

Réponses au questionnaire sur la régulation économique
Responses to the questionnaire on economic regulation

Hongrie
Curia

Hungary
Curia

Questionnaire on economic sectoral regulation in European Union countries

— Answers given by the Curia of Hungary —

I. Scope and purpose of economic sectoral regulation

1. Economic sectoral regulation in Hungary is based on EU legislation. Energy, electronic communication, audiovisual media, transport and postal activities are subject to European Union legislation, primarily directives, though postal activities are only in an initial phase of market opening. There are no other such sectors, however problems and legal solution methods at disposal are similar in the bank sector and in the area of water supply.

2. Transposition of European Union legislation into national law is complete, the regulation of the status of the regulatory authorities in some fields (e.g. railway regulation) is different.

3. Like in every other country of the Union, in Hungary the purpose of economic sectoral regulation is to cut back earlier state monopoly and introduce competition. Due to the privatisation of certain state sectors, state monopoly was terminated before Hungary's accession to the Union (energy, public utility services, electronic communication). Independent, non-state service providers entered into these fields, however, the introduction of competition had only partial results in respect of prices and the quality of services. The purpose of sectoral regulation was primarily to define the framework of functioning and the creation of efficient consumer protection. Regulation solutions are various, some aim at regulating prices, others aim at regulating the content of certain services. The development of national law at present unambiguously points in the direction of consumer protection, in accordance with EU regulation.

4. Both types exist. In regulated sectors, such as electronic communication and energy *ex ante* regulation is strong, *ex post* regulation is scarce. As opposed to this, in fields where there are several actors present in the sector (e.g. electronic communication), *ex post* regulation aimed at sanctioning infringement is more significant. In these fields consumer protection regulation is also more exhaustive.

5. The special relation between sectoral regulation and competition in Hungary can be traced back to history before 1990. At the beginning of democratic transition the presence of state was predominant in every economic sector. By the mid-1990s state property was cut back due to privatisation, however, the appearance of private capital did not necessarily lead to the introduction of competition in the classic sense of the word. Regulation meant the regulation of a restricted market of a few actors, where regulation defined the framework of operation for new entrants.

6. In Hungary, the nature of economic regulation is not directly linked to the privatisation of publicly owned companies. As stated in the answers to the previous questions, the waves of privatisation aimed at terminating earlier state monopoly, and by the time of the accession to the Union, in the fields concerned private companies had been operating for the most part. One exception to this has been postal activities, where the modification of regulation made it possible that in fields of activities that had exclusively been carried out by the Hungarian Post, other service providers could also enter.

7. The bank sector.

II. Organisation of economic sectoral regulation

8. In Hungary, economic sectoral regulations are implemented by several administrative authorities. In cases of transportation the National Transportation Authority proceeds, in cases of info-communications the National Media and Info-communications Authority, in cases of energy supply the Hungarian Energy and Public Utility Authority. In Hungarian law economic regulations are divided into sectoral divisions, therefore administrative authorities are sectorally divided too. There are authorities (e.g. the Energy Authority) that are entitled to issue legal rules which are binding on every citizen, administrative authorities and courts have to apply them in given cases. In case of authorities that are entitled to issue legal rules, the responsibility to legislate and the task to proceed as an authority are separated, but both are carried out independently of the actors of the economic sector, in proceedings regulated by law. The procedural framework of decisions is regulated by law, primarily the Act on the General Rules of Administrative Procedures and the Act on Legislation.

9. The authorities are completely independent of the regulated economic sector, but this independence is not the same as judicial independence. Authorities are independent bodies, organisations with their own staff, their procedures are regulated by separate legal rules, their operation is ensured by state budget. The incompatibility of officers proceeding in given cases is regulated by separate laws, service relation with a certain authority excludes participation in the economic sector. In the transportation sector there are no or few criteria of independence.

10. Certain authorities are entitled to issue legal rules, e.g. the Hungarian Energy and Public Utility Authority, the National Media and Info-Communications Authority. As of 1 October 2013 the bank sector is regulated by the Hungarian National Bank, which is also entitled to issue legal rules. The entitlement to legislate is based on a legal rule of higher level, which defines the concrete fields to which the entitlement to legislate can extend and also fixes the framework of regulation. Departure from this framework is not possible, since overstepping the granted scope of legislation can be brought before the Constitutional Court. Authorities are entitled to legislate characteristically only in given fields and it serves the implementation of legal rules of higher level.

11. It can be stated that all the authorities concerned have professional regulatory competencies, hence they take part in the preparation of draft pieces of legislation in their respective fields. They play a leading and co-ordinating role in negotiations aiming at drafting pieces of law, however, these authorities usually forward their proposals to the minister responsible for the given regulation, who then countersigns them under his own name.

12. Almost all regulatory authorities have a sanctioning power and are entitled to impose fines on market operators which have committed an infringement. Different types of fines exist under Hungarian law, such as fines imposed on operators contravening vehicle weight restrictions or not respecting driving and rest periods in the field of traffic management. But there are other sorts of sanctions, such as the suspension or prohibition of business activities, business closure, the revocation of authorisation to provide services or to carry on business activities. These sanctions can be taken within the framework of administrative proceedings which constitute a separate public procedure. In principle, proceedings are initiated *ex officio* by the competent authorities upon being advised of possible infringements, all procedural aspects being regulated by law in detail. Some special procedures are governed by specific

acts of law which take into account the particularities of the activities of the given economic sector.

13. In Hungary, sectoral economic regulations are common, which means that each economic sector is supervised by a specific regulatory authority. However, due to the characteristics of this sectoral regulation and to previously established intersectoral professional interfaces, some authorities are given overlapping competencies. For instance, the National Media and Info-Communications Authority have such powers.

14. Activities related to competition law are carried out by the National Competition Authority. The activities of this authority encompass the whole economic sector involved in competition. It is problematic, however, that the same economic activity might have competition and consumer protection consequences, therefore, sanctions can be different and can be applied by different authorities. EU predominance is the most significant in competition law, and this can be felt in the adjudication of concrete cases as well.

III. Judicial review of economic sectoral regulatory authorities' decisions

15. The Fundamental Law and separate acts of law ensure the judicial review of administrative decisions. There is a possibility for the judicial review of individual administrative decisions in almost every aspect. If the authority creates legal rules, their constitutionality is examined by the Constitutional Court. Economic sectoral regulatory authorities' decisions are, therefore, subject to judicial review, in a large amount of such cases it is the court that makes the final decision.

16. In Hungary, it is the ordinary system of courts that is entitled to review administrative decisions. Separate administrative and labour courts have been functioning since 1 January 2013, these are entitled to review administrative decisions in the economic sector (including the decisions of the National Competition Authority). They are first-instance courts, appeal against their decision can be lodged with the tribunals and an extraordinary review can be lodged with the Curia of Hungary.

17. The court examines the administrative decision from the aspect whether the decision complies with the relevant provisions of law. Law in this case can be an act of law or a legal rule of lower level, e.g. a decree. The court examines the merits of the case, it examines if the authority applied substantive and procedural rules appropriately. The court usually makes a decision on the merits of the case, however, it can make a procedural type of decision, i.e. it can order the authority to carry out further inspection, or it can call upon the authority to make a new decision with a content defined by the court. The court can decide, for example, if in a case of competition a cartel was formed among the actors, or if in a case of info-communications the operating licence was appropriate, or if a truck driver on whom sanction was imposed had violated the provisions of rest time. These are cases in which the court proceeds and makes a decision according to procedural rules.

18. In Hungary, the judicial review of administrative decisions means a legality review over the authorities' decisions. The court examines whether the administrative decision complies with the relevant provisions of law and if the authority applied substantive and procedural rules appropriately. The court's examination and proceedings are bound by the plaintiff's claim. In general, the party who invokes the unlawfulness of the administrative decision carries the burden of proof to justify his argument. On the other hand, the burden of proof can

be shifted in exceptional cases onto the authority. Court proceedings in these matters are regulated by the general provisions of the Code of Civil Procedure, but its specific provisions also contain important exceptional rules. The extent of judicial review depends on the aggravated party's claim, references and evidences. Forensic expert opinions can also be obtained at the request of the parties, enabling the court to render a final decision in respect of issues requiring special expertise. The completeness and decisive nature of the court's decision are influenced by the characteristics of the case, the result of the taking of evidence as well as the parties' petitions.

19. In Hungary, the judicial review of administrative decisions is regulated by an act of law, namely the Code of Civil Procedure which contains specific provisions in respect of the above procedure in Chapter XX. The rules of civil procedure mainly apply to the judicial review of administrative decisions, the methods and means of the taking of evidence are identical in both procedures, hence in administrative matters – similarly to civil cases – the court is entitled to appoint a forensic expert, to hear witness testimonies, or to inspect documents. Proceedings are conducted in an adversarial manner, and the parties are required to play an active role in them. In some administrative cases, the taking of evidence constitutes a significant part of proceedings and thus the court has to assign two or more experts and can be required to seek the expertise of a variety of academic or scientific bodies. The subject matter of the reviewed administrative decision can be very complex (e.g. the authorisation of important investments in construction projects), affecting different fields of law and resulting in a complicated legal dispute.

20. The role of the Curia of Hungary in administrative cases is defined by law. In Hungary, the Curia acts as the supreme administrative jurisdiction dealing with extraordinary judicial remedies. Thus, it deals with petitions for judicial review submitted against final court decisions. The procedural and substantive requirements in respect of these petitions are regulated by the Code of Civil Procedure. In administrative cases, petitioners have to verify that the value of the subject matter of their case exceeds an amount approximately equivalent to 3 200 EUR. The Curia examines the legality of the impugned court decision, which means that it has to decide whether the lower instance courts applied substantive and procedural rules of law appropriately. In most cases, this examination also comprises an assessment as to the legality of the reviewed administrative decision, consequently the Curia renders a final decision on the merits concerning the authorities' measures as well. Since the possibility to submit petitions for judicial review in administrative cases is not restricted to certain economic sectors, the Curia is given a wide range of powers as regards all economic fields. As a result, the Curia deals with a large variety of cases, in particular in the fields of competition, energy, transport, info-communications and media law.