licenses are issued to economic operators established in Hungary. Economic operators established in other Member States are able to provide services in Hungary on the basis of the license issued by the supervisory authority of the home Member State in the form of a cross-border delivery of services or by means of cross-border establishment.

Robust
licensing
regime

The regulatory framework operates consciously with EU compliance clauses ((Art. 183: general compliance clause). Evidently, a considerable number of legal rules were introduced with the purpose of facilitating the application of the mutual recognition principle or of giving effect to the freedom to provide cross-border services or to carry out economic activities in the Hungarian market through cross-border establishment (Arts. 27, 29, 171-173).

EU compliance

3.12.4.2 The market

The main market participants are investment undertakings and credit institutions.

3.12.4.3 *Market entry*

3.12.4.3.1 *Licensing*

Investment services and supplementary services may only be provided under a license (Art. 8(1)).

The cross-border provision of investment services in Hungary or the cross-border establishment of a branch in Hungary by an EEA Member State established investment undertaking is subject to obtaining the license of the home Member State supervisory authority and to meeting the conditions laid down in Arts. 27(5) and 27(8) (Art. 8(3)).

Investment undertakings established in another EEA Member State may provide cross-border investment services in Hungary (Art. 7(4)).

The supervisory authority issues the license for individual activities and services or for the entirety of activities and services in case the applicant meets the relevant requirement laid down legislation and the effective and successful supervision of the applicant is not impeded (Art. 27(1)). The license entitles the investment undertaking to provide investment services and supplementary services in another EEA Member State (Art. 27(3)).

Cross-border establishment and the cross-border provision of services by an EEA Member State investment undertaking licensed in that State are not subject to a license issued by the supervisory authority (Art. 27(2)).

3.12.4.3.2 *Institutional form*

Investment services may only be provided by investment undertakings and credit institutions subject to meeting the conditions laid down in legislation (Art. 7(1)).

3.12.4.3.3 *Legal form*

Investment undertakings must be established as public companies or Hungarian branches (Art. 16(1)).

3.12.4.3.3.1 *Main office requirement*

Investment undertakings established in Hungary must have their central administration in Hungary (Art. 16(3)).

3.12.4.3.4 *Capital requirements*

Capital requirements: as a general rule, a minimum 730.000 EUR starting capital (Art. 13(1)).

The registered capital of an investment undertaking must be provided exclusively in the form of pecuniary contribution (Art. 15(1)).

3.12.4.4 Provisions on cross-border establishment and the cross-border provision of services

3.12.4.4.1 Outgoing establishment and service provision

The cross-border provision of services by a Hungarian licensed investment undertaking is subject to informing the supervisory authority, which information must identify the host EEA Member State, the services provided in that State, and whether it intends to use a dependent agent (Art. 27(4)). Activities in the host Member State may be commenced when the information provided to the supervisory authority reaches the host Member State authority and the investment undertaking is notified of this fact, or one month after informing the supervisory authority (Art. 27(5)).

Cross-border establishment by a Hungarian licensed investment undertaking is subject to informing the supervisory authority, which information must identify the host EEA Member State, the services provided in that State, whether it intends to use a dependent agent, and the persons responsible for the management of the branch in the host State (Art. 27(7)). Activities in the host Member State may be commenced when the host Member State supervisory authority notifies the investment undertaking of its consent, or two month after the supervisory authority informing the host Member State supervisory authority, which during that time produced not notification (Art. 27(8)).

The information submitted by the investment undertaking concerning the cross-border establishment of a branch or the cross-border provision of services is forwarded within one month (cross-border services)/three months (cross-border establishment to the relevant EEA Member State supervisory authority (Arts. 172 and 173).

3.12.4.4.2 Cross-border cooperation before issuing a license

In the licensing process, the supervisory authority obtains the opinion of the relevant EEA Member State supervisory authority, when the applicant is the subsidiary of an investment undertaking, credit institution or insurance company registered in another EEA Member State, is the subsidiary of the parent company of an investment undertaking, credit institution or insurance company registered in another EEA Member State, or is the owner with controlling influence of an investment undertaking, credit institution or insurance company registered in another EEA Member State (Art. 29).

3.12.4.4.3 Cross-border consultation before issuing a license

The supervisory authority request the opinion of the relevant EEA Member State supervisory authority in case the applicant is the subsidiary of an investment undertaking or credit institution the license of which was issued by that supervisory authority, is the subsidiary of the parent company of an investment undertaking or credit institution the license of which was issued by that supervisory authority, or is a company controlled by a person or an

organisation the controlled company of whom was issued a license by that supervisory authority (Art. 171(1)).

The supervisory authority request the opinion of the EEA Member State supervisory authority with competence over insurance services or the activities of credit institutions in case the applicant is the subsidiary of a credit institution or an insurance company the license of which was issued by that supervisory authority, is the subsidiary of the parent company of a credit institution or an insurance company the license of which was issued by that supervisory authority, or is a company controlled by a person or an organisation the controlled company of whom is a credit institution or an insurance company which was issued a license by that supervisory authority (Art. 171(1)).

3.12.5 The payment services market

The Hungarian market for payment services and electronic money payment services is regulated by Act 2013:CCXXXV on payment services. In principle, the measure establishes an open but closely regulated market where competition prevails. Only the most important legal provisions are included in this legal mapping report.

3.12.5.1 Overview of the legal and regulatory environment

In general, at the level of statutory provisions the Hungarian market for payment services operates as an open market which provides equal access and equal opportunities for EEA economic operators. The legal rules explicitly provide for the cross-border provision of such services and entry to the Hungarian market through cross-border establishment. The legal framework contains numerous restrictions concerning the carrying out of economic activities, but these, on a general level, are supported either by public interest considerations or by considerations relating to the nature of economic activities in the sector.

Market access
ensured

As a norm, carrying out economic activities in the Hungarian market (market entry) is subject to the obtaining of a license from the supervisory authority, 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. Entry to the Hungarian market is also made possible, as required by the relevant provision of EU law, by means of a cross-border provision of services or of cross-border establishment. The legal provisions governing market entry do not involve directly discriminatory provisions and provisions which would unduly hinder the access of EEA economic operators to the Hungarian market.

Cross-border
access
ensured

The Hungarian regulatory regime operates with a robust licensing system. Licenses are issued to economic operators established in Hungary. Economic operators established in other Member States are able to provide services in Hungary on the basis of the license issued by the supervisory authority of the home Member State in the form of a cross-border delivery of services or by means of cross-border establishment.

Robust
licensing
regime

The regulatory framework operates consciously with EU compliance clauses ((Art. 90: general compliance clause). Evidently, a considerable number of legal rules were introduced with the purpose of facilitating the application of the mutual recognition principle or of giving effect to the freedom to provide cross-border services or to carry out economic activities in the Hungarian market through cross-border establishment (Arts. 24, 25, 26).

EU compliance

3.12.5.2 The market

The main market participants are payment service and electronic money payment service providers.

3.12.5.3 Access to payment systems

The regulations governing access to a payment system must contain objective, proportionate and non-discriminatory conditions (Art. 53(1)).

Access to a payment system must not be restricted beyond what is necessary for avoiding the relevant risks and for ensuring the stability of operations (Art. 53(2)).

Access to a payment system cannot be subject to the following conditions: restricting the right of access to another payment system, introducing different rights and obligations for different undertakings, or restricting the institutional form of the undertaking concerned (Art. 53(3)).

3.12.5.4 Market entry

3.12.5.4.1 Licensing

The provision of payment services and electronic money payment services are subject to a license issued by the supervisory authority (Art. 4(1)).

The license is provided on the basis of a careful assessment of the documents and information submitted in the licensing process, and the supervisor author must establish that the issuing of the license does not violate a provision of law (Art. 18).

Payment service and electronic money payment service providers established in another EEA Member State may provide their services in Hungary on the basis of cross-border establishment in the form of a Hungarian branch or of cross-border provision of services (Art. 4(2-4)). Such service providers are not subject to a license issued by the supervisory authority in connection of activities and services licensed by the home EEA Member State supervisory authority (Art.4(5)).

3.12.5.4.2 Legal form

Payment service and electronic money payment service providers must operate as public companies, limited liability companies, cooperatives, or as the branches of companies established in another EEA Member State (Art. 10(1)).

3.12.5.4.2.1 Main office requirement

Payment service and electronic money payment service providers established in Hungary must have their central administration in Hungary (Art. 10(4)).

3.12.5.4.3 Capital requirements

Capital requirements: as a general rule, a minimum 37.5 million HUF starting capital for payment service providers (Art. 11(1)).

Capital requirements: a minimum 100 million HUF starting capital for electronic money payment service providers (Art. 11(4)).

The starting capital of payment service and electronic money payment service providers must be provided exclusively in the form of pecuniary contribution (Art. 11(6)).

3.12.5.5 Provisions on cross-border establishment and the cross-border provision of services

3.12.5.5.1 Incoming establishment and service provision

In case the supervisory authority of another EEA Member State informs the supervisory authority that a payment service or an electronic money payment service provider established in that State intends to establish a branch in Hungary or provide services on a cross-border basis in Hungary, the supervisory authority informs the undertaking concerned regarding the conditions governing the provision of services in Hungary (Art. 26(1)).

3.12.5.5.2 Outgoing establishment and service provision

The establishment of a branch in another EEA Member State is subject to notifying the supervisory authority (Art. 24(1)). The notification must identify the host EEA Member State, the services provided in that State, and the documents relating to the operation and controlling of the branch, the address and business plan of the branch, and the person responsible for the management of the branch in the host State (Art. 24(2)). In case the relevant requirements laid down in legislation are met, the supervisory authority informs within 1 month the relevant supervisory authority of the host Member State (Art. 24(3)).

The cross-border provision of services another EEA Member State is subject to notifying the supervisory authority (Art. 25(1)). The notification must identify the host EEA Member State (Art. 25(2)). In case the relevant requirements laid down in legislation are met, the supervisory authority informs within 1 month the relevant supervisory authority of the host Member State (Art. 25(3)).