

## newsletter

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### IN THIS ISSUE:

<b>Civil Law</b>   Acquisition of real property by foreigners	p. 1
<b>EU Law</b>   Emblematic decision of the European Court of Justice concerning the free movement of persons	p. 2
<b>EU Law</b>   The EU adopts the Directive on Antitrust Damage Actions	p. 3
<b>Tax Law</b>   Planned Internet tax withdrawn	p. 4
<b>Banking Law</b>   Developments on foreign exchange loan agreements	p. 4

### CIVIL LAW

#### Acquisition of real property by foreigners

As mentioned in our previous newsletters, there have recently been significant changes to the Hungarian regulations that govern the acquisition of real estate by foreign citizens.

Since Hungary's EU accession in 2004, the administrative burdens related to the acquisition of real estate by citizens of EU Member States have been gradually abolished. Namely, since 2009, citizens of EU Member States are allowed to acquire real estate on the same terms and conditions as Hungarian citizens, provided that the real estate in question does not qualify as agricultural land. As regards such agricultural lands, Hungary applied a moratorium up until 30 April 2014, under which EU citizens could only acquire such real estate with restrictions.

The restrictions to the rights of EU citizens to purchase Hungarian real property (used for agriculture) elapsed on 30 April 2014. At that point, an entirely new act on agricultural land (the "AAL") entered into force.

With this change, the entire regulatory framework governing the acquisition of real estate (agricultural lands and non-agricultural property) by foreigners had to be reconsidered. The regulatory framework remained unchanged in that the acquisition of ownership (disregarding acquisition by inheritance) of agricultural lands is regulated in the AAL, and rules related to non-agricultural lands are set out in Act LXXVIII of 1993 on the lease and sale of apartments and other premises.

As a part of these changes, a new government decree (the “**Decree**”) came into force on 3 October 2014, which governs the acquisition of non-agricultural real estate by foreigners.

The AAL contains new definitions of “foreigners” and “foreign nationals”, in which the most significant change is that citizens of EU Member States, persons holding a citizenship of an EEA Member State, and the nationals of other States enjoying similar treatment under international agreement, are no longer qualified as foreign persons and therefore enjoy the same treatment as Hungarian citizens. The definitions of “foreigners” or “foreign nationals” pertain to citizens and nationals of other third countries.

The rules of the Decree detailed below apply to the second group mentioned above, i.e. citizens of third countries.

The basic principle of the Decree remains unchanged: foreign persons may only acquire the ownership of real estate on the basis of an authorization by government office. There are some exceptions to this rule, e.g. in principle, no authorization is required for any real estate necessary for a company established in a third country whose business activities are performed by said company’s Hungarian branches.

The Decree includes detailed provisions on the authorization and some procedural rules related thereto. As a matter of principle, the acquisition shall be authorized (i) if it is not against public interest or municipal interest or (ii) if the applicant is a private entrepreneur or member of a sole proprietorship and complies with the following:

- the acquisition of the real estate is not against the public interest,
- the applicant wishes to pursue economic activities in Hungary,
- the real estate intended to be acquired is necessary for such activities, or
- the applicant wishes to take up residence in Hungary.

In contrast to previous rules, the Decree determines the possible cases where public or municipal interest is violated. For example, natural persons expelled or serving a term of imprisonment or legal persons undergoing liquidation or winding-up proceedings are considered to be injuring to public interest.

Even if the acquisition does not violate public and/or municipal interest, the application may still be rejected by the government office if the home country of the applicant does not provide equal treatment to Hungarian citizens in that country. As an exception to this rule, if the purpose of the acquisition is to terminate a joint ownership or if the foreign person has been living and working in Hungary for five years, the authorization can be granted.

Another novelty was introduced concerning acquisition by way of auction. In such cases, a “prior authorization” may be requested, which constitutes an entitlement for the acquisition of any real estate that is subject to such auction.

## **EU LAW**

### **Emblematic decision of the European Court of Justice concerning the free movement of persons**

The Court of Justice of the European Union (the “**CJEU**”) recently ruled on an important question related to the free movement of persons, stating that those EU citizens who are economically inactive and enter another Member State solely to benefit from the social security system of that country may be excluded from social benefits.

According to German rules, foreigners (including EU citizens) coming from different Member States are excluded from social benefits if their right of residence arises solely from their search for employment in Germany. The rule was contested by two Romanian citizens who were seeking social benefits to cover their minimum subsistence costs. The case was pending before the Leipzig Social Court, which has referred it to the CJEU, asking for its preliminary decision.

In its preliminary ruling, the CJEU argued with the wording of the Free Movement of Citizens Directive, which indicates that the application of the principle of equal treatment of EU citizens is narrowed down to the scope of the Directive. In practice, this means that the host Member State is not obliged to grant social assistance during the first three months of residence. In cases where the residence period is longer than three months but less than five years, the right of residence is only granted if the economically inactive person has sufficient resources of his own to cover his costs of living.

Accordingly, the host Member State shall have the right to refuse to grant social benefits to economically inactive EU citizens and such domestic legislation will not be in breach of EU law as economically inactive people - following the above outlined concept - do not have right of residence. Thus, under the Directive, they cannot claim equal treatment with nationals of the host Member State.

Consequently, from now on it is clear that economically inactive people cannot invoke the principle of non-discrimination under EU law if access to the social security system of another host Member State is refused to them.

### **The EU adopts the Directive on Antitrust Damage Actions**

On 10 November 2014, the European Council gave its final approval to the Directive on Antitrust Damages Actions (the "**Directive**"), which is a regulatory milestone in the field of private damage claims arising from the infringement of competition law.

The text was brought into its final form in an ordinary legislative procedure by the European Parliament and the Council based on the proposal of the European Commission. The Directive on Antitrust Damage Actions is expected to be published at the end of November and will enter into force twenty days after publication. Member States will have two years to transpose the Directive into their national legislation after its entry into force.

The goal of the Directive is twofold: (i) to help victims of antitrust infringements to obtain compensation, and (ii) to optimise the interaction between public and private enforcement and to ensure that these two ways of enforcement complement one another.

In order to achieve the first goal of the Directive - once it is implemented - there will be a rebuttable presumption that cartels cause harm, undertakings which have infringed competition law through joint behaviour will be jointly and severally liable for the harm caused, the parties will have easier access to the evidence they need during the compensation claim, the final decision of a national competition authority will be a relevant source of the infringement in all Member States, and victims will have more time to claim damages. Furthermore, according to the provisions of the Directive, those who ultimately suffered the harm will be the ones entitled to claim compensation, even if price increases caused by an infringement have been "passed on" down the distribution chain.

As regards the second goal, the Directive provides restriction to the disclosure of evidence included in the competition authority's file, as well as measures for the protection of the attractiveness of leniency programs.

It seems that, considering the rules implemented by the Directive, it will be much easier in the EU to obtain compensation for damages caused by the violation of antitrust rules. At the same time, it will harmonise the diverging national regulations among Member States in this field by providing a predictable regulatory environment under the umbrella of equal treatment for both EU citizens and undertakings.

## TAX LAW

### Planned Internet tax withdrawn

In the second half of October 2014, the plan to introduce a tax on Internet usage as an element of Hungary's 2015 tax package became public. The motion would have extended the telecommunications tax to Internet service providers, who would have had to pay a tax based on the data traffic generated by their customers. The motion also included a rule that would have prohibited service providers from passing on their costs arising from this new tax. After some significant preliminary criticism on the project, according to a new proposal, the tax rate would have been capped at HUF 700 per month for private users, and HUF 5000 per month for companies. After several demonstrations held against the planned tax, the proposal was officially withdrawn by the Committee on Economics of the Hungarian Parliament. Nevertheless, a national consultation will be launched on the regulation of Internet and related financial matters in January 2015.

## BANKING LAW

### Developments on foreign exchange loan agreements

There have recently been certain developments in connection with foreign exchange loan agreements.

As mentioned in the September issue of our newsletter, the Constitutional Court was requested to examine whether certain provisions of Act XXXVIII of 2014 ("**Act 1**"), which declared the presumption of nullity of some unilateral amendment option clauses of foreign exchange loan agreements, were anti-constitutional. The motion submitted to the Constitutional Court stated that some provisions of Act 1 violated the Constitution, as they were introduced with retroactive effect, and the extraordinary procedural rules set out in Act 1 did not meet the requirements of fair procedure. In its decision issued on 11 November 2014, the Constitutional Court ruled that the respective provisions of Act 1 are in compliance with the Constitution and dismissed the motions.

Firstly, the Court stated that the prohibition of retroactive effect was not violated, since the principle that unilateral amendment option clauses must be fair and in accordance with good faith must always be respected. The court considered that the relevant criteria set out in detail by Act 1 – the fulfilment of which had to be proven by the financial institutions in lawsuits in order to defend their contractual clauses – could also have been deducted previously from legal principles and the case-law.

Secondly, with regard to the right to fair procedure, the Court declared that the 30-day time limit prescribed for financial institutions to file a claim was enough to take a realistic decision on whether to commence a suit and to prepare the trial.

Another novelty in this field is that, according to Act XL of 2014 on the rules of settlement set out in Act 1 ("**Act 2**"), the rules detailing settlements with consumers must be determined in decrees by the Hungarian National Bank (the "**HNB**").

The rules on the method of settlement were set out in the recently published HNB Decree No. 42/2014 (XI. 7) on the general rules pertaining to the method of settlement following invalid contractual provisions indicated in the consumer loan agreements of financial institutions. This decree only prescribes rules for the settlement of 'trouble free' consumer loan agreements, in which the consumer has not defaulted on his payments and where the consumer does not fall within the scope of a preferential programme or discount.

Finally, an agreement between the Ministry of National Economy and the Hungarian Bank Association determined the exact exchange rates at which foreign exchange loans are to be converted into Hungarian Forints. The HNB's official exchange rates, dated 7 November 2014, must now be applied: 256.47 HUF/CHF and 308.97 HUF/EUR.

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