THE NEW GEOPOLITICAL DIMENSION OF THE EU COMPETITION AND TRADE POLICIES

The proceedings of the XXX FIDE Congress in Sofia in 2023 are published in four volumes. This book (Vol. 2) contains the reports of the General Rapporteurs (Jean-François Bellis and Isabelle Van Damme), the Institutional Rapporteur (Ben Smulders) and the National Rapporteurs on Topic 2: The New Geopolitical Dimension of the EU Competition and Trade Policies

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THE NEW GEOPOLITICAL DIMENSION OF THE EU COMPETITION AND TRADE POLICIES

LA NOUVELLE DIMENSION GÉOPOLITIQUE DE LA POLITIQUE DE CONCURRENCE ET DE LA POLITIQUE COMMERCIALE DE L'UE

DIE NEUE GEOPOLITISCHE DIMENSION DER WETTBEWERBS- UND HANDELSPOLITIK DER EU

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COMPETITION

Green competition policy

Question 1

Hungarian competition law, especially substantive law, has been harmonized with EU competition law. In *Allianz*,[2] the Hungarian Supreme Court submitted preliminary questions in a purely Hungarian competition matter (one which was based on facts arising before Hungary's accession to the EU), considering that "the concepts referred to in Paragraph 11(1) of the (…) [Hungarian Competition Act] must in fact be interpreted in the same way as the equivalent concepts in Article 101(1) TFEU and that it is bound in that regard by the interpretation of those concepts provided by the Court."[3] Accordingly, the CJEU held that Section 11(1)-(2) CA, as the national equivalent of Article 101 TFEU, "faithfully reproduces Article 101(1) TFEU. It is clearly apparent, moreover, from the preamble to and the explanatory memorandum for the CA that the Hungarian legislature sought to harmonise domestic competition law with that of the European Union"[4]. Although the statement related specifically to Section 11 CA, in principle, it may be extrapolated to the substantive rules of Hungarian competition law at large, provided certainly that such rules do not contain an express deviation from the EU rules.

It has to be noted that the Hungarian Competition Act (hereafter: HCA),[5] in the provision on individual exemption, does refer to environment protection as one of the legitimate benefits that may justify the exemption of an agreement that otherwise restricts competition.

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[2] Case C-32/11.

[3] Para 22.

[4] Para 21.

[5] Act LVII of 1996 on the Prohibition of Unfair and Restrictive Market Practices.

Article 17 An agreement is exempted from the prohibition pursuant to Article 11 provided that

(a) it contributes to a more reasonable organisation of production or distribution, the promotion of technical or economic progress, or the improvement of competitiveness or of the protection of the environment;

(b) it allows trading parties not participating in the agreement a fair share of the resulting benefit;

(c) the concomitant restriction or exclusion of competition does not exceed the extent necessary to attain economically justified common goals; and

(d) it does not enable the exclusion of competition in respect of a substantial proportion of the goods concerned.

The reference to environment protection of Article 17 of the HCA has never been used in the decisional and judicial practice.

The Hungarian Competition Office (hereafter: HCO) usually follows the European Commission's approach in competition matters, including its guidelines and notices. The question of sustainability is no exception to this and the HCO is expected to follow the European Commission's (more conservative) approach and not to be willing to consider relevant sustainability benefits to the wider society under Article 101(3) TFEU when examining the effects of agreements between competitors.

The same holds true for courts, who are not expected to follow a different approach in a private action.

Question 2

The HCO has a very wide discretion for assessing mergers and, in theory, sustainability benefits may be taken into consideration along other effects in the market. The lack of decisional practice in this regard makes it difficult to predict what the reaction of the HCO would be in a case where the assessment of a merger hinges on the consideration of sustainability benefits.

Question 3

Article 17 of the HCA would be an adequate entry point to consider sustainability benefits, as it contains a specific statutory reference to the protection of the environment as a benefit that may justify otherwise restrictive agreements. As a matter of practice, however, the real question is not if environment protection

or sustainability more generally are relevant benefits that may be taken into a consideration under Article 17 of the HCA, but if these benefits need to accrue to the affected consumers in the relevant market. Under EU competition law, the Commission does not take into consideration under Article 101(3) TFEU all the benefits accruing from the arrangement, only those which accrue to the direct or indirect consumers of the product (or service). The HCO is expected to follow this more restrictive approach when assessing benefits under Article 17 of the HCA.

Merger control, the same as the rules on the abuse of dominant position allow a wider playing field for the HCO.

The rules on the assessment of mergers do not specify sustainability among the legitimate benefits to be considered, however, the wide discretion enjoyed by the HCO and the extrapolation of the reference to environment protection in Article 17 of the HCA may authorize the HCO to consider sustainability benefits.

Article 30 (1) The Hungarian Competition Authority shall prohibit a concentration where, with a view to the provisions of paragraph (2), the concentration would significantly reduce competition on the relevant market, in particular as a result of the creation or strengthening of a dominant position.

(2) When assessing a concentration, both concomitant advantages and disadvantages shall be considered. In the course of such consideration, the following factors shall be examined in particular:

(a) the structure of the relevant markets, existing or potential competition on the relevant markets, procurement and marketing possibilities, the costs, risks and technical, economic and legal conditions of market entry and exit, the prospective effects of the concentration on competition on the relevant markets;

(b) the market position and strategy, economic and financial capacity, business conduct, internal and external competitiveness of the undertakings concerned and likely changes to them;

(c) the effect of the concentration on suppliers and trading parties.

The same holds true for the assessment of abuse of dominant position under Article 21 of the HCA.

European strategic autonomy, the promotion of “European champions” and competition law enforcement

Question 4

There is no publicly available data in this matter about the Hungarian implications of the *Siemens/Alstom* transaction.

To the best of our knowledge, the HCO has not been confronted with similar arguments in comparable transactions.

Question 5

The HCO has a wide discretion when assessing mergers. Although, as noted above, Article 30 of the HCA refers solely to competition goals to be taken into account, the discretionary powers of the HCO allow it to consider the circumstances and aspects listed in the question but may not allow to side with the non-competition benefits when there is a clear conflict between competition and geopolitical considerations.

Question 6

Article 24/A of the HCA authorizes the government to directly exempt a concentration from the notification duty if this is justified by the public interest, especially the preservation of the workplaces for the sake of the security of supply. In this case the concentration may be announced as having a national strategic significance; such concentrations do not have to be notified to the HCO at all. This provision was inserted into the HCA by Act CXCI of 2013.

Article 24/A of the HCA does not specify the aspects the government should take into account when making use of this possibility and affords a very wide discretion.

It has to be noted that when making use of Article 24/A of the HCA the government does not overrule the HCO's decision but removes the case from the competence of the HCO and makes the decision itself.

The government has made use of this possibility in several cases, among others, in the energy, telecommunications and media sectors.[6]

Question 7

The HCO has brought no antitrust or merger control procedures against US digital platforms. According to the rules on the division of work between the

[6] Csongor István Nagy, Competition Law in Hungary, Kluwer, 2006, 44.

European Commission and national competition authorities, competition cases of a European dimension are handled by the European Commission, hence, it is not expected that the HCO would open an investigation in such a case.

Nonetheless, it has to be noted that the HCO fined Facebook (Meta) on the basis of the Hungarian Unfair Commercial Practices Act.[7] The HCO found that Facebook's allegation that its services were "free" was misleading, as the use of personal data may be conceived as the performance of the users, the consideration they provide for the services received from the social media platform. Nonetheless, in Case *Kfv. II.37.243/2021/11*, the Supreme Court quashed the HCO's decision and held that the services of Facebook are free, even if the social media platform uses of personal data of the users. The Supreme Court found that the use of data and provision of personalized services, including advertising, constitute no meaningful burden for the users and, hence, the services of Facebook can be regarded as "free" in the sense that they do not involve any financial or financially relevant detriment.

Question 8

Hungarian law contains no general regime on state aid comparable to the EU rules and, hence, we cannot report on any local aspects or experiences in this regard.

Question 9

We are not aware of any Hungarian judicial practice concerning EU state aid rules, which implies that the use of Regulation 2015/1589 does not emerge before national courts.

Geopolitical instruments, trade defence instruments, and competition policy

Question 10

We cannot report on any such case and we do not expect that similar considerations would be relevant when the new "geopolitical" instrument will be applied more regularly.

[7] Act XLVII of 2008 on the Prohibition of Unfair Commercial Practices against Consumers.

TRADE

FDI control

Question 11

Investment control has been part of the Hungarian legal system even before the EU-wide regulation entered into force. These rules were to be found in a number of laws pertaining to different industries. For the purposes of the present research, these will not be addressed. Instead, we focus on the unified investment screening regime adopted in 2018, in addition to the regime adopted in 2020. The purpose of these two mechanisms is to protect Hungarian economic interests pursuant to the state of emergency in the country.

Act LVII of 2018 on controlling foreign investments violating Hungary's security interests ("2018 Act") constitutes the main national legal instrument on investment screening. This was adopted by the Hungarian Parliament in October 2018 and entered into force on January 1, 2019. This Act constitutes the main framework of the FDI screening system in Hungary, and it is complemented by Government Decree no. 246/2018 (December 17) on the implementation of Act LVII of 2018 on controlling foreign investments violating Hungary's security interests ("2018 GD"). The 2018 GD contains the detailed rules which supplement the screening framework established by the 2018 Act.

During the SARS-COV2 pandemic, the Hungarian government adopted Government Decree no. 227/2020 (May 25) concerning the measures necessary for the protection of the economic interests of companies established in Hungary in order to prevent a human pandemic threatening the safety of life and property and to avert the consequences thereof. Soon after its entry into force, it was replaced by a new law, which entered into force on June 18, 2020. The legislature adopted Act LVIII of 2020 concerning the transitional rules and epidemiological preparedness related to the ending of the state of emergency ("2020 Act"). This is a massive piece of legislation which regulates in a large number of different areas. Chapter 85 of the 2020 Act – namely articles 276-292, under the title "Measures necessary for the economic protection of companies incorporated in Hungary" – lays down additional rules for investment control. These rules were adopted during the state of emergency decreed in the wake of the pandemic, and contain a temporary regime for investment screening, parallel to the system laid down by the 2018 Act.

The 2020 Act was complemented by Government Decree no. 289/2020 (June 17) on the definition of the scope of activities necessary for the economic protection of companies established in Hungary, which contains a table of economic activities that fall under the screening obligations established within this piece of legislation.

The 2018 Act initially gave competence to the Minister of Interior for conducting the review of foreign investments in accordance with its rules. This was recently modified by government decree, which passed this competence to the Cabinet Office of the Prime Minister. Under the 2020 Act, notifications must be submitted to the Ministry of Innovation and Technology, which – in the Government established in 2022 – is now named the Ministry of Technology and Industry.[8]

The simultaneous existence of the two investment screening regimes means that in case foreign investors' activities will fall under the application of both regimes, two separate applications will have to be submitted in accordance with the rules laid down by the two legislative acts.

For the purposes of making the two regimes more readily identifiable, the year of their adoption is used, naming them accordingly: the 2018 Act and the 2020 Act. These denominations also include all additional regulatory modifications and supplementations, which form part of the respective legislative acts. The two regimes have also been dubbed by some practitioners as "permanent" and "temporary", respectively.[9] The "temporary" screening regime was enacted for the duration of the state of emergency introduced pursuant to the SARS-COV2 pandemic. The state of emergency was subsequently extended due to the Russian aggression against neighboring Ukraine.[10]

The most important difference between the two regimes concerns the underlying considerations for their adoption. The 2018 Act establishes a regime focusing mainly on national security and public order matters, with the aim of protecting sensitive economic sectors from investors whose activities might constitute a threat to the national interest and security. The 2020 Act establishes a regime which focuses on the protection of Hungarian economic interests in strategic sectors, which may be affected during the state of emergency. As shown, the state

[8] In accordance with Government Decree No. 182/2022 (May 24) on the competences and powers of the members of Government.

[9] See e. g. https://www.engage.hoganlovells.com/knowledgeservices/news/hungarian-fdi-veto-lifted-after-pressure-from-eu-commission-alls-well-that-ends-well-or-dangerous-precedent. The two systems have also been dubbed as *lasting* and *temporary*, see e. g. https://www.wolftheiss.com/insights/status-report-on-newly-implemented-fdi-regimes/ – Accessed August 28, 2022.

[10] Government Decree 180/2022 (24 May) on the declaration of a state of emergency and on certain emergency rules in view of the armed conflict and humanitarian disaster in Ukraine and in order to avert the consequences thereof in Hungary.

of emergency was first justified by the SARS-COV2 pandemic, and then extended because of the Russian aggression against neighboring Ukraine.

Originally the screening regimes were meant to cover foreign investors from outside the EU, EEA and Switzerland, or investors from within such countries, as well as from Hungary, but controlled by foreign entities. During the state of emergency, the personal scope of the 2018 Act has been extended to all investors coming also from the EU, EEA and Switzerland. The screening regimes also extend to indirect acquisitions, acquisitions of shares and deals related to assets.

The threshold for triggering the screening obligation is set at HUF 350 million, just under EUR 1 million, in the case of the screening regime established by the 2020 Act. The 2018 Act does not contain such a financial threshold, with only a corporate threshold applying to cases where there is an acquisition of 25% of ownership in a private company, or 10% in a publicly traded company. Additionally, the 2018 Act is also triggered in case the investment results in the acquisition of a dominant influence as defined by the Hungarian Civil Code (art. 8:2). Similar corporate threshold exists in the case of the 2020 Act, where an investment aimed at acquiring a 10% shareholding triggers the obligation to notify the transaction. Furthermore, in the 2020 Act, the acquisition of convertibles, rights in usufruct, corporate transformations, asset acquisitions, capital injections and in-kind contributions also trigger the obligation of notification, even in cases where this is free of charge.

In accordance with the screening regimes, investors must submit their request within ten days after a transaction is negotiated and the contract is signed. The transaction will go through, or conclude, pending approval. Pending approval, the parties to the transaction must suspend their activities, with a standstill obligation being mandated under both screening regimes. Approval or prohibition of the transaction shall be notified in the case of the 2018 Act in a maximum of 60 days after receipt of notification, which may be extended with up to 60 days. In the case of the 2020 Act the Ministry shall reply in no later than 30 days, which may be extended with up to 15 days.

In cases of non-compliance with the legal obligation to report a transaction in accordance with these laws, the transaction will be nullified and voided *ex lege*, and the party breaching its legal obligations will face an administrative fine. In the case of the 2018 Act the administrative fine is up to HUF 10 million (or approx. EUR 25.000). In the case of the 2020 Act the administrative fine is measured at up to 1% of the annual turnover of the Hungarian business targeted by the foreign investor.

a. What are the main challenges in applying FDI control at Member State level? Please explain by reference to concrete examples based on available practice in your Member State jurisdiction.

Due to the novelty of a unified investment screening regime, the experience with its application is quite limited, with just a small number of cases which have become public as a consequence of investors manifesting their dissatisfaction in front of the judiciary with the way their cases have been handled. The challenges in applying the FDI screening regimes stem from the fact that there are two regimes, and both underwent several amendments in a short period of time, which might have made it more difficult for interested persons to follow through with their obligations.

In addition to the regime established by the 2018 Act, the screening regime established by the 2020 Act brought a whole different set of complications. The number of legislative interventions which have in the past couple of years amended the investment screening regimes make things a little more complicated. An example of this is Government Decree no. 532/2020, which was in force for approximately one year, and added a number of new features to the regime established by the 2018 Act. It extended the material scope of the 2018 Act by adding activities from the insurance sector, and it also extended the personal scope of the 2018 Act to investors from the EU, EEA and Switzerland. After GD 532/2020 was abrogated, Act XCIX of 2021 on the transitional rules related to the state of emergency entered into force which maintained both the extension on the personal scope (art. 114) of the screening regime, as well as the extension on the material scope.[11] It takes quite some effort to follow all the amendments and abrogations made during this period of time.

As a matter of principle, the continuous evolution of the screening regimes, as also shown above, especially of the regime established pursuant to the state of emergency, might have made it difficult for some economic actors to follow the rules. Nonetheless, there have not been any resounding cases where investors' complaints regarding the amendments to the screening regimes have become public, which is most probably due to the fact that foreign investors are usually assisted by professionals who are able to follow the legislative evolution within the

[11] There were provisions related to the 2020 Act in Government Decree no. 189/2021 (April 21) *on the different application in emergency situations of the measures necessary for the protection of the economic interests of companies established in Hungary in order to prevent a pandemic which threatens the safety of life and property and to avert the consequences thereof* (currently not in force). Some of the provisions of this government decree were then transposed into Act no. XCIX of 2021 on transitional arrangements in the event of an emergency, Chapter 72: Measures necessary for the economic protection of companies established in Hungary in order to prevent a human pandemic threatening the safety of life and property and to avert the consequences thereof.

country. The existence of two parallel regimes for investment screening might also, in theory, make it a bit more difficult and more expensive for investors, but **once again** no signs of complaints in this regard could be identified.

One issue that more realistically poses a challenge to foreign investors is the definition of terms such as national security and economic interest, which constitute the evaluation criteria for FDI. While the industry sectors where the 2018 and 2020 screening regimes apply are quite well defined in the government decrees accompanying them, it must also be noted that these regimes cover a significant part of Hungarian industry (as is also shown in detail below). Combining a wide domain of application of these regimes with evaluation criteria that are open-ended to say the very least, leaves authorities' decisions up for debate, and easily leads to an abundance of accusations of arbitrariness in the decision-making process. This also stems from the fact that national security[12] is an evaluation criterion (contained in the 2018 Act), which implies a certain degree of secrecy, being tied to the inherent sovereign rights of a state. Making such evaluations public would beat the purpose of national security considerations. It is also an issue that is recognized by the EU, this being the reason why the FDI Screening Regulation allows for much leeway for Member States to create the mechanism which best suits their needs.

While having such a wide degree of appreciation due to the special place held by national security in the workings of a sovereign, it seems more difficult to accept a similar argument in the case of national or public (or indeed, economic) interest as an evaluation criterion. It is for this reason that a definition for the term was included in art. 276 point 1 of the 2020 Law, that provides the following as a definition of national interest: "the public interest in the safety and security of networks and equipment and continuity of supply not covered by sectoral EU and national law." However, art. 160 of Act XCIX expands this definition by also adding after continuity of supply "a public interest relating to an essential strategic economic interest from the point of view of the national economy" as also constituting national (or public) interest.

The expansion of the material scope of the investment screening regimes might have also made it difficult to observe the law, which was the case, for example, with the inclusion of higher education institutions into the sphere of strategic entities, as per art. 1(3) of Government Decree 189/2021, and then art. 160(2) of Act XCIX/2021. Or that of insurance activities, as shown below, regarding a case which came out of such an investment.

[12] This term is defined extensively in art. 74 of Act no. CXXV of 1995 regarding the national security services.

The following section will present two cases which have thus far sprung up in relation to Hungary's investment screening system, and are considered pioneering in their own right:

VIG case[13]

AEGON Group of the Netherlands, an insurance company, was preparing a sale of its subsidiaries in a number of CEE countries in September 2020. VIG (Vienna Insurance Group) expressed an interest in acquiring its businesses in Hungary, Poland, Romania and Turkey. This acquisition would have made VIG a market leader in Hungary. The parties agreed to sign an agreement in this regard in November 2020.

Before the transaction was signed, the aforementioned Government Decree no. 532/2020 entered into force, and widened the applicability of the investment screening regime established by the 2018 Act.[14] Thus, the parties had to seek the approval of the Minister of Interior for the transaction to go through. Subsequent to submitting the notification for approval, the Minister vetoed the transaction in April 2021. The European Commission, in turn, applying the EU Merger Regulation, cleared the transaction in August 2021. The parties sought judicial review over the decision of the Minister, but their claims were rejected by the Budapest-Capital Regional Court in September 2021. In the meantime, the parties also sought the intervention of the Commission, alleging that Hungary essentially violated EU law with its decision to veto the transaction.

In addition to the legal battles, VIG was also discussing alternative solutions with the Hungarian Ministry of Finance, reaching an agreement and signing a memorandum of understanding ("MoU") in December 2021. Pursuant to this MoU, the Hungarian State would gain a 45% participation in the Hungarian subsidiaries of AEGON and in UNION Vienna Insurance Group Biztosító Zrt. The transaction then took place in February 2022 between VIG and Corvinus Nemzetközi Befektetési Zrt. a state-owned investment fund.

[13] Information provided regarding this case is based on the following sources: https://ec.europa.eu/commission/presscorner/detail/en/ip_22_1258 https://ec.europa.eu/competition/mergers/cases1/202209/M_10102_8196601_401_3.pdf https://www.vig.com/en/investor-relations/ir-newsinside-information/detail/vienna-insurance-group-and-hungary-reach-an-agreement-on-the-outlines-of-a-cooperation-and-the-further-procedure-regarding-the-hungarian-insurance-companies-aegon-and-union.html
https://www.jdsupra.com/legalnews/hungarian-fdi-veto-lifted-after-3725622/ – Accessed 30 August 2022.

[14] Extending its applicability to all EU, EEA and Swiss investors, and also over the insurance industry. For this reason, some have called it 'Lex AEGON', see: https://www.engage.hoganlovells.com/knowledgeservices/news/hungarian-fdi-veto-lifted-after-pressure-from-eu-commission-alls-well-that-ends-well-or-dangerous-precedent – Accessed 30 August 2022.

The investigation of the Commission went on regardless of this agreement between the Government and VIG. The scope of the investigation was to find out whether the veto of the Ministry of Interior was compliant with EU law and did in fact aim to protect national security. The Commission found that the Hungarian veto infringed EU law, because it failed to communicate the intended veto to the Commission prior to its implementation, with which it basically infringed art. 21 of the EU Merger Regulation. In addition, the Commission observed that Hungary failed to demonstrate that the measure was justified, suitable and proportionate, which made it incompatible with the EU rule on freedom of establishment, and infringed art. 21 of the EU Merger Regulation. The decision contained an order for Hungary to withdraw its veto by 18 March 2022, threatening the launching of an infringement procedure before the Court of Justice of the European Union for failure to do so.[15]

This case is an illustration of the ways in which a screening procedure can ultimately force investors into negotiations. Any judicial review and petitioning of the EU institutions will take time and ultimately hold many risks. In this case, judicial review did not produce positive results, while the order by the Commission to withdraw the veto under the threat of infringement proceedings would have only prolonged the case, without producing immediate results itself. The eventual result of the infringement proceedings, despite the Commission's decision, would have still carried a degree of uncertainty, prolonging the finalization of the transaction. It is obvious why prolonging a transaction in this way may be considered bad for business. The amendment to the 2018 Act via GD 532/2020 provided the Hungarian Government with sufficient tools to pressure the investor into a deal which allowed for a state-owned entity to enter the insurance market.

The finance minister in charge of the negotiations with VIG declared in a Facebook post on 21 February 2022 that this acquisition aimed to increase public wealth and return strategic assets into the ownership of the state.

Xella case[16]

The case of *Xella* (C-106/22) is one in which the Budapest-Capital Regional Court (Budapest High Court, as named in the Case) made a request for a preliminary ruling in February 2022. The Hungarian court asked the CJEU to interpret whether or not the Hungarian FDI screening regime established by the 2020 Act is compatible with EU law, namely the FDI Screening Regulation.

[15] The decision was not public as of the closing of herein manuscript.

[16] Information regarding this case is based on the following sources:
https://curia.europa.eu/juris/showPdf.jsf?text=&docid=257222&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=8901808 – Accessed 30 August 2022.

The case was brought by Xella Magyarország **Építőanyagipari** Kft, which is owned by a German company, which in turn is partially indirectly owned by a Bermudan company, which sought authorization for acquiring Janes **és** Társa Szállítmányozó, Kereskedelmi **és** Vendéglátó Kft, an extractor of raw materials. The Minister, due to Janes being considered a strategic company, refused the approval of the transaction arguing that the influence bought by Xella as a foreign-owned entity in such a company "would represent a long-term risk in terms of ensuring the security of building materials." In essence, the Minister further argued that the issues currently faced by Hungary due to the disruptions in global supply chains, the increase in the price of construction materials and the already existing situation of foreign entities controlling similar strategic undertakings in the market, the acquisition of Janes by Xella would further reduce Hungarian ownership of strategic enterprises, damaging the national interest, potentially harming the national economy and jeopardizing particular investments in Hungary.[17]

In its response, Xella argues that its ultimate beneficiary is a citizen of an EU Member State, and that the restriction is arbitrary. Xella also notes that the concept of "national interest" is unclear, thus infringing the principle of rule of law. It is also stated that the European Commission already approved the foreign ownership structure of Xella in 2017 in case M.8604. The second question addressed to the CJEU relates to this last argument, enquiring whether in case a merger is approved by the Commission under its merger control procedure, will its future examination under a Member State's legislation be precluded.[18]

The above two cases, pertaining to both the 2018 and the 2020 regime actually demonstrate how difficult it is to find a place in an open economy for investment screening regimes, especially when the use of such open-ended terms as national security and national interest constitute the backbones of these regimes. A proper mixture of EU and national law will likely bring about a better understanding of the limits as to what these open-ended terms actually allow Member States to decide in the course of applying their investment screening regimes.

b. Is the FDI Screening Regulation directly applied or do Member State rules go beyond the harmonisation achieved by that regulation (in terms of scope and/or the strictness of the control)?

[17] See para. 6 and subsequent – Case C-106/22, Summary of the request for a preliminary ruling made under Article 98(1) of the Rules of Procedure of the Court of Justice https://curia.europa.eu/juris/showPdf.jsf?text=&docid=257222&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=8901808 – Accessed 30 August 2022.

[18] See also: https://curia.europa.eu/juris/document/document.jsf?text=&docid=259779&pageIndex=0&doclang=en&mode=req&dir=&occ=first&part=1&cid=246944

The dual regime in Hungary extends to much more than what is covered by the EU FDI Screening Regulation, with some estimating that the screening mechanism established via the 2020 Act extends to approximately 80% of Hungarian industry sectors.[19]

One of the more important differences is the fact that the preamble of the Regulation, in para. (9), provides that it does not cover portfolio investments. The Hungarian screening regimes do not make such a difference between investments, which means that the screening regime may also apply to portfolio investments, not just FDI.

The screening mechanism established by the 2020 Act shall not apply if an entity established abroad enters into a transaction relevant under the Act with its Hungarian subsidiary, which qualifies as a strategic company.

c. What investments and investors are subject to FDI control?

The 2018 Act

The regime established by the 2018 Act applies to foreign investors, defined as follows:

a) a national of a state outside the European Union, the European Economic Area and the Swiss Confederation or a legal entity or other organization registered in such a state,

b) a legal entity registered domestically, in another Member State of the European Union, another member state of the European Economic Area or the Swiss Confederation acquiring ownership or interest as specified under art. 2 (1) in an economic entity registered in Hungary, with activities laid down under art. 2 (4), if the person with controlling interest in the legal entity as specified in the Act on the Civil Code (hereinafter: HCC) is a national of a state outside the European Union, the European Economic Area or the Swiss Confederation, or a legal entity or other organization registered in such a state.

The foreign investor, as defined above, must obtain the prior approval of the minister of interior in case it plans to establish an economic entity (meaning that the screening regime also applies to greenfield investments) or acquire ownership within an entity registered in Hungary. Regarding the acquisition of ownership, this must be notified in case it meets the conditions set out below:

[19] See: https://www.engage.hoganlovells.com/knowledgeservices/news/hungarian-fdi-veto-lifted-after-pressure-from-eu-commission-alls-well-that-ends-well-or-dangerous-precedent – accessed 24.08.2022

a) direct or indirect acquisition of more than a 25% ownership (in the case of a publicly listed company, more than a 10% ownership) in an existing or yet to be established company with its registered seat in Hungary, provided that this company pursues activities that are deemed sensitive from a national security point of view;

b) acquisition of controlling interest (or decisive control) in such a company, pursuant to the definition of the Hungarian Civil Code (HCC) of controlling interest.

The notification obligation is also applicable in case the acquisition by the foreign investor extends to less than 25% of the company, but as a result of the acquisition, more than 25% of the company will be owned by foreign investors. Publicly traded companies are exempted from this rule.

The notification obligation is also applicable in case a foreign investor wishes to establish a branch office in Hungary, or in case it wishes to acquire a right to operate or use infrastructure and equipment related to activities in the field of utilities services (electricity, natural gas, water).

The 2020 Act

The above definition of the 2018 Act is maintained within the 2020 Act, with a small adjustment regarding the specific activities of the foreign investor. Thus, an entity shall be considered a foreign investor, similarly to what was shown above at point b), whenever it acquires a determined share, or influence, in a Hungarian economic entity, and it is a legal person or another entity registered domestically (in Hungary), in another Member State of the European Union, a member state of the European Economic Area, or the Swiss Confederation, in case the majority influence (or control) over said legal person or other entity belongs to a citizen of, or legal person or other entity registered in a state outside the European Union, the EEA or the Swiss Confederation. What has been added is the specific nature of the economic activity of the Hungarian entity in which such influence is acquired, as defined by art. 277 section (2) of the 2020 Act: the Hungarian entity must be a company (limited liability company, private joint stock company or publicly traded joint stock company) the main or additional activity of which falls within a sector of strategic importance within the meaning of art. 4(1)(a)-(e) of Regulation (EU) 2019/452 (except for financial infrastructure). These are the economic activities of the strategic company.

In the case of the 2020 Act, a foreign investor must obtain the prior approval of the minister of economy, in case it intends to acquire directly or indirectly an interest

in a company registered in Hungary and active in a specific industrial sector (called a 'strategic company') by way of acquisition (including *in kind* contributions, or other types of acquisitions, whether free or not), capital increase, merger, division of a company, or other transformation, issuance of bonds or establishing of usufructuary rights over the shares or quotas of a strategic company, provided that the transaction results in the acquisition of:

a) a direct or indirect majority control over, or 10% interest in a Strategic Company, and also reaches or exceeds the threshold of HUF 350 million (approx. EUR 1 million);

b) 15%, 20% or 50% interest in a Strategic Company, irrespective of its value;

c) more than 25% interest in a Strategic Company, if this is the result of an acquisition carried out by more than a single Foreign Investor; or

d) ownership or establishment of operation rights over an infrastructure or asset necessary for pursuing activities in strategic sectors (including the establishment as a security over any "strategic infrastructure or asset").

d. What sectors are subject to FDI control?

The 2018 Act

The activities affected by the obligation to notify are the following:

a) manufacture of weapons and ammunition as well as of military equipment and devices subject to license,

b) manufacture of dual use products,

c) the production of secret service equipment as defined in the government decree on the detailed rules for the licensing of military technology activities and the certification of such undertakings,

d) provision of financial services as specified in the law on credit institutions and financial undertakings and the operation of payment systems as ancillary financial services,

e) services governed by the law on electricity,

f) services governed by the law on natural gas supply,

g) services governed by the law on water public utility services,

h) services governed by the law on electronic communications,

i) the set-up, development and operation of electronic information systems governed by the law on the electronic information security of central and local government agencies,

j) insurance and reinsurance activities under Law LXXXVIII of 2014 on insurance activities and activities directly related to insurance activities subject to mandatory reporting.

The above activities have been included in a more concrete manner in Annex 1 and Annex 2 of GD 246/2018, as follows:

Annex 1 to Government Decree 246/2018 (December 17) – Activities subject to notification within the scope of activity laid down in the law

1. Activities subject to notification in the scope of manufacture of weapons and ammunition as well as of military equipment and devices subject to license

   1. The manufacture of firearms, pieces of firearms, ammunition – with the exception of museal ammunition – and Flobert ammunition laid down in Law XXIV of 2004 on Firearms and Ammunition (hereinafter Arms Act) according to Section 2 (20) of the Arms Act.
   2. The manufacture of devices specified in Annex 1 of Government Decree 156/2017 (VI.16.) on the detailed regulations of the licensing of defense industry and trade activity and the certification of enterprises (hereinafter: DI Decree) – not governed by (1) or by Chapter 3 (1) of DI Decree – in compliance with Section 1 (d) of Act CIX of 2005 on the authorization of the manufacturing of military equipment and the provision of military services (hereinafter: ME Act), not including the manufacture of the devices listed under Chapter XXV (1) "Coercive devices".

2. Activities subject to notification obligation within the scope of the manufacture of dual use products

   1. The manufacture of products specified in ANNEX 1 of Regulation 428/2009/EC setting up a Community regime for the control of exports, transfer, brokering and transit of dual use products.

3. Activities subject to notification obligation in the scope of the manufacture of intelligence devices specified in the government decree on the detailed regulations of the licensing of defense industry, trade activity and the certification of enterprises

   1. The manufacture of devices specified in CHAPTER XXVI of Annex 1 of the DI Decree in compliance with Section 1 (d) of Act CIX of 2005 on the authorization of the manufacturing of military equipment and the provision of military services.

4. Activities subject to notification obligation within the scope of the operation of the payment system from the industry of financial services and auxiliary financial services specified in the Act on Credit Institutions and Financial Enterprises

1. The credit reference services specified under Section 3 (1) (k) of Act CCXXXVII of 2013 on Credit Institutions and Financial Enterprises (hereinafter CI Act), data processing by the financial enterprise operating the central credit information system defined by the Act on the Central Credit Information System as laid down under Section 6 (1) (42) (b) of the CI Act.
2. The operation of payment systems laid down under Section 3 (2) (b) of the CI Act, not including operation by cash-substitute payment instruments exclusively.

5. Activities subject to notification obligation within the scope of services governed by the Act on Electric Energy

The activity specified in this subsection shall be subject to notification only if it is carried out through the direct use of a critical system element as defined in Article 1(f) of Act CLXVI of 2012 on the Identification, Designation and Protection of Critical Systems and Installations (hereinafter: CI Act).

1. The transmission of electric energy as laid down under Section 3 (1) of Act LXXXVI of 2007 on Electric Energy (hereafter EE Act).
2. The distribution of electric energy as laid down under Section 3 (8) of the EE Act.
3. System control as laid down under Section 3 (51) of the EE Act.
4. The production of electric energy by a production license holder with a production license for a power plant with a nominal performance capacity of at least 50 MW as laid down in Section 3 (57) of the EE Act.

6. Activities subject to notification obligation within the scope of the Act on Natural Gas Supply

The activity specified in this subchapter is subject to notification only if it is carried out through the direct use of a vital system element within the meaning of Section 1(f) of the CI Act.

1. The distribution of natural gas in compliance with Section 3 (24) of Act XL of 2008 (hereinafter GET Act).
2. The storage of natural gas in compliance with Section 3 (31) of the GET Act.

3. The delivery of natural gas in compliance with Section 3 (34) of the GET Act.
4. System supervision in compliance with Section 3 (52) of the GET Act.

7. Activities subject to notification obligation with the scope of the act on water public utility services

The activity specified in this subchapter is subject to notification only if it is carried out through the direct use of a vital system element within the meaning of Section 1(f) of the CI Act.

1. Outsourcing as laid down under Section 2 (13) of Act CCIX of 2011 on Water Utility Supply (hereinafter: WUS Act).
2. The development of water utilities as specified under Section 2 (21) of the WUS Act.

8. Activities subject to notification obligation within the scope of services governed by the Act on Electronic Communications

1. The provision of electronic communication services – defined under Section 188 (13) of Act C of 2003 on Electronic Communications – for the provision of which services the electronic communication network operated includes system elements of vital national or European importance designated by virtue of Government Decree 249/2017 (IX.5.) on the Identification and Protection of Critical Assets and Infrastructure in the Infocommunications Sector.

9. Activities subject to notification obligation within the scope of the establishment, development or operation of electronic information systems governed by the Act on the Electronic Security of State and Local Government Organizations

1. Cooperation in the establishment, operation, auditing, maintenance or repair of electronic information systems specified in Section 1 (1) (14 b) of Act L of 2013 on the Electronic Security of State and Local Government Organizations (hereinafter: IS Act), as laid down under Section 11 (1) (k) of the IS Act.
2. Participation in an investigation into a security event specified under Section 1 (1)(9) of the IS Act as laid down under Section 11 (6) of the IS Act.
3. The performance of a fragility test specified under Section 1 (1) (41) of the IS Act as laid down under Section 18 (3) of the IS Act.

10. Activities subject to notification under Act LXXXVIII of 2014 on insurance and reinsurance activities and activities directly related to insurance activities

1. Insurance and reinsurance activities within the meaning of Act LXXXVIII of 2014 on Insurance Activities (hereinafter: "IR Act").
2. Activities directly related to insurance pursuant to Section 40 (3) a) and e) of the IR Act.

The 2020 Act

Government Decree 289/2020 contains a much more straightforward, which actually relies on the classification of economic activities in Hungary (TEÁOR), which is identical to the one established in Regulation 1893/2006/EC establishing the statistical classification of economic activities (NACE):

Chemical sector:

19 – Manufacture of coke and refined petroleum products

20 – Manufacture of chemicals and chemical products

21 – Manufacture of basic pharmaceutical products and pharmaceutical preparations

Commercial facilities:

45 – Wholesale and retail trade and repair of motor vehicles and motorcycles

46 – Wholesale trade, except of motor vehicles and motorcycles

47 – Retail trade, except of motor vehicles and motorcycles

Communications sector

58 – Publishing activities

59 – Motion picture, video and television program production, sound recording and music publishing activities

60 – Programming and broadcasting activities

61 – Telecommunications

Critical industrial sectors (including electronics, mechanical engineering, steel production and production of means of transport)

26 – Manufacture of computer, electronic and optical products

27 – Manufacture of electrical equipment

28 – Manufacture of machinery and equipment n.e.c.

29 – Manufacture of motor vehicles, trailers and semi-trailers

30 – Manufacture of other transport equipment

24 – Manufacture of basic metals

25 – Manufacture of fabricated metal products, except machinery and equipment

Defense industry

254 – Manufacture of weapons and ammunition

304 – Manufacture of military fighting vehicles

Dams

4291 – Construction of water projects

Energy sector

35 – Electricity, gas, steam and air conditioning supply

Services related to emergency situations

8422 – Defense activities

8424 – Public order and safety activities

8425 – Fire service activities

Food and agricultural sector

10 – Manufacture of food products

11 – Manufacture of beverages

12 – Manufacture of tobacco products

1 – Crop and animal production, hunting and related service activities

2 – Forestry and logging

3 – Fishing and aquaculture

6820 – Renting and operating of own or leased real estate – only if it is also carried out in relation to land used for agriculture and forestry pursuant to Section 5(17) of Act CXXII of 2013 on the Turnover of Agricultural and Forestry Land

Governmental facilities

84 – Public administration and defense; compulsory social security

Healthcare

86 – Human health activities

87 – Residential care activities

88 – Social work activities without accommodation

Information technology

62 – Computer programming, consultancy and related activities

63 – Information service activities

Nuclear sector

2446 – Processing of nuclear fuel

Construction industry

41 – Construction of buildings

42 – Civil engineering

43 – Specialized construction activities

Water and wastewater services

36 – Water collection, treatment and supply

37 – Sewerage

Waste management

38 – Waste collection, treatment and disposal activities; materials recovery

39 – Remediation activities and other waste management services

Building materials industry

23 – Manufacture of other non-metallic mineral products

Traffic, transport and logistics

49 – Land transport and transport via pipelines

50 – Water transport

51 – Air transport

52 – Warehousing and support activities for transportation

53 – Postal and courier activities

Manufacture of medical devices

325 – Manufacture of medical and dental instruments and supplies

Tourism

55 – Accommodation

56 – Food and beverage service activities

Administrative and support service activities

782 – Temporary employment agency activities

Raw material of critical importance

5 – Mining of coal and lignite

6 – Extraction of crude petroleum and natural gas

7 – Mining of metal ores

8 – Other mining and quarrying

9 – Mining support service activities

Teaching

8542 – Tertiary education

8560 – Educational support activities

e. How is a risk to public order or security assessed at Member State level?

The assessment of public order or security is made at the level of the competent ministries, in a non-public manner, maintaining the classified nature of confidential information.

In accordance with the 2018 GD, art. 11, pursuant to the decision of the competent minister, the public body concerned in accordance with its statutory tasks may be involved in the screening procedure. For such purposes, the state security services may be involved, which have competences in matters of security.

The national security services in Hungary are divided into two categories. The so-called civil national security services include the following: the Information Bureau (Információs Hivatal), the Bureau for the Protection of the Constitution (Alkotmányvédelmi Hivatal), the Specialised National Security Service (Nemzetbiztonsági Szakszolgálat), the National Information Center (Nemzeti Információs Központ). The military national security service is made up of the Military National Security Service (Katonai Nemzetbiztonsági Szolgálat). Theoretically all these security services may be involved in during

the screening procedure. Of these, the Bureau for the Protection of the Constitution is named in art. 14 of the 2018 GD as the one which checks for investors' compliance with the notification obligation under the screening regime. The Bureau for the Protection of the Constitution may itself involve other public bodies the statutory tasks of which may make this necessary. The Bureau for the Protection of the Constitution will inform the competent minister of any facts which it might encounter that are relevant in this regard, and may also suggest what action shall be taken. However, such suggestion is not binding on the minister, meaning that the latter will not have an obligation to act in the way suggested by the Bureau.

In case the investment is approved, there is no need to reveal any further information with the occasion of the approval. However, when the competent ministry chooses to oppose the approval of the investment, it must include in its decision some explanations.

Reasons for refusal, in accordance with art. 6(6) of the 2018 Act, which provides that in case the investor falling under the provisions of the 2018 Act attempted to hide the fact that it would present a risk to Hungary's national security interests, attempts to impede control or circumvent the screening procedure. This is especially so in case the foreign investor does not carry out actual economic activity in its country of registration, or where there is no evidence of the existence of lasting economic activity (especially establishments, facilities, or employees). In such a case the refusal will contain the reasons for which the investor was nominated as a risk in accordance with art. 6(6) (shown above), as well as the circumstances which underly the probability of the abuse shown there (in accordance with art. 13(1)(e)). In addition, the refusal must contain the security interest, or sphere of interest that is violated by the investment (in accordance with art. 13(1)(c)), but shall not contain any classified information.

In accordance with the art. 284 or the 2020 Act, the decision for refusing the investment will show whether there is a risk of prejudice to or threat to the interests of the State, public security or public order of Hungary, or the possibility of such prejudice or threat, in particular with regard to the security of supply of basic social needs. The refusal shall also contain information on which of the following risks (in addition to the above mentioned one) exists in the case of the investor: the lack of any formal elements in the notification as shown in art. 279 of the Act; whether the notifier is controlled in any form by an administrative body (public body, military) of a state outside the EU, whether via its ownership structure or via substantial financing; whether the investor has been involved in

activities affecting security or public order in another EU Member State; whether there is a serious risk that the notifier will engage in illegal or criminal activities.[20]

f. Is there room for competition considerations in the FDI control, for example, could it be relevant to argue that the target would become a more effective competitor if it were acquired by the foreign firm which is willing to significantly invest in the target?

In accordance with the provisions of the 2018 and 2020 Acts, there is no room for competition considerations in the process of FDI control.

g. Do the information-sharing mechanisms between the Commission and the Member States operate effectively and adequately?

While it is one of the principal aims of the FDI Screening Regulation to enhance information-sharing between the European Commission and Member States, there is no publicly available information on how this has evolved between Hungary and the Commission.

The Ministry of Foreign Affairs and Trade has been designated as the national contact point for the purposes of information-sharing under the screening mechanism.

h. What legal remedies are available to contest national authorities' FDI decisions?

There is limited judicial review that is made available. Under both screening regimes the investor may only seek judicial review in case of severe violations of the procedural rules pertaining to the screening process. In such cases, the investor may turn to the Budapest-Capital Regional Court (Fővárosi Törvényszék)[21] which may only order that the procedure be repeated, thus no immediate judicial remedy is made available through the courts. This is also a consequence of the fact that the courts will not have access to all information that is available to the competent authority to decide on a matter of national security.

i. Has the COVID-19 pandemic affected the application of FDI control?

It was the pandemic which has prompted the creation of the regime under the 2020 Act, and as it has been shown in the above, there have been many legislative interventions at the level of both the 2018 Act and the 2020 Act, that were justified by the state of emergency introduced due to the pandemic.

Trade defence and public procurement – foreign subsidies

[20] In accordance with art. 284 of the 2020 Act.

[21] https://birosag.hu/sites/default/files/2019-02/birosagok_angolul.pdf

Question 12

Our research identified no specific concerns voiced at the level of the Member State. While we are aware that Hungary made a submission during the public consultation, this has been kept confidential and is not publicly available.[22]

We have also consulted with the government body responsible for the monitoring of state aid (State Aid Monitoring Office, in Hungarian: Támogatásokat Vizsgáló Iroda), where it was confirmed that at this point there is no publicly available government standpoint to report about.

Question 13

In Hungary, there is no public position we could report on in this matter.

The scholarship has considered the extension of the EU state aid rules to foreign subsidies as a reasonable and consistent regulatory step, which is in conformity with the objectives of EU competition law and commercial policy.[23]

Mandatory due diligence and regulating supply chains

Question 14

For the purposes of this question, we use the elements of corporate due diligence in relation to human rights and environmental protection as presented in Article 4 of the Corporate Sustainability Directive's draft proposal (hereafter: "Corporate Sustainability Directive" or "Directive"). Therefore, we present the Hungarian rules on the basis of these elements.[24]

In general, Hungary's legal system provides for extensive protection regarding environment protection and various human rights (especially in relation to labour rights), which also obligate companies active within the country. However, there is no single law mandating corporate due diligence as presented by the Corporate Sustainability Directive in the context of human rights and environmental protection and the Hungarian regulation is heavily fragmented.

[22] See Summary of the responses to the public consultation on the White Paper on levelling the playing field as regards foreign subsidies –
https://ec.europa.eu/competition/international/overview/WP_foreign_subsidies2020_summary_public_consultation.pdf

[23] Cs.I. Nagy, 'Foreign Subsidies, Distortions and Acquisitions: Can the Playing Field Be Levelled?', *Central European Journal of Comparative Law*, Vol. 2, No. 1, 2021, pp. 147-162.

[24] Corporate Sustainability Directive, Article 4, para 1, (a)-(f).

The first aspect of mandatory due diligence as per Article 4 of the Directive, is integrating due diligence into the company's policies. Specifically, as detailed by Article 5, this includes a description of the company's approach to due diligence, a code of conduct, and a description of the processes put into place to implement due diligence. Based on our research findings, it appears that Hungary's legal system has thus far not specifically mandated the incorporation of a description of the company's approach to due diligence within its policies in a general human rights / environmental protection context. In a similar fashion, the third element appears absent as a requirement from the regulations processed for this research. Hungary, however, does deal with the presentation of a code of conduct by companies within certain contexts. These are primarily in relation to consumer protection, and the prevention of unfair commercial practices. For instance, Act XLVIII of 2018 establishes the legal basis for corporate codes of conduct with relation to unfair commercial practices.[25] This is further expounded by Act CCXXXVII of 2013, which mandates that financial entities must inform their clients if the activity covered by the contract between them falls under the scope of the company's code of conduct and make this code freely accessible to the client. Likewise, if the said entity operates a website, they must make their code of conduct freely accessible in all language version that are available.[26]

The other aspect of mandatory due diligence is identifying actual or potential adverse impacts, preventing and mitigating potential adverse impacts, and bringing actual adverse impacts to an end and minimising their extent. For this aspect, our research has found one concrete example in Hungarian regulations that seems to be applicable within the context of the Directive. According to Act XXXVII of 2009, all economic actors participating in a timber trade chain must establish information gathering procedures based on due diligence and maintain a ready system of documentations in relation. Most importantly of this obligation, the economic actors are obligated to retain their data for five years, prove that they have mitigated risk, and remove legally problematic timber from the market. This particular provision largely stems from the Hungarian legislative's adherence to Regulation 995/2010.[27]

With regards to the complaints procedures mandated by the Directive, while the Hungarian legal system does deal with corporate complaints procedures, these are chiefly related to consumer concerns and were not strictly created in a human rights or environmental protection context. An example of this is Gov. Decree

[25] Act XLVIII (2018), §. 2 (i).
[26] Act CCXXXVII (2013), §. 117 (6-7).
[27] Act XXXXVII (2009), §. 90(6)-(7), 115(c)

435/2016 (XII. 16.), which deals with the complaints procedures employed by financial institutions towards financial consumers.

The remaining aspects of due diligence as laid down by the Directive (monitoring of due diligence policy effectiveness and public communication of due diligence policy) are consequently not applicable.

Question 15

As shown by the previous question, Hungary's internal regulation on corporate due diligence with regards to environmental protection and human rights are largely absent (in the context presented by the Directive). The sole exception to this is the existing legislation on timber production and trade.

In general, Hungary's regulatory approach thus far has been to encourage the voluntary participation of companies in corporate social responsibility, as well as voluntarily adopting codes of conduct that are relevant to the Directive's goals. Therefore, the adoption of mandatory measures raises a question of implementation in Hungary. The primary challenge would be to ascertain the ideal approach to implementing due diligence on a regulatory level. The current environmental protection and human rights legislation is highly fragmented. One approach would be to implement the due diligence rules into these individual pieces of legislation. Another would be to create an entirely new law specifically for the implementation of the Directive. In the researchers' opinion, this latter approach would be most beneficial as it would make due diligence related rules easily accessible by both companies and professionals. Furthermore, the fragmented implementation approach would risk diffusing the importance of these rules. The singular law approach would likely ensure a stronger enforcement by judges.

From a practical perspective, the relatively wide-ranging obligations imposed by the Directive might pose challenges for companies operating within Hungary. The adoption process of the new obligations would likely be lengthy, and successful enforcement would require significant investment into organizational infrastructure from the member state.