

BALÁZS & KOVÁTSITS
LEGAL PARTNERSHIP

NEWSLETTER

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FOUNDING MEMBER OF EAST LEGAL TEAM EEIG – AN INTERNATIONAL ASSOCIATION OF EASTERN EUROPEAN LAW FIRMS



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DEAR READERS,

We are happy to inform you that two lawyers (Dr. Tamás BALÁZS and Dr. Károly BAGÓCSI) of our Legal Partnership will hold lectures at the annual conference of European Society of Construction Law in Bucharest at the end of October. This year the topic of the conference will be the enforcement of national and European rules of public procurement law in construction projects in the member countries of the Society. Our Legal Partnership has represented Hungary at this Society since 2016.

During the last months our lawyers had a lot to do in connection with drafting different regulations in the field of data protection law regarding the new General Data Protection Regulation entered into force on 25 May 2018 in all member states of the European Union. In our present Newsletter you can also read an article about the actual aspects of GDPR considering also the new Hungarian rules in this field. In our current Newsletter you will find an article on an interesting collision of the FIDIC-contracts and Hungarian construction law and some information about the new business confidentiality rules.

Finally, I would like to call your kind attention to our new services in field of real estate issue. You can find information about these services at the end of this Newsletter.

We look forward to your remarks and questions.

Best regards,

Dr. Tamás BALÁZS
Attorney at law
Managing Partner

LEGISLATIVE CHANGES IN HUNGARIAN DATA PROTECTION

With Regulation (EU) 2016/679 (EU GDPR) coming into effect on 25th May 2018, European Data protection entered into a new era of unified data protection regulations. The introduction of GDPR has posed challenges to enterprises in Hungary as well, as they had to conform an entirely new kind of regulation. In the months before and after the introduction of GDPR, existing and new Clients of BALÁZS & KOVÁTSITS Legal Partnership, seeking counsel on GDPR compliance or GDPR-compliant Data Protection Regulations and other data protection often posed questions on how the new European data protection rules will affect Hungarian data protection laws, known to be some of the most strict



in Europe, and that which data protection regulations they would need to comply with – the European (GDPR), the Hungarian data protection laws, or both? In the past months, Hungarian legislation has passed several legislative changes to the Hungarian data protection laws, and it is now possible to provide a brief summary to some of the most frequently asked questions.

One of the most important results of the EU regulative legislation is that the rules of the GDPR Regulation shall be directly applicable, and member states will not have to – and will not be able to – enact national laws on data protection. The GDPR Regulation, by its nature, seeks total conformity in data protection laws, and shall possess horizontal effect, that is to say that the generally applicable regulations shall apply to all legal relationships directed at, or concerning the handling of personal data and shall be directly applicable in Hungarian law. However, the handling of personal data that is not regulated by the GDPR regulation, such as handling of criminal data (which is indirectly regulated by an EU directive) shall be still governed by Hungarian data protection laws.

Amongst the novelties of the new European General Data Protection Regulation it is worthwhile to mention the introduction of significantly increased data protection fines, and furthermore that data handlers must report and document without undue delay any and all cases of severe data security incidents to the national data protection authorities – the National Data and Information Protection Authority in the case of Hungary – and similarly to inform the data subject thereof, depending on the results of risk assessment.



At the same time, there are several practical benefits of GDPR – there are new legal titles for the handling of personal data in addition to obtaining the prior, informed consent of the data subject, such as data handling to perform contracts or to comply with legislative obligations.



This means that in everyday business practice, the GDPR Regulation is easier and more flexible to use, in contrast to previous Hungarian data protection law that as a general principle required obtaining the prior, informed consent of the data subject.

As the new GDPR regulation came into force, it resulted in legislative changes to Hungarian laws concerning data protection, first and foremost changes to Act CXII of 2011 on Freedom of Information in order to comply with the GDPR Regulation reform and EU directives.

After several legislative amendments since 25 May, the practically new Hungarian Act on Data protection shall implement the rules of the EU data protection directive into Hungarian laws, define the conditions of how to execute the regulations of GDPR, including the subject of national authority, procedural rules, and furthermore the applicable material and procedural rules for data protection cases outside the scope of GDPR. Thus the amended Hungarian Act on Data protection shall cover fully all data handling operations that concern the Hungarian National Data and Information Protection Authority, and even the rules of enforcing data protection rights after the death of personal data subjects.

As the GDPR Regulation is based on the principles of risk-based approach and the accountability of the data handler, and not on reporting of all data handling of operations and registration thereof to the Hungarian National Data and Information Protection Authority. Instead, data handlers to perform risk assessments and risk prevention for data handling operations, the amended Hungarian Act on Data protection will no longer uphold previous regulations to maintain a data register.

In order to provide information to all data subjects, the amended Hungarian Act on Data protection shall, in conformity with the GDPR, require that the Hungarian National Data and Information Protection Authority would publish its own decisions, set forth in the GDPR and the amended Hungarian Act on Data protection; furthermore, certain data concerning Data Protection Officers, based on the Regulation and the Directive.



The first of several legislative amendments to the Hungarian Act on Data protection concerned matters of procedure and clarified that the Hungarian National Data and Information Protection Authority shall have powers over data protection cases under the new GDPR. Subsequent legislative amendments concerned the implementation of GDPR-based definitions and legal titles for the handling of personal data. It may be noted that the amended Hungarian Act on Data protection does not use a verbatim copy of the GDPR definitions, but similar, yet more general definitions that may be construed and applied on a wider scope. Such extended interpretation of the definitions of data protection definitions might prove beneficial for data subjects, and less beneficial for data handlers. A new Chapter VI/A of the amended Hungarian Act on Data protection shall also introduce a new legal plea for data protection and shall define its procedural rules.

The latest amendments, that shall enter into force on the 25 August 2018 shall provide Hungarian National Data and Information Protection Authority with the powers to perform, upon request, permission procedures for data handling, to approve codes of conduct, compulsive enterprise rules and controlling activities. These latter procedures shall be subject to the payment of administrative duties.



We have trust that this short summary on the latest, most important legislative amendments of Hungarian Act on Data protection shall help our existing and future Clients to orient themselves in the rapidly changing legal environment of European and Hungarian data protection, and that they shall continue to place their trust in the expertise of BALÁZS & KOVÁTSITS Legal Partnership in the field of data protection and data protection compliance.

dr. MILLEI Ádám
Attorney at law

COLLISION BETWEEN FIDIC YELLOW BOOK AND HUNGARIAN CIVIL CODE IN DEFECTIVE PERFORMANCE

FIDIC (International Federation of Consulting Engineers) is an international standards organization for consulting engineering and construction. In order to help the actors who work in the field of construction law around the world, FIDIC issues books for them which are not legal rules, they are only construction contract's drafts especially for contractors and employers. Prior to the application of these books as construction contracts, they have to be harmonized to the legal system of the place of the construction. One of these books is FIDIC Yellow Book which includes such construction contract's draft wherein the contractor's duties are delivering the plan of the work and carrying into effect of it. The books of FIDIC are usually renewed and reprinted with regard to the construction praxis and development of the technique. The newest books are published this year.



Last time, when our Legal Partnership met using a book of FIDIC, it was a construction contract concluded by our Client based on the old FIDIC Yellow Book. At the handing over procedure, the contractor could not hand over the work without any defect to our Client, therefore the rules of the defective performance of the FIDIC Yellow Book had to be applied.

What is defective performance? It is when the performance of the contractor at the delivery date is not in compliance with the quality requirements laid down in the contract or stipulated by law. In this case, the FIDIC Yellow Book includes mostly unambiguous provisions.



First of all, the employer has to demand from the contractor to repair the defect of the work within reasonable time. If the contractor does not remedy the defect within the period defined by the employer, the employer comes to be entitled to choose from the following warranty claims:

- repairment of the defect by the employer himself or a third person at the contractor's costs;
- reduction of the contract price;
- termination of the contract, if the defect deprives the employer substantially of the whole benefit of the work or major part of the work, or if the work or the major part of the work cannot be put to the intended use.



According to our standpoint, the warranty claims mentioned in FIDIC Yellow Book are very similar to the concerning provisions of the Hungarian Civil Code. The difference between the FIDIC Yellow Book and Hungarian Civil Code is in connection with the conditions of applications of the above mentioned claims. According to Hungarian Civil Code, the repairment of the defect by the employer, reduction of the contract price and termination of the contract only are applicable if the contractor does not undertake the repairment or if the repairment is not possible within an acceptable period and with

taking care of the interest of the employer or if the interest of the employer for the repairment is elapsed. Application of the above mentioned warranty claims (except for termination of the contract) in FIDIC Yellow Book are not bound to further conditions. In case of termination of the contract, the preconditions of application of this claim have functional aspects which are much more objective and provable than in case of Hungarian Civil Code. The FIDIC Yellow Book provides the employer with more possibilities in connection with the enforcement of his warranty claims because they can be applied any time in case of defective performance. Among other things, that's why we often recommend our Clients to apply the FIDIC Yellow Book in their construction projects.

D. Károly BAGÓCSI
lawyer



WHAT DOES TRADE SECRET MEAN AND WHAT CAN YOU DO UPON ITS VIOLATION ACCORDING TO THE NEW REGULATION?



Several times we were faced by this question from our clients. Here in this article we would like to use our legal expertise to highlight the main aspects of the new regulation.

The Act LIV of 2018 on the defense of trade secrets entered into force on 9 August 2018. The major part of the provisions of the new Act has been transferred from the Act V of 2013 on the Civil Code. The scope of the new Act covers two areas, trade secrets and know-how. The trade secret means every fact, information or other data which is not generally known or otherwise accessible by persons engaged in that business activity and where the market interest of the holder can be damaged upon the acquisition, use, communication to others or disclosure of the abovementioned data by unauthorized persons. The know-how can be any technical, economic or organizational knowledge having a pecuniary value and recorded in such a way that renders it identifiable.

The authorized persons of the trade secrets have the right to acquire, use, disclose the data or transfer to the abovementioned rights to other persons. If someone obtains the trade secrets without proper authorization, the lawful holder of the trade secrets have multiple legal possibilities to instigate his or her will. In accordance with the rules of the Act CXXX of 2016 on the Code of Civil Procedure, the person whose right to trade secrets has been violated may hand in a claim to the competent Court with the petition for various legal consequences. Aside the establishment of the violation the claimer may demand that the violation be ceased and the person committing the violation ought to be forbidden from continuing the violation; that the merchandise in relation to violation ought to be withdrawn from further commercial traffic or ought to be abolished; that the material gain obtained by the violation ought to be relinquished. In addition, the claimer may demand indemnification from the person committing the violation according to the general rules of civil law relations.



Upon the procedure the Court has the right to limit the right to access to files or exclude the public from the trial if the risk of disclosure of the trade secrets emerges. If the entitled person enforces a claim, the Court may dispose provisional measures, where i.e. the person committing the violation forbidden from continuing the violation or the further purchase of the merchandise in relation to violation may be withdrawn.

If you have any further questions, please do not hesitate to contact our Legal Partnership and we can provide you with more information about this legal issue, the violation of your trade secrets.

Balázs Zoltán AMBRUS
Legal trainee

REAL ESTATE SERVICES – WITH COMPLEX APPROACH AND SOLUTION

BALÁZS & KOVÁTSITS Legal Partnership and its predecessor whose most important field of speciality is real estate law and construction law has been at the disposal of its clients since 1995. Besides the services our Legal Partnership, BALÁZS & KOVÁTSITS Legal Partnership provides, let me focus your kind attention on the new services we have recently introduced, real estates agency services and real estate management services especially for foreign clients.

Besides our professional experience in real estate and construction law, the main strength of our Partnership stands in the fact that we are at the disposal of our clients in seven languages, as besides Hungarian we work in English, German, Russian, Italian, Spanish and French. On request written Polish and Turkish communication can also be provided. Our Legal Partnership is not only unique as with its versatile language skills it creates a bridge between East and West but also because of the fact that it offers complex services for its clients.

We are at the disposal of our clients if they

- are looking for real estate in Budapest or in Hungary (even as investment properties), or they would like to build or invest in a real estate,



- are planning to move to Hungary and looking for a firm which can offer complex services from legal advice in settlement through choosing a school for their children to finding Hungarian/English language courses and health care,
- need financial planning or legal advice for purchasing a real estate, building one or investing in constructions.



We are also at the disposal of those clients who are interested in real estates abroad as we are members of several international associations. For further information please visit our website: www.bakolegal.com or www.bakolegal.ru.

Should you have any questions, interest in purchasing a real estate in Hungary, or investing in one, do not hesitate to contact us: office@bakolegal.com, or balazs@bakolegal.com.

Éva SÁNDOR
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