

## newsletter

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### DOMESTIC LITIGATION

#### The draft new civil procedure act is published

By virtue of a resolution issued in mid-2013, the Hungarian Government announced its plan to adopt a new code on the rules of civil procedure. Following the preparatory work completed these last two years, the draft of the New Civil Procedure (the "Draft Bill") was published recently.

According to the reasoning behind the Draft Bill the rules currently in force no longer comply with requirements, due to inconsistencies deriving from multiple modifications carried out over the last sixty years. The key priority seems to be to increase the efficiency of the procedures. The main reforms of the Draft Bill would be as follows:

- A new principle will be introduced, namely the obligation to cooperate, which applies to the parties and commands proactive contribution from the judge in order to actively advance proceedings.
- The new rules will divide the procedure into two parts: the preparatory stage and the trial stage. The aim of this amendment is to shorten the procedure itself by clarifying the factual questions during the preparatory stage, so that the judge can decide more easily on the merits of the case during the trial stage. Accordingly, making amendments to the statement of claims during the procedure and the deadlines for submitting a counterclaim or evidence will be much stricter.
- In addition, administrative litigation rules (e.g. the review of decisions taken by administrative bodies) will be codified in a separate act with regard to the specific nature of such litigation. In the long run, the government aims to separate the administrative judicial review system from the civil judicial system.
- The Draft Bill will review the rules applicable to class actions, i.e. where a group of plaintiffs sues another party. The new rules aim to facilitate the initiation of lawsuits based on many similar, but low-value, individual claims.
- Lastly, a new filtering system will be put in place to limit the review of claims brought before the Curia, Hungary's highest judicial body.

The Draft Bill is still under debate. The new rules are expected to be adopted in 2017.

## CROSS-BORDER LITIGATION

### **Brussels I Regulation (recast): faster enforcement within the EU, end of abusive “torpedo actions”**

On 10 January 2015, a new regulation (EU Regulation No. 1215/2014, “**Brussels I Regulation (recast)**”) entered into force in relation to jurisdiction (i.e. the split of competence between EU Member State courts in cross-border commercial and civil matters). The new rules aim to facilitate the recognition of judgments rendered in other Member States and the enforcement of such judgments in other EU countries. The new rules replace the former EU Regulation No. 44/2001, which was often referred to as “Brussels I Regulation”.

One of the most important changes of the Brussels I Regulation (recast) is the abolition of the exequatur. To date, enforcement based on a court judgment passed by another Member State was only possible after a time-consuming recognition process in the State in which the decision had to be declared enforceable (“exequatur”). Such exequatur will now no longer be required. Instead, a party wishing to invoke in a Member State a judgment passed in another Member State now essentially need only present the enforcement authority with a copy of the original judgment.

Another important change concerns the enforceability of jurisdiction clauses. In the past, a contractual party breaching the underlying contract could win considerable amount of time by initiating a claim for a declaratory judgment about the non-existence of the breach before a foreign court that had obviously no jurisdiction over the case. Until this tribunal did not state its lack of jurisdiction, the other party could not begin its legal action on the merits at the court that did indeed have jurisdiction (this type of abusive procedure is often called “Italian torpedo”, since in many cases the abusive parties benefited from the slower proceedings of Italian courts).

In future, torpedo actions will no longer be possible in cases in which the contractual parties have agreed exclusive jurisdiction. If a court on which such an agreement confers exclusive jurisdiction is seized by any party, any court of another Member State seized earlier must stay its proceedings until such time as the court seized later on the basis of the agreement declares that it has no jurisdiction under the agreement. If this latter court establishes its jurisdiction in accordance with the agreement, the former court of the other Member State must decline jurisdiction in favour of such court.

## COPYRIGHT

### **The European Court of Justice states that lawsuits for online copyright infringements can be initiated at any EU jurisdiction where the infringing website is accessible**

In the case at hand, pictures were posted on the website of a company whose headquarters are located in Germany without the consent of the professional photographer, who lives in Austria. The Austrian photographer initiated a copyright infringement lawsuit before an Austrian court. According to the photograph, the Austrian court had jurisdiction since the “place of damage” occurred in Austria (Article 5(3) of the Brussels I Regulation). The German company would have preferred to move the procedure to Germany and therefore debated the jurisdiction of the Austrian court by claiming that the mere fact that the website was available from Austria are insufficient grounds to confer jurisdiction to an Austrian court.

In its preliminary ruling (Case C-441/13), the ECJ ruled that a member state's court has jurisdiction to hear an action for damages in reference to an infringement of copyright resulting from the posting of photographs on a website accessible in its territorial jurisdiction. Nevertheless, the ECJ added that the local court has jurisdiction to rule only about the damage caused in the Member State in which the court is situated.

The ECJ concluded that, in the case of damages caused by online copyright infringements, any court of the Member state in question can proceed if the infringing contents are accessible in its territory via the internet.

## TAX / COMPETITION LAW

### **The European Commission opens an in-depth investigation into Hungarian advertisement tax**

The European Commission has opened an in-depth investigation to determine whether Hungary's advertisement tax introduced in June 2014 (and amended recently) complies with EU state aid rules. In particular, the Commission has concerns that the progressive tax rates, ranging from 0 to 50%, could selectively favour certain companies and give them an unfair competitive advantage. The Commission has therefore also taken a separate decision prohibiting Hungary from applying progressive rates until the Commission has completed its assessment.

Under the advertisement tax act (the "Act"), companies are taxed at a rate depending on their advertisement turnover, with those companies benefitting from a higher advertisement turnover being subject to a significantly higher tax rate. At this stage, the Commission considers that this progressive tax rate system, which ranges from 0% to 50%, selectively favours certain media companies, in breach of EU state aid rules.

The Commission also has doubts as to whether the provisions in the Act, which allow the deduction of previous losses from the taxable advertisement turnover, are in line with state aid rules. These rules seem to be inconsistent with the overall objective of the tax and their narrow application only to companies that did not generate profit in 2013 appears to grant a selective advantage to these companies.

Hungary and interested third parties can now submit their comments to the Commission. Following its investigation, the Commission will decide whether the advertisement tax generates state aid for certain companies and if so, whether it complies with EU rules.

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