

NATIONAL-LEVEL CORPORATE ANTI-ABUSE MEASURES RELEVANT TO THE EU COMPANY LAW PACKAGE

Expert Questionnaire

Hungary
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1) Anti-abuse mechanisms - do any of the following mechanisms exist in this country? If so, how do they work?

a. Disqualified Directors

i. Is there an official definition of “disqualified director”? If so, what are the grounds for disqualification? In which law can this be found? (link to legal text(s))

According to *Act V of 2006¹* (Company Procedures Act), *Title 7 includes the process of the disqualification* of a Member or Executive Officer.

The Court of Registration shall disqualify for five years any executive officer upon whom the court of the registry has imposed a financial penalty, and who failed to comply with the payment obligation set out in the final court decision, provided that the enforcement procedure against such person was unsuccessful (*Section 9/B²*).

During the term of disqualification, the persons disqualified shall not acquire majority control in any business association, shall not be installed as a member with unlimited liability in any business association or as a member of a sole proprietorship, and shall not be an executive officer or manager of, or supervisory board member in, any company (*Section 9/C (4)³*)

ii. Is there an official list of (current) disqualified directors? If so, where can this be found? (name of organization maintaining it and link)

The names of “disqualified persons” (among them managers) *can be downloaded freely and publicly from the Business Information and Electronic Business Procedure Service of the Ministry of Justice* (Company Information Service)⁴ The link is: <https://www.e-cegijegyzek.hu/?eltiltottkereses> - Disqualified person search.

¹ The procedures on founding, implementing changes in data and winding up of Hungarian associations are primarily governed by Act V of 2006 on Public Company Information, Company Registration and Winding-up Proceedings (Company Procedures Act), *amended and effective as of 1. I. 2021*

² Enacted by Subsection (5) of Section 112 of Act CCLII of 2013, effective as of 15 March 2014.

³ Established by Subsection (1) of Section 5 of Act XCI of 2018, effective as of 1 January 2019. (Source: <https://net.jogtar.hu/getpdf?docid=A0600005.tv&targetdate=&printTitle=Act%20V%20of%202006&dbnum=62&getdoc=1>)

⁴ In Hungarian: „Igazságügyi Minisztérium Céginformációs és Elektronikus Cégeljárásban Közreműködő Szolgálat”, shortly “Céginformációs Szolgálat”

To search for a disqualified person, you must choose in the menu the “Eltiltott személy” (Disqualified person)

iii. If there is an official list, who has access to this list (general public or restricted)?

The *general public has the access to the data on “disqualified” persons* (“Eltiltott személyek”). The Company Procedures Act V of 2006 requires that information relating to natural persons in their function as an executive officer or supervisory board member may be provided free of charge through the website of the Company Information Service.⁵ That is, information relating to disqualified persons may be obtained *in the form of free company information*, by way of a categorized query (e.g. by way of a search engine or browser) under specific other legislation⁶.

b. Beneficial Owners

i. Where is the database of beneficial owners and which organisation maintains it (link)

The Anti-Money Laundering Act (Act LIII of 2017 on the Prevention and Combating of Money Laundering and Terrorist; the *AML Act*⁷ entered into force on May 16, 2017. It included provisions for the (future not yet existing) central register of UBO (Ultimate Beneficial Owners) information.⁸

The AML Act defines the beneficial owner as a natural person who holds, directly or indirectly, at least 25% of the voting rights of capital of a company or he/she exercises the actual control or has a dominant influence over it.⁹

Several deadlines postponed

The AML Act included *the obligation of the service providers*¹⁰ to fill their customers’ (which may be a legal person (like a company) or organisation without legal personality or a natural person) actual data on ownership in the central register, by 1 March 2021 at the latest. In 2019, it was planned to set up the register on 1st December 2020¹¹. According to other

⁵ Act V of 2006, section 14, (2) Established by Subsection (7) of Section 112 of Act CCLII of 2013, effective as of 15 March 2014.

⁶ Act V of 2006, section 14, (6), Established by Subsection (8) of Section 112 of Act CCLII of 2013, effective as of 15 March 2014. Source: Act V of 2006 on public company information, company registration and winding-up proceedings amended and effective as of 1. I. 2021
<https://net.jogtar.hu/getpdf?docid=A0600005.tv&targetdate=&printTitle=Act%20V%20of%202006&dbnum=62&getdoc=1>

⁷ In Hungarian: *A pénzmosás és terrorizmus finanszírozásának megelőzéséről és megakadályozásáról szóló 2017. évi LIII. törvény, Pmt.*

⁸Source: <https://cms.law/en/int/expert-guides/cms-expert-guide-to-aml-and-ctf-in-central-eastern-europe/hungary>

2019. évi CXIX. törvény 21. § (1). Hatályos: 2021. VI. 1-től

⁹ Act LIII of 2017 section 3 (38)

¹⁰ Act V of 2006, section 1 (1) (a-r) refers the service providers covered by this act, like financial service providers, credit institutions, attorneys, law offices, registered in-house legal counsel, notary public, entities engaged in auditor activity or in activities related to real property transactions, and much more.

¹¹ Source: <https://www.noerr.com/en/newsroom/news/hungarian-central-register-of-ultimate-beneficial-ownership>

information from November 2020, the searchable register would be set by Spring 2021.¹² Another source states that “According to information provided by the Hungarian Financial Intelligence Unit, there is no specific date by which the central Ultimate Beneficial Ownership - UBO register is expected to go live and it is not possible to predict when this will happen. In our view, go live before late spring or summer would not be realistic”¹³.

However, the legal regulations to set up *the central register for information on beneficial ownership have not entered into force yet. As of 1 June 2021, the amendment of the Anti-Money-Laundering Act will come into force in connection with the UBO register.*¹⁴ The detailed rules relating to the recording of the data and information on beneficial owners of customers (legal persons or organisations without legal personality) are to be set up in a separate act (*Act on the Central Records of the Data of Beneficial Owners*).

ii. Are there any checks on the authenticity of beneficial owners, or does the organisation depend on a “statutory declaration” or “affidavit” from the company directors?

According to the amendment of Anti-Money Laundering Act LIII of 2017 entering into force as of 1st June 2021, it is the *customer* (legal person (company) or organisation without legal personality), who has to report the data of its beneficial owner to the central records established for storing such data. It must happen not later than within 5 business days from the commencement of its activity, and shall subsequently report any change concerning the beneficial owner within 5 business days.¹⁵ Before June 2021, it is the *service provider* and not the customer who is obliged to do so. (Instead of the originally planned 1st of December 2020, the mentioned amendments will be valid from 1st of June 2021.)

If any doubt arises on the identity of the beneficial owner, the *service provider* shall take any further measure until the identity of the beneficial owner is established. The *service provider* shall verify the data relating to the *identity of the beneficial owner* based on the instrument presented to it, publicly accessible registries or other registries, from which the service provider is entitled to request data¹⁶.

iii. How quickly must the company give notice when ownership has changed (updating of lists/databases)?

The customer has to report on the beneficial owner to the central records established for storing such data *not later than within 5 business days* from the commencement of its activity, and shall subsequently report any change concerning the beneficial owner within 5 business days. ((Instead of the originally planned 1st of December, 2020 the amendments will be valid from 1st of June, 2021).)¹⁷

¹² Source: <https://www.retivarszegipartners.hu/tovabb-csuzik-a-tenyleges-tulajdonosi-adatok-bejelentesi-kotelezettsege/>

¹³ Source: Istvan Reczicza, Dentons, EU Interactive Registers, <https://www.transparencyregisterlaws.com/?c%5B%5D=33&c%5B%5D=33&c%5B%5D=&k%5B%5D=20&k%5B%5D=21&k%5B%5D=30&k%5B%5D=23&k%5B%5D=31&k%5B%5D=27&k%5B%5D=28&k%5B%5D=29>

¹⁴ Source: [EU Transparency Registers Hungary \(transparencyregisterlaws.com\)](https://www.transparencyregisterlaws.com)

¹⁵ Act LIII of 2017, Part 8, Central records of information on beneficial owners, section 25 (1)

¹⁶ Act LIII of 2017, Part 4, Customer due diligence measures, Section 8 (4) and ((5)

¹⁷ Modified Act LIII of 2017 on the Prevention and Combating of Money Laundering and Terrorist (Part 8, Central records of information on beneficial owners, Section 9(1)

iv. Who has access to the beneficial ownership database? Does the general public have unrestricted access, restricted access or no access?

The following authorities will have direct, unrestricted access to request data from the central register (when it is set up): the financial intelligence unit, investigating authorities, the anti-terrorist organization, national security services, public prosecutors and the courts.

The following authorities and entities will have access to the register, to perform their tasks under the Anti-Money Laundering Act (supervision, customer due diligence): the National Bank of Hungary; the gaming supervisory authority; the Chamber of Hungarian Auditors; regional bar associations; regional associations of notaries; authorities for trade and commerce; financial intelligence unit; and service providers.

Third persons may request data from the central register on a case-by-case basis strictly to the extent necessary to achieve the purpose of use, if:

- ✓ the third person can verify and produce documentary evidence regarding the purpose for which the data will be used and a legitimate interest to combat money laundering and terrorist financing;
- ✓ the data requested is necessary for the enforcement of their rights and legitimate interest;
- ✓ and the conditions prescribed by law on setting up the central register are met.¹⁸

c. Electronic identity (eID) scheme – is there a scheme registered with the European Commission, and if so, what eIDAS level of assurance does it have?

*Hungary does not have yet an eID system registered with the European Commission*¹⁹.

However, in April 2012, with the amendment of Act CXL of 2004 on the General Rules of Administrative Procedures and Services by the Act CLXXIV of 2011, and the introduction of the so-called regulated electronic administration services, the legal preconditions for eGovernment services were established. In July 2015, a *new law on the Hungarian eID card has been adopted*, to issue the new card from the beginning of 2016²⁰. The Hungarian eID card was introduced on 1 January 2016 (it includes personal identity data, tax number, social security number, digital signature, dactylogram, etc.). It can be used as a travel document (ePASS), as an electronic signature card (eSIG), and as an electronic identification card (eID)²¹. In early 2019, the number of eID cards has reached over 4 million in Hungary.

Hungary's main eID system uses the so-called Client Gate (<http://www.magyarorszag.hu/ugyfelkapu>), which is available from the Government Portal (www.magyarorszag.hu). Through this portal, citizens can authenticate themselves using a username/password system, and access several common eGovernment services. The

¹⁸ Source: Dentons, state of play December 2020

<https://www.transparencyregisterlaws.com/?c%5B%5D=33&c%5B%5D=&c%5B%5D=&k%5B%5D=18&k%5B%5D=19&k%5B%5D=20&k%5B%5D=21&k%5B%5D=30&k%5B%5D=23&k%5B%5D=31&k%5B%5D=27&k%5B%5D=28&k%5B%5D=29>

¹⁹ Source: <https://ec.europa.eu/cefdigital/wiki/display/EIDCOMMUNITY/Overview+of+pre-notified+and+notified+eID+schemes+under+eIDAS>

²⁰ Source: <http://eugo.gov.hu/key-facts-about-hungary/egovernment-hungary>)

²¹ Source: <https://www.microsec.hu/en/pki-blog/personal-e-id-cards-hungary>)

credentials for this system are issued by local public authorities after the identity of a requesting party has been verified based on the central citizen registry²².

2) Company registry – transparency, access, cost

a. Which organization maintains the company registry? (name and link)

The *Online Company Information Service* (the company registry) is maintained by the organisational unit of Ministry of Justice, the National System of Company Registration and Company Information (Országos Cégnyilvántartó és Céginformációs Rendszer).

The link to it is <https://occsz.e-cegjegyzek.hu/>

Authentic and valid (effective) up-to-date and also non-effective company information can be downloaded here as part of the online company information service on companies registered at the Court of Registration. The underlying public authentic company documents from the primary, the public authentic registry can be also downloaded. This kind of usage (asking for authentic and effective data and documents) of the Company Information Service requires contracting, it can be used after concluding a contract to do it. It is a paid service.

However, there is also the possibility to get free (but not authentic) company data, but only for information. The link to it is: <https://e-cegjegyzek.hu/?cegkereses>

The annual *account and balance sheet* of the companies can be downloaded *free* on the link of Ministry of Justice, <https://e-beszamolokim.gov.hu/>

b. To what extent is the registry digitalized? Can company foundations/registrations and reporting be carried out fully online/digitally?

Yes, the registry is fully digitalised. Company foundations/registrations and reporting can be carried out fully online.

c. Are bulk downloads of the entire list of registered companies possible?

Not directly from the website. However, bulk information on the entire list of registered companies is possible. The Company Information Service provides the possibility to retrieve user-defined ***data from the company registry*** (for example, all companies operating in a certain county and/or in a certain sector (NACE) and/or all Hungarian companies in liquidation). A written application must be submitted to the Company Information Service including the chosen criteria based on what data can be collected from the database. The results will be sent electronically in "XML", "CSV" or "HTML" format. Data fee and system usage must be paid.

d. Does the registry have search features beyond the name of the company or person (e.g. by sector or employee size)

²² Source: <https://www.cosic.esat.kuleuven.be/modinis-idm/twiki/bin/view.cgi/Main/HungarianProfile>

Yes. Also, the Company Information Service can give data from the company register beyond the name of the company, like by sector, etc... (See the previous answer).

e. What is the typical cost of downloading a document from the registry?

The Company Information Service is available *directly and indirectly*.

- ✓ Non-official company data and company registry extract for information are free (<https://e-cegjegyzek.hu/?cegkereses>)
- ✓ *Official, authentic and valid (effective) up-to-date* and also non-effective company information and *public authentic company documents can be downloaded* after concluding a contract to do it. It is a *paid service*.

The Company Information Service is available also through *official local distributor partners*. (Actually, 17 such distributors operate). Distributors have to contract with the National System of Company Registration and Company Information – Company Information Service. There is a dual contracting mechanism: a contract with the Ministry of Justice and a contract with Microsec Ltd (which handles the database). It means that after the service usage 2 different invoices will be issued.

The Company Information Service asks for a company registry, official copy 3000 HUF (8,5 EUR (calculated with an approximate exchange rate of 1 EU = 350 HUF)) and for a non-official copy 450 HUF (1,3 EUR); for a company registry extract, official copy 1800 HUF (5 EUR) and for a non-official copy 270 HUF (0,8 EUR), etc...²³

Microsec Ltd. invoices a basic fee (10000 HUF/month, 28,5 EUR/month) and a fee based on data traffic, for example, a company registry extract costs 20 HUF/Kbyte (0,06 EUR).²⁴

As concerns the fees of distributors, for example, [eGov Consulting Ltd.](#) offers a company registry extract in English and electronically for 15,3 EUR (the same in Hungarian for 4,5 EUR) and an official copy of a company record for 22 EUR (the same in Hungarian for 6,4 EUR)²⁵. Another distributor, *OPTEN*, for example, offers a company extract for 690 HUF (2 EUR), a financial report for 400 HUF (1,1 EUR), company history for 1030 HUF (3 EUR), and a company analysis for 4305 HUF (12 EUR).²⁶ OPTEN also offers an analysis of a *network of connections* (that is the owner or the authorised holder which has ownership in other companies)²⁷. They also offer an analysis of a *network of address connections* (that is they connect (they identify) all the companies sharing the same (headquarter) address)²⁸.

OPTEN offers free information like company name, address of headquarter, year of foundation, number of sites, tax number, amount of the registered capital, net income, and main activity (according to NACE).

Another distributor, [ceginformacio.hu](#), for example, offers more free data, like the number of managers, the number of owners and financial reports that can be downloaded directly. The company extract can be received for 4432 HUF (12,6 EUR), in Hungarian, English or German. On the site, [cegbirosag.com](#) extra services such as a **Credit Check Report** (15240 HUF (43,5 EUR)) can be ordered.

²³ Source: https://ceginformacioszolgalat.kormany.hu/download/3/0d/a1000/aszf_egyedi_20170101.pdf

²⁴ Source: https://occsz.e-cegjegyzek.hu/Utmutatok/ASZF_Microsec_20201014.pdf

²⁵ Source: <https://www.companyregister.hu/>

²⁶ Source: https://webshop.opten.hu/product/company/0106714800#detailed_info

²⁷ Source: https://webshop.opten.hu/document_samples/ST.pdf

²⁸ Source: https://webshop.opten.hu/document_samples/CH.pdf

f. Is there information on employment levels beyond what is contained in annual accounts?

Not directly through the registry. However, the *National Tax and Customs Administration* has a free searchable database on companies indicating the valid number of employees of the company. See link:

https://www.nav.gov.hu/nav/adatbazisok/adatbleker/afaalanyok/afaalanyok_egyszeru

The number of staff, managers and owners can be found among the basic data downloaded from the searchable sites of some distributors.

g. Information on European company forms and EU reorganizations (CBM) - is a search possible for companies with the SE legal form or companies reorganized through a CBM?

It is possible search for companies with the SE ("Európai Részvénytársaság" in Hungarian) legal form in the registry website (e-cegjegyzek.hu) one by one by name and/or tax number and/or company registration number and/or address of headquarter. It is also possible to search for SEs in the searchable databases like OPTEN²⁹. The company registry number also indicates the SE status (the second two numbers should be '20').

European Companies (SE) in Hungary has a code 141 according to the Classification of economic organizations by type of economic activity³⁰.

3) Firm foundations

a. What authority or organization is responsible for registering new companies (with link)?

An application for registration of a company may and must be submitted to the **Court of Registration, or Court of Registry (Cégbíróság)**, whose competency is based on the location of the registered office of the company.³¹ In Hungary, there are 20 Courts of Registry, one in the capital (Budapest) and 1-1 in the 19 Hungarian counties. They operate as part of the regional courts.³²

Application for company foundation (or later any modification) must be sent by the attorney-in-law first to Microsec Ltd., providing the technical background for the operation of the Hungarian company registry and company information system. Microsec Ltd. forwards the application to the competent Court of Registration. The attorney-in-law has to pack all documents in a special electronically signed and stamped map.

²⁹ For example, in the database OPTEN we find CER Cargo Holding SE Európai Részvénytársaság and Wamsler SE Háztartástechnikai Európai Részvénytársaság

³⁰ In Hungarian: Gazdasági szervezetek gazdálkodási forma szerinti osztályozása, GFO

³¹ The registering a company is regulated by the Chapter IV of the Act V of 2006 on Public Company Information, Company Registration and Winding-up Proceedings (2006. évi V. törvény a cégnyilvánosságról, a bírósági cégeljárásról és a végelszámolásról)

³² See contact details of Courts of registration: <http://ebetekintes.birosag.hu/20140311/cegbirosagok-elerhetosegi>

(In any other issues of the company, like annual declarations, the Governmental Portal (www.magyarorszag.hu), with a general framework program for filling-out forms (called ÁNYK) is used. In the electronic procedure of business, the legal representatives of a company need to use an electronic signature and time stamp and he/she must be registered in the so called Client Gateway (it is reachable through <https://regi.ugyintezes.magyarorszag.hu/> and after that choose: <https://gate.gov.hu/>)³³.

The company is established by the act of the **Court of Registration**. *The process is a "one-stop-shop" process*. The Court of Registration obtains the company's *tax number* and *statistical code* as well (there is an internal electronic system created for this purpose), there is no need to deal in person with the competent tax authority and the Central Statistical Office, before registration.

Later, having received the act of the Court of Registration, there is a need to get in touch *for post hoc registration* with the *National Tax and Customs Administration (Nemzeti Adó és Vámhivatal)* - <http://en.nav.gov.hu>-, the *local government* according to the address of the headquarters (because of the local business tax), the local *Chamber of Commerce and Industry* (www.mkik.hu) (because of the obligatory yearly 'registration' fee) and the *Central Administration of National Pension Insurance* (www.onyf.hu).

b. What are the steps needed to found and register a new company? To what extent can these happen digitally?

Since July 1st 2008, the registration of a company is fully digital. Registration fees must be paid exclusively electronically too. Legal representation is obligatory; applying for the registration of a company is possible only with an attorney's countersignature. The founder of the company has to sign the papers of the foundation in person in front of the attorney-in-law. However, actually there is the possibility to use video technology (skype or other) for client identification and to sign the relevant documents. In this case, a proper video recording must be prepared (identifying the founder, clearly presenting the documents and the act of the signing) and saved by the attorney.

The steps to register a new company are as follows:

Step 1. Preparation of corporate documents by a Hungarian attorney-at-law.

Step.2. Opening of a bank account

Step.3. Registration of the new company at the Hungarian Court of Registration and obtaining a tax identification number and statistical number at once. The registration happens by submitting electronically all the needed and electronically signed and time-stamped documents by the legal representative through Client Gateway³⁴. The Court of

³³ 'The Client Gateway is the electronic identification and customer entry system of Hungarian governance. After single-sign-on and authentication of identity, the Client Gate allows users to connect with public bodies, which provide e-government services and administration.

³⁴ For example, to establish a general partnership and limited partnerships (regulated by Act V of 2013 on the Civil Code) the following documents must be submitted to the Court of Registration: Standard application form.

- ✓ Articles of association of the partnership contained in a notarised deed or in a document countersigned by a lawyer or the partnership's legal counsel.
- ✓ If one of the partners is a foreign company, its certificate of incorporation issued in the previous three months.
- ✓ If a foreign person or entity must be registered (for example, the founder, director and so on), the power of attorney of the applicant's delivery agent.

Registration electronically records documents relating to the company and provides an *electronic certificate of registration*.

Step 4. **Registration with the Hungarian tax authority, local government, chamber of commerce, and** the Central Administration of National Pension Insurance. It can be done by the representative of the company or an authorized tax expert (accountant).

Step 5. **Data provision on employees to the tax authority** - employers are obliged to submit electronically **on the Governmental Portal** the data relating to their employees. It must be done **no later than the first day of the legal insurance relationship before the commencement of employment**.

c. **What checks (if any) are done on the authenticity of documents, identity of founders, record of founders (e.g. disqualification as directors) and beneficial owners**

i. **By registration authority**

The documents transferred to the registration authority are at the first place already verified and countersigned by a lawyer, attorney or the partnership's legal counsel.

One of the main tasks of the Company Information Service (organisational unit of the Ministry of Justice) which operates the electronic registration system is to verify the application from an IT point of view; to check the authenticity of electronic signatures; data integrity; date and authenticity of timestamp; electronic document format; examine the data contained in the application for conformity with formal requirements and then to forward the verified electronic application to the *competent court of registration*.³⁵

To verify the data of natural persons indicated in the application form and to obtain data from the penal register the Company Information Service requests data from the personal data and address records and from the central immigration register, that is the registers of natural persons. The registers of natural persons - personal data and address records (személyiadat- és lakcímnnyilvántartás), the central immigration register (központi idegenrendészeti nyilvántartás) - generate a joint *access code (összerendelési kód)* concerning natural persons indicated in the application instead of using the personal identification sign (in Hungarian *személyazonossági jel*) and gives it to the court of registry together with the natural identification data.

If the application for registration is found to conform with regulations from information technology and formal perspectives, and the data contained in the application form has successfully been verified, the Company Information Service shall immediately forward it to the competent Court of Registration.

The **Court of Registration** shall examine all registration applications for compliance with formal requirements within three working days from the date when received. If the standard form or all required documents are not enclosed with the application for registration, or if

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- ✓ Declaration of the executive officers accepting their role in the partnership, including a clause covering conflicts of interest. This declaration is not necessary if all partners are authorised representatives of the partnership.
 - ✓ Specimen signatures of the executive officers.
 - ✓ Proof of right to use the registered seat.
 - ✓ Statement of the partnership regarding registration for value added tax liability (if applicable).
 - ✓ Power of attorney of the partnership's legal representative.

³⁵ See Act of 2006, Section 38

the registration fee and/or the publications charges are not paid in full, the court of registry shall reject such application.

The Court of Registration examines the content of the (otherwise public) articles of association; among other obligatory data³⁶ it must include *the name of founders and the name of the first director(s)*. The competent Court of Registration has to check whether the company register contains any entry of disqualification in respect of any member, executive officer or director of the company. If the company register contains either of the aforesaid entries in respect of any executive officer or director shown in the application for registration, the court of registry shall reject such application on the eighth working day following the time of receipt of the application without asking for any amendment or additional information³⁷.

The same happens if comes to the knowledge of the Court of Registration that any natural person or organization indicated in the application is listed in the decisions on restrictive measures imposed by the *European Union and the UN Security Council* relating to liquid assets and other financial interests.³⁸

ii. By notaries (attorney-of-law)

Every company set up (including those from abroad) needs a legal representative – in Hungary an attorney-in-law. The attorney has the responsibility for the authenticity of the documents. He/she asks for and verifies the identity of the founder(s). The attorney has the duty (and right) to check the persons taking part in the transaction through the “Framework for Enhancing the Security of Legal Transactions”³⁹ run by the Ministry of Interior and reachable through the Client Gate⁴⁰. The attorney encloses a statement in the application for registration of having inspected the documents to be enclosed for judicial aspects, and guarantees their conformity.⁴¹

iii. By “facilitator” companies (foundation agents)

Several companies or agencies are dealing with company foundations. They cooperate with law firms or are law firms themselves; they take on the same responsibilities as the attorneys.

4) Cross-border Mergers (CBMs)

³⁶ The articles of association of a Kft must include the following information: Legal form. Name of the company. Registered seat (if the registered seat and the place of central administration are not the same, the latter must also be indicated). Place of business and branches. Main activity. Name of the founders. Capital contributions. Name of the first director(s).

³⁷ Act V of 2006, Section 46 (1) it is the so called ‘insufficient data procedure’ (in Hungarian: ‘hiánypótlási eljárás’)

³⁸ Act V of 2006, Section 46 (1a)

³⁹ In Hungarian: “Jogügyletek Biztonságát Erősítő Adatszolgáltatási Keretrendszer” – regulated by Act LXIV of 2007 on strengthening the safety of legal transactions

⁴⁰ <https://regi.segitseg.magyarorszag.hu/segitseg/ugyfelkapu/szolgalatasok3/jub.html>

⁴¹ Act V of 2006, Section 48 (2)

a. Which authority is responsible for the pre-merger certificate (outbound CBMs), which authority is responsible for approving the merger (inbound CBMs)? (name and link)

Hungary implemented the rules of the European directive on *cross-border mergers*⁴² by the Act CXL of 2007 on Cross-Border Mergers of Limited Liability Companies (the Cross-Border Mergers Act)⁴³.

The general principle is that each company taking part in a cross-border merger *remains subject to the provisions and formalities of the national law that would be applicable in the case of a national merger*. That is the process is similar to domestic mergers but additionally, the preliminary publication of the common draft terms of the merger is required. In Hungary, the *Court of Registration* is the national authority that has jurisdiction over the merging companies. If the receiving company is not Hungarian, the *Court of Registration will issue a pre-merger certificate* confirming the fulfilment of all statutory conditions for the merger under Hungarian law and such certificate needs to be provided to the competent authority of the receiving company's state. A cross-border merger generally takes approximately 6-10 months to complete.

The application for the registration of the merger shall be submitted to the Court of Registration within six months of the issuance of the pre-merger certificate. The Court of Registration immediately notifies the registrars of the participating companies of the registration (or rejection or cessation) of the application⁴⁴ through a system for the interconnection of Member States' central, commercial and companies registers (Business Registers Interconnection System (BRIS))⁴⁵.

b. What personnel capacity/qualifications does the authority/ies listed above (organization(s) granting the pre-merger certificate + approving merger) have?

Due to strict procedural and documentation requirements, the merger of companies requires the close cooperation of legal, accounting, audit and tax experts. It means that before the authority enters into the picture several experts have already dealt with the issue.

The steps and measures taken before the cross-border merger contribute to the quality of the process. The first step is *an initial general meeting* which decides to start the merger process. Next, a *merger balance sheet is drafted* (including asset inventories) and the *merger terms agreement* is prepared. For the audit of the draft and the final merger balance sheet and asset inventories, *an independent auditor* needs to be appointed. They must be approved by a *second general meeting*. After it, a *filing may be made for registration*. *Common draft merger terms* need to be drawn up by *the directors of the companies* involved in the merger. The common draft must *be published in the Companies Gazette at least one month before the decision on the merger is taken*. Such draft merger terms have to be accompanied by an *independent expert report*. The corporate and accounting documents may be filed with the Court of Registration by a *Hungarian lawyer*.

⁴² EU Cross-Border Mergers Directive 2005/56/EC (with effect from 15 December 2007)

⁴³ In respect of transformations, mergers and demergers of legal entities it is the Act CLXXVI of 2013 on Transformations, Mergers and Demergers of Legal Entities ('Transformation Act') which supplements the Civil Code. The aim behind the Cross-Border Merger Directive is that a cross-border merger process should be as simple and straightforward process as a merger within one single member state under that national law.

⁴⁴ <http://globalmandatoolkit.cliffordchance.com/downloads/Hungary-Guide.pdf> and <https://www.szarvaslawfirm.hu/guides/merger-and-demergers-of-companies.html>

⁴⁵ https://e-justice.europa.eu/content_find_a_company-489-hu.do?clang=hu

c. What (if any) anti-abuse checks are made?

i. Purpose of reorganization

As cross-border mergers are a corporate law procedure, the regulatory notification procedures, if any, would still apply. *These procedures would need to be completed before a merger and therefore the two procedures will run parallel to each other.*

The management/board of directors of both merging companies shall draw up a *report* intended for the shareholders explaining and justifying the legal and economic aspects of the cross-border merger and explaining the implications of the cross-border merger for shareholders, creditors and employees.

Merger control - careful consideration should be given in advance whether the proposed transaction will be subject to any merger controls in concern of EU thresholds and Hungarian thresholds. In Hungary mergers, joint ventures, and direct and indirect acquisitions of control fall within the Hungarian merger control regime.⁴⁶

Reaching a certain market threshold shall be reported to, or approved by, the *Hungarian Competition Authority* (GVH). The reporting obligations and the rules for approval are outlined in Act LVII of 1996 on the Prohibition of Unfair Trading Practices and Unfair Competition. If a concentration beyond the thresholds is not notified, then the *Hungarian Competition Authority* may launch a *merger control procedure* ex-officio within 6 months from the implementation of the concentration.

ii. Background check on directors

Court of Registration has to check whether the companies register contains any entry of disqualification in respect of any member, executive officer or director of the company.

iii. Identity of beneficial owners

Not applicable – no beneficial ownership register exists yet.

iv. Worker I/C/P arrangements

When examining the application, the Court of Registration shall verify that the procedural rules governing the merger have been complied with, in particular the rules governing the *draft terms of the merger and the agreement on employee participation*.⁴⁷

Employee participation in the process of merger must be established in line with the principles and procedure provided for in Council Regulation (EC) No. 2157/2001 of 8 October 2001 in the Statute for a European company (SE) and in Council Directive 2001/86/EC of October 2001 supplementing the Statute for a European company. It outlines the procedure for electing members from each EU Member State to a Special Negotiation Body, which

⁴⁶ For example, a merger has to be notified to the Hungarian authorities if the undertakings concerned have a combined turnover in excess of HUF 15 billion (approximately €48 million), etc.

⁴⁷ Act CXL of 2007, section 8 (2).

conducts negotiations with the governing bodies of the merging companies to determine employee participation in the decision-making process of the surviving company.⁴⁸

The Hungarian Cross-Border Merger Act imposes an obligation on the merging companies to regulate the participation of the employees in the company resulting from the cross-border merger. As a general rule, employee participation in the surviving company shall be set according to the existing Hungarian rules concerning employee participation. For example, if the annual average of full-time staff exceeds 200 persons, the employees have the right to take part in the supervision of the company, unless there is an agreement between the works council and the management of the company to the contrary.

⁴⁸ <http://globalmandatoolkit.cliffordchance.com/downloads/Hungary-Guide.pdf>

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Act C of 2000 on Accounting

Act IV of 2006 on Business Associations (Companies Act) – since March 15, 2014 - integrated into the Act V of 2013 on the Civil Code

Regulation of Ministry of Justice 21/2006. (V. 18.) IM on certain issues of company registration and company registration

Act V of 2006 on Public Company Information, Company Registration and Winding-up Proceedings (Company Procedures Act).

Act CXL of 2007 on Cross-Border Mergers of Limited Liability Companies (the Cross-Border Mergers Act)

Act LXIV of 2007 on strengthening the safety of legal transactions

Act V of 2013 on the Civil Code (regulating general partnership and limited partnership as well)

Act CLXXVI of 2013 on Transformations, Mergers and Demergers of Legal Entities ('Transformation Act')

Act CCXXII of 2015 on general rules of electronic administration and confidential services