Public Goods & Governance

RECENT CHANGES IN GOVERNING PUBLIC GOODS & SERVICES

Volume 2 * Issue 1 *** June 2017**

Journal of the MTA-DE Public Service Research Group

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Articles

IMPRINT

PUBLISHER:

MTA-DE Public Service Research Group
Head of the research group and Editor-in-chief:
Tamás M. Horváth, DSc., full professor
26th Kassai str., Debrecen, H-4028 Hungary
http://publicgoods.eu

ISSN 2498-6453

JOURNAL DOI 10.21868/PGnG
ISSUE DOI 10.21868/PGnG.2017.1.

Aims and Scope

*Public Goods & Governance*is a semi-annual academic journal, aims to publish original material within the field of public policy, public management, governance and administration. This includes articles, shorter notes and comments based on theoretically and empirically grounded research on public goods, public service delivery and other public functions in a wide range of sectors, especially focused on recent challenges of governmental roles and new governance models in the market economies.

The journal welcomes submissions (articles, notes and comments) from anywhere in the world from both academics and practitioners. The maximum word limit for articles is 2500 words. Notes (not full academic papers presenting new phenomena, ideas or methods in a brief form) and comments providing additional thoughts and critical remarks to previously published articles should not exceed 1000 words.

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FOREIGN DIRECT INVESTMENTS AND INTERNATIONAL TRIBUNALS: WHY THE CONNECTION IS IMPORTANT?*

Ninjin Bataa[1]

Foreign Direct Investments (FDIs) have been the main engine in the economic growth of countries with developing economies. Nowadays, institutions of international business law are facing certain challenges in the area of foreign investment. These challenges mostly rise up from the nature of legal system in recipient countries. Because of their specific nature such as favorable atmosphere for foreign investors, international tribunals also have different approaches regarding these cases. This paper will focus on these factors of foreign investment to understand its nature, specifically in the Asian countries, including Mongolia. One of the purposes of the underlying research is to provide a new understanding of foreign investment based on the factors such as diverse legal systems and arguments of international tribunals to these countries.

Under the favorable atmosphere for the foreign investors we can include a few positive steps toward stable investment, such as new legislation in the scope of international investment. Usually host states adopt new laws which give foreign investors the same rights as domestic investors, and provide them with a legal framework to protect their investment. For example, Mongolia passed a new Investment Law of Mongolia in October 2013, which replaced the Foreign Investment Law of 1993. The above law encourages foreign investment by setting out tax stabilization incentives and other non-tax incentives. It also simplifies the registration process for setting up a business which only requires to be registered in the Intellectual Property and State Registration Office (IPSRO). Such a clarified procedure shortens the duration of opening a business operation making it 30 days in total.

The Investment Law of Mongolia also includes a provision for an 'Invest Mongolia Agency', which will focus on promoting, supporting, and regulating investment activities and is in charge of issuing stabilization certificates to the investors and monitoring whether such certificate holders are operating in compliance with Mongolian laws and regulations. The applicable rates of the following taxes, fees and duties can be stabilized under stabilization certificates for a period up to 18 years, and may be extended to 27 years for qualifying projects such as corporate income tax or; customs duty. Such behavior from a host state is a usual activity in the international investment area. As we can see, all these legislations aim to make a better environment for foreign investors, so investors can consider host countries potentials.

Another important point of international investment law was developed through dispute settlement procedures of arbitral tribunals which hear claims between foreign investors and host states brought under international investment treaties. Oddly enough

* DOI 10.21868/PGnG.2017.1.1.

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that these cases were not brought by diplomatic channels, intergovernmental negotiations. This explains that international investment law develops more in view of arbitral precedent and case law than on the basis of traditional textual approaches to treaty interpretation. Nevertheless, applying investment treaties in practice as well as studying and understanding the field not only requires knowledge about the jurisprudential developments but also demands awareness of the historic, economic, and customary international law context of foreign investment activities.

The most used dispute settlement system is Investor-state Dispute Settlement or shortly ISDS. It is a system through which investors can sue countries for alleged discriminatory practices. Provisions on ISDS can be a part of a bilateral agreement (between the home state and the host state) or be a part of international (multilateral) investment agreement. If an investor from one country (home state) invests in another country (host state), both of which have agreed to ISDS, and the host state violates the rights granted to the investor under the treaty (i.e. thebilateral or the multilateral agreement), then that investor may bring the matter before an arbitral tribunal. Talking about arbitral tribunals we should mention the International Centre for Settlement of Investment Disputes, which takes place under the auspices of international arbitral tribunals governed by different rules or institutions. For example, the London Court of International Arbitration, the International Chamber of Commerce or the UNCITRAL Arbitration Rules.

There are certain challenges in international arbitral tribunals regarding international investment cases. First of all, while the current ISDS mechanism may work well from the perspective of international investors, it entails considerable risks for host country governments. Under these risks fall the fact that aggrieved investors have a choice between seeking remedy either under the domestic law of a host country or the applicable international treaty (or both), while host countries do not have that choice, as only investors can initiate the ISDS mechanism when disputes between investors and host countries arise. Second of all, it is also questionable that only big investors have access to the dispute settlement mechanism, while small and medium-size enterprises cannot initiate the ISDS process.

In addition to all of that, there are other problems such as private arbitral panels adjudicate over public policies; conflicts of interests exist for arbitrators, including conflicts of interests that may compromise their independence; that there is no real possibility for the review of arbitral decisions taken; that poor countries are not in a position to defend themselves as respondents; investors engage in abusive treaty shopping to benefit from ISDS; and the costs of the rising number of claims are high, both in terms of the costs of the arbitration process and the potential awards involved.

With all these difficulties there arise questions regarding the prevention of international investment disputes going to arbitral tribunals. At the national level, the prevention, management, and resolution of disputes between foreign investors and host countries are imperative. In particular, it is imperative for countries to avoid such disputes reaching the international (arbitration) level. This means that, other alternative dispute resolution approaches such as mediation should be effective.

As to international dispute settlement, a number of options should be considered to improve the ISDS mechanism. Some of these should be relatively straightforward. For instance, abusive treaty shopping to obtain the protection of an International

Investment Agreement and its ISDS mechanism could be limited sharply by requiring that a substantial presence test be met.

For the further understanding of influence of international arbitral tribunals in investment disputes, examining the case law would be a better approach.

A recent example: Khan Resources v. Mongolia case[2]

The claimants and the project

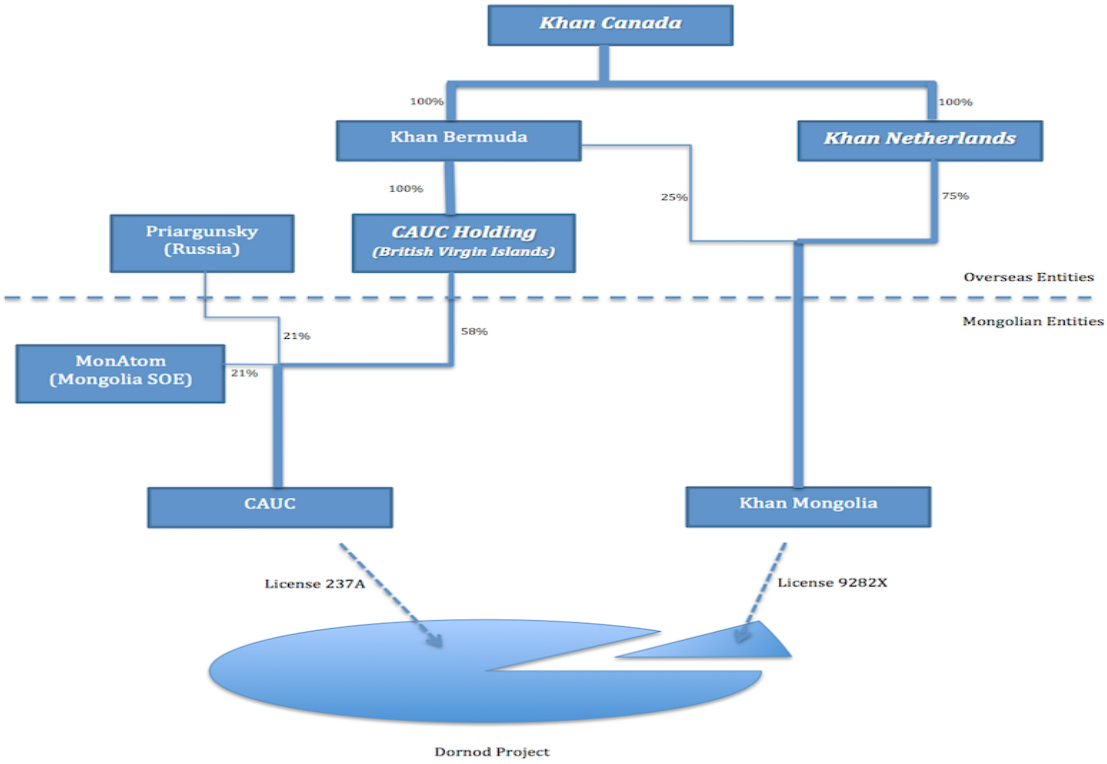
The arbitration was brought by three claimants for their investment in a uranium exploration and extraction project in the Mongolian province of Dornod (the Dornod Project). The claimants were (1) CAUC Holding Company Ltd (CAUC Holding), a British Virgin Islands (BVI) company investing in the Dornod Project through its majority-owned Mongolian subsidiary Central Asian Uranium Company (CAUC); (2) Kahn Resources B.V. (Kahn Netherlands), a Dutch company investing in the Dornod Project through its fully-owned Mongolian subsidiary Khan Resources LLC (Kahn Mongolia); and (3) Kahn Resources Inc. (Kahn Canada), a Canadian company that wholly owns both CAUC Holding, through a Bermuda vehicle, and Kahn Netherlands.

CAUC operated in the Dornod Project under a mining license (License 237A) that initially covered two deposits, but which later, on CAUC's application, was reduced to exclude a segment aimed at tax and fee savings. Such excluded segment was later acquired by Kahn Mongolia and covered by a separate mining license (License 9282X).

[2] Khan Resources Inc., Khan Resources B.V. and CAUC Holding Company Ltd. v. The Government of Mongolia and MonAtom LLC, PCA Case No. 2011-09. For a detailed description, see: https://www.iisd.org/itn/2015/08/04/khan-resources-inc-khan-resources-b-v-and-cauc-holding-company-ltd-v-the-government-of-mongolia-and-monatom-llc-pca-case-no-2011-09/[accessed November 20, 2017]

Chart 1

Structure of the Dornod Project



Source: http://www.iisd.org/itn/wp-content/uploads/2015/07/ITN-v6i3-Awards-and-Decisions-Khan-v.-Mogolia-chart-Final_En.png[accessed November 20, 2017]

The disputes

In 2009, as part of its nuclear energy reform, Mongolia enacted a Nuclear Energy Law (NEL) and established a Nuclear Energy Agency (NEA). In October 2009, NEA issued Decree No. 141, which suspended 149 uranium exploration and exploitation licenses, including Licenses 237A and 9282X, pending confirmation from NEA of their re-registration under the NEL. In March 2010, NEA inspected the Dornod Project site, noting that the project failed to remedy certain previously identified violations of Mongolian law and listing further breaches of law. In April 2010, NEA invalidated both mining licenses, and declared later that they could not be re-registered to the claimants. The applicable international investment agreement was the Energy Charter Treaty of 1994 (ECT).

The claimants initiated the arbitration in 2011, relying on four different instruments. Khan Canada and CAUC Holding invoked the arbitration clause of the joint venture agreement that created CAUC (Founding Agreement), claiming that the suspension and invalidation of the licenses constituted an unlawful expropriation, in breach of Mongolia's obligations under the Founding Agreement, Mongolian law (including the Foreign Investment Law), and customary international law. Khan Netherlands relied

solely on the ECT, claiming that, by violating the Foreign Investment Law, Mongolia also breached its commitment under the ECT through the operation of the treaty's umbrella clause.

Judicial Challenges

Mongolia objected to the tribunal's personal jurisdiction over Khan Canada, which was not a party to the Founding Agreement. While noting that the Canadian compliant was indeed not a signatory, the tribunal held that a non-signatory could become a "real party" to the agreement if this was the common intention of the signatory and non-signatory parties. The tribunal found such common intention based on evidence that Khan Canada had assisted CAUC Holding in performing its financial obligations under the Founding Agreement and that various non-official exchanges had in some occasions referred to Khan Canada, instead of its BVI subsidiary CAUC Holding, as one of the shareholders of CAUC.

Mongolia further argued that it should not be bound by the arbitration clause of the Founding Agreement, to which it was not a party. Relying on testimony provided by the claimants' legal expert, the tribunal found that one of CAUC's shareholders, MonAtom, a Mongolian company wholly owned by the state, acted as Mongolia's representative and undertook obligations that only a sovereign state could fulfill, namely, committing to reduce the natural resource utilization fees to be paid by CAUC, thereby giving the tribunal personal jurisdiction over Mongolia under the Founding Agreement.

Invalidation of the licenses

The tribunal first looked at whether Mongolia had a legal basis for the invalidation of the licenses. Disagreeing with Mongolia, it did not find that the claimants breached Mongolian law. After a proportionality analysis, it concluded that the invalidation of the licenses was not an appropriate penalty, even if the alleged violations had existed. Therefore, the tribunal found Mongolia failed to "point to any breaches of Mongolian law that would justify the decisions to invalidate and not re-register" the mining licenses (Award on the Merits, para. 319). Further, it found, based on evidence presented by the claimants that the alleged breaches were pretexts for Mongolia's real motive to "[develop] the Dornod deposits at greater profit with a Russian partner".

Turning to the procedural requirement, the tribunal found that the claimants were denied due process of law. In particular, it found that Mongolia had an obligation to re-register the mining licenses as there was "no legally significant reason why the Claimants would not have fulfilled the [prescribed] application requirements". The tribunal further found that, since the mining licenses were never re-registered under the newly enacted Nuclear Energy Law (NEL), the invalidation procedure provided in the NEL would not apply to those mining licenses, and Nuclear Energy Agency (NEA) did not have authority to invalidate the licenses unless they were re-registered under the NEL.

Based all these reasons, the tribunal concluded that the Mongolian Government had breached the ECET by invalidating licenses of uranium mining of CAUC Ltd.

Certain challenges and opportunities exist in international investment. Overviews on these challenges should be updated frequently as the regime governing the relations between international investors and governments constitutes the most important form of international economic transactions in the globalizing world economy. In addition to that, the role of international tribunals to these updates is magnificent. As mentioned above history of the international investment says that the law was developed more in the arbitration, rather than through intergovernmental institutions. Such case as Khan Resources v. Mongolia clearly touches all the necessary issues within the area and the tribunal sets out the interpretation to eliminate further misunderstandings. As most of the host states are implementing new legislations to attract more investors or make the legal environment more favorable to them, this very case points out question where the legislator should be more careful.

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THE EUROPEAN ENERGY COMMUNITY*[1]

Daniel Haitas[2]

A major part of Europe's geopolitical landscape is energy, and thus it is imperative to have an understanding of the tools and instruments employed by various international actorsin thisarea. The major mechanism which the European Union usesin order to extend its energy regime beyond its own borders is the Energy Community. According to the European Commission, „The Energy Community Treaty is the reference point for the majority of the EU's neighbours willing to be a part of the European energy system."[3]*Its two primaryaims are the European Union's energy security and the desire to export itsenergy-related norms to neighbouring countries.*[4] *TheEnergy Community's Secretariat has itself stated that, "The Energy Community's mission is to extend the EU internal energy market to South East Europe and beyond on the basis of a legally binding framework. The principal instrument to achieve this aim is the adoption of the EU's legislation, the so-called "acquis communautaire", in energy and related areas."*[5] *In this article there shall be a brief overview of the background of to the Energy Community's formation, and its basic aims and structure.*

It was not until the late 1980s that real, substantial progress began to be made in the area of establishing a common European approach to energy policy.[6] This may be considered somewhat curious, particularly if we considersuch factors as the crucialrole energy playsin modern economies, the consequences of the increases of the price of oil in the 1970s, the existence of the Euratom and ESCS Treaties, and the fact that the Commission itself had stated for years that the integration of the energy market would be highly beneficial and lead to large savings.[7] The major obstacle to development in this area were the Member States themselves, who, due to their differing circumstances and percularities, tended to prefer national solutions.[8]

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* DOI 10.21868/PGnG.2017.1.2.

[1] The paper was created within the framework of programmes aiming the increasing of quality of lawyer education (IX - 14/6/2/2017. contract number).

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[3]Communication from the Commission (2011). *On security of energy supply and international cooperation – „The EU Energy Policy: Engaging with Partners beyond Our Borders"*, 7 September 2011, COM, pp. 6.

[4]Talus, Kim (2013). *EU Energy Law and Policy: A Critical Account*, Oxford, Oxford University Press, pp. 245.

[5]Energy Community (2017). *What We Do*, https://www.energy-community.org/portal/page/portal/ENC_HOME/ENERGY_COMMUNITY/What_we_do. [accessed November 15, 2017]

[6] Nugent, Neil (2010).*The Government and Politics of The European Union*, 7th edition, Basingstoke, Palgrave Macmillan, pp. 343.

[7]Ibid.

[8]Ibid.

One major aim of the development of a coherent, independent and united European energy policy is in order to alleviate pressures arising due to over dependence upon any particular particular energy producer.[9] The EU relies on non-Member States to meet almost half of its energy needs, and in the case of oil the level of dependence reaches as high as 70 per cent.[10] Specifically, it has been Eastern and Central European states which have been particularly concerned with this matter, and the 2004 and 2007 enlargements had the impact of making this issue of even more vital importance.[11] In addition, the repeated interruptions in the delivery of Russian energy along the Ukrainian and Belarussian transit routes (in particular in 2006 and 2009), as well as the present conflict taking place in Ukraine, have provided a strong impetus for the EU to seek alternative energy sources.[12]

In this context, the extension of the internal energy market to neighbouring countries was a natural step in the development of the European Union's energy policy. On 1 July 2006 the Energy Community Treaty came into force, it being initially limited to the European Community and the countries of the West Balkans, the signatories being Albania, Bulgaria, Bosnia-Herzegovina, Croatia, the Former Yugoslav Republic of Macedonia, Montenegro, Romania, Serbia, and Kosovo.[13]Its main underlying thrust was that the EU would strengthen its supply security while the Balkan states involved would experience the benefits of a coherent policy in the energy area.[14]The Energy Community Treaty explicitly seeks to emulate the European Coal and Steel Community, for in the same way that the latter arose in a region that had just emerged from war and conflict, so the Energy Community is the first time that all the West Balkan member states signed a legally binding treaty, which arose in the aftermath of the Balkan wars of the 1990s.[15]Former European Council President Herman Van Rompuy had said, "Europe was built as a community for coal and steel. Sixty-four years later, and in new circumstances, it is clear we need to be moving towards an energy union".[16]

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[9]Buchan, David (2015). *Energy Policy: Sharp Challenges and Rising Ambitions.* In Wallace, Helen, Pollack, Mark A. and Young, Alasdair R.: *Policy-Making in the European Union*, 7th Edition, Oxford, Oxford University Press, pp. 345.

[10]Nugent (2010): *i.m.*pp.343.

[11]Buchan (2015): *i.m.*pp. 345.

[12]Ibid. See also Slobodian, Nataliia (2016). *Russia, Ukraine and European energy security*, New Eastern Europe. http://www.neweasterneurope.eu/interviews/2007-russia-ukraine-and-europe-s-energy-security[accessed November 15, 2017]

[13]Van Der Loo, Guillaume (2016). *The EU-Ukraine Association Agreement and Deep and Comprehensive Free Trade Area: A New Legal Instrument for EU Integration without Membership*, Leiden and Boston, Brill Nijhoff, pp. 348.

[14]Marhold, Anna (2016). *EU Regulatory Private Law in the Energy Community: The Synergy between the CEER and the ECRB in Facilitating Customer Protection.* In Cremona, Marise, and Micklitz, Hans W (2016). *Private Law in the External Relations of the EU*, Oxford, Oxford University Press, pp. 262.

[15] European Commission Press Release (2005). *The EU and South East Europe sign a historic treaty to boost energy integration*, Brussels, 25 October 2005, IP/05/1346.

[16]Ellis, Vicky (2014). *EU countries agree to scrap reliance on Russian gas*, Energy Live News https://www.energylivenews.com/2014/03/21/eu-countries-agree-to-ditch-reliance-on-russia-gas/[accessed November 15, 2017]

Eventually, the European Commission called for the ECT to move beyond the Balkans and to also cover European Neighbourhood Policy states,[17] and so Moldova joined in 2010, Ukraine in 2011.[18] The common interests of all parties with this action were described by the then European Commissioner for Energy, Günther Oettinger that „Ukraine will have access to a pan-European energy market, based on the principles of solidarity and transparency. For the Community, Ukraine is an important new member and security of supply further improved."[19] This statement reiterates the fact that the Energy Community facilitates the extending of the legal boundary of the EU beyond its political-institutional boundary with the aim of ensuring its security and stability, while third countries are also able to benefit from integrating into the the European Union's energy system and order.

The Treaty Establishing the Energy Community states in its preamble that it seeks "to establish among the Parties an integrated market in natural gas and electricity, based on common interest and solidarity".According to Title 1 Article 2 of the Treaty, its aims are to:

(a) create a stable regulatory and market framework capable of attracting investment in gas networks, power generation, and transmission and distribution networks, so that all Parties have access to the stable and continuous energy supply that is essential for economic development and social stability,

(b) create a single regulatory space for trade in Network Energy that is necessary to match the geographic extent of the concerned product markets,

(c) enhance the security of supply of the single regulatory space by providing a stable investment climate in which connections to Caspian, North African and Middle East gas reserves can be developed, and indigenous sources of energy such as natural gas, coal and hydropower can be exploited,

(d) improve the environmental situation in relation to Network Energy and related energy efficiency, foster the use of renewable energy, and set out the conditions for energy trade in the single regulatory space,

(e) develop Network Energy market competition on a broader geographic scale and exploit economies of scale.

The Energy Community places a strong onus upon signatory countries, which can be seen in Article 6 of the ECT, which states that „The Parties shall take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of this Treaty. The Parties shall facilitate the achievement of the Energy

[17]Communication from the Commission (2006). *On Strengthening the European Neighbourhood Policy*, Brussels, 4 December 2006, COM 726, 8, 3.4.

[18]Energy Community (2017). *About Us: Parties*, https://www.energy-community.org/portal/page/portal/ENC_HOME/ENERGY_COMMUNITY/Stakeholders/Parties.[accessed November 15, 2017]

[19]European Commission Press Release: *Commission welcomes Ukraine in Energy Community*, Brussels 24 September 2010, IP/10/1173.

Community's tasks. The Parties shall abstain from any measure which could jeopardise the attainment of the objectives of this Treaty."

The Energy Community is an example of EU external governance policy, that is, an attempt to expand and move the legal boundary of the Union while not simultaneously moving the political boundary of the Union through official enlargement.[20] This is connected to the concept of the EU as a 'normative power', which aims at exporting and promoting its norms and ideals.[21] Such an approach includes third countries applying the EU's 'sectoral acquis', which allows them greater access and integration into the Internal Market of the EU.[22] By harmonizing energy legislation and market conditions between EU Member States and third parties, the Energy Community also seeks to facilitate foreign investment and the creation of transborder interconnections in the area of the transmission of electricity and energy trade across borders.[23]

One of the major criticisms of the Energy Community has been that implementation of the energy*acquis* varies between different contracting states, thus leading to a very "mixed picture" in terms of successful implementation.[24] This problem is compoundedwith issuesrelating to enforcement mechanisms, with the claim being made that existing ones are weak, and that so far no financial sanctions or binding penalties having been imposedfor the breach of obligations.[25] Many, however have hailed the Energy Community as a success story of EU external relations policy.[26] This may be argued as the European Union has has managed to integrate countries that are not full Member States into a crucial part of its legal order. It cannotbe doubted that the issue of energy will only gain in importance in the years to come, and with it, the role of the Energy Community as a crucial component of EU external relations policy.

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[25] Ibid, 8.

[26]Schwarz, Oliver (2015). *Exploring the Impact of the Energy Community: A True Pan-European Single Market or Difference Worlds of Compliance*, ECPR General Conference Université de Montréal, Montreal, 26-29 August 2015, https://ecpr.eu/Events/PaperDetails.aspx?PaperID=25993&EventID=94.[accessed November 15, 2017]

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ERASMUS+ FUNDING INSTRUMENTS FOR SOCIAL INCLUSIONIN THE FIELD OF EDUCATION, TRAINING AND YOUTH*[1]

Dániel Szilágyi[2]

In the focus of this article is the Erasmus+ Programme, the European Commission's current programme supporting education, training, youth and sport in Europe. The programme commenced in 2014 and aims to provide a total of €14.7 billion in funding in the aforementioned policy areas until 2020. This comprehensive programme serves as the continuation of several preceding European Union initiatives in the field of education, training and youth, including the Lifelong Learning programme, several international cooperation programmes and – of greatest importance with regard to the topic at hand – the Youth in Action programme promoting active citizenship, solidarity and tolerance and fostering intercultural dialogue between young people residing in the different member states; and at the same time developing the capabilities of civil society organisations and supporting a general European cooperation in the field of youth policy.[3]

What makes this precedent programme so relevant today is that Youth in Action emphasized the importance of social inclusion in conjunction with all of its objectives – ensuring that the opportunities provided by the programme are available to all European youth, irrespective of their educational, social and cultural backgrounds. These objectives and the emphasis on social inclusion remain equally important – if not more so – in the Erasmus+ programme: while the Youth in Action initiative had to deal with drastically increased levels of youth unemployment in the aftermath of the 2008 economic crisis, the current programme has to respond to several new key issues, including a significant increase in immigration through the external borders of the European Union while still facing some lingering aftereffects of the economic crisis. The variety and the considerable economic and cultural impact of these social issues requires constant innovation, the development of novel (and targeted) approaches for

* DOI 10.21868/PGnG.2017.1.3.

[1] The publishing of this article has been made possible by a Campus Mundi grant, http://www.tka.hu/palyazatok/4811/campus-mundi

[2]*Dániel Szilágyi*, PhD Student, Géza Marton Doctoral School of Legal Studies, University of Debrecen. This paper was prepared in the framework of the project, „Az állami szabályozó szerepek újraértékelődése a szolgáltatásOkban " [*Reassessment of State Roles in Regulation of Services*] implemented by the „MTA-DE Public Service Research Group" of the Hungarian Academy of Sciences and the Faculty of Law at the University of Debrecen.

[3]EACEA (2013). Youth in Action Programme – About Youth in Action 2007-2013.http://eacea.ec.europa.eu/youth/programme/about_youth_en.php[accessed December 19, 2017]

social inclusion in the field of education, training and youth; these innovative projects, in turn, require effective funding mechanisms in order to achieve their objectives.[4]

Implementation of the Erasmus+ programme

The implementation of the Erasmus+ programme is based on a fivefold structure of key actions:

- Key Action 1 concerns the mobility of individuals – including both learners and the staff of education institutions,
- Key Action 2 covers cooperation between education and research institutions and – in some cases – other economic operators for innovation and the exchange of good practices,
- Key Action 3 concerns projects supporting policy reform in the field of education, training and youth,
- The so-called Jean Monnet activities are dedicated to promoting the inclusion of European integration studies in higher education curricula and fostering a dialogue (a policy debate) between the academic world and policy-makers,
- Finally, actions in the field of sport constitute a separate segment of the programme.[5]

The specific actions to be undertaken (and to be funded) in these areas are outlined in the yearly Erasmus+ work programmes. Implementing these work programmes are the European Commission (primarily through its Education, Audiovisual and Culture Executive Agency) and the National Agencies appointed by the member states participating in the programme. The implementation occurs mainly through indirect management, meaning that the Commission entrusts the majority of budget implementation tasks to the National Agencies. Also involved in the implementation are several other European Union bodies, including the SALTO-YOUTH network of resource centres which provide resources, information and training in specific areas – social inclusion and cultural diversity, among others – for National Agencies and other actors involved in youth work, while also fostering the recognition of non-formal and informal learning: a key tool in handling social exclusion.

The funding necessary for the implementation of the programme is provided via four parallel methods (avenues) of intervention:

- Grants: the European Commission (or its Executive Agency) publishes general and specific calls for proposals each year. Any organization, institution or group in the education, training and youth field may apply for a grant, provided that they have the financial stability to maintain their

[4]European Commission (2007). Inclusion Strategy of the «Youth in Action» programme (2007-2013). https://www.salto-youth.net/downloads/4-17-1294/InclusionStrategyYiA.pdf [accessed December 19, 2017]

[5] European Commission (2017). Erasmus+ Programme Guide. http://ec.europa.eu/programmes/erasmus-plus/sites/erasmusplus/files/files/resources/erasmus-plus-programme-guide_en.pdf [accessed December 19, 2017]

activitythroughout the period during which the action is being carried out and to participate in itsfunding and have the professional competences and qualifications required to complete theaction.

- Procurements: several Erasmus+ actions are to be implemented via public procurement procedures – through calls for tenders or the use of framework contracts.
- Specific financial instruments: the *Regulation 1288/2013 of the European Parliament and the Council* establishing the Erasmus+ programme refers to the Student Loan Guarantee Facility as such an instrument, which provides partial guarantees to the financial intermediaries of the loans provided by the programme to students undertaking a second-cycle degree, such as a Master's degree, at a higher education institution in a programme country other than their country of residence. The management of this instrument is entrusted to the European Investment Fund.
- Experts and other actions: the yearly work programmes also cover the costs related to the experts involved in the assessment of the submitted projects. Finally, specific funding is set apart for activities carried out in cooperation with the Commission's Centre for Research on Education and Lifelong Learning.

Grants for social inclusion in the field of education, training and youth

Today, specific funding is assigned – through the use of grants– to activities related to social inclusion in the field of education, training and youth, as an integral part of Key Action 3 of the programme (titled Supporting Policy Reform). This can be considered a novel addition to Erasmus+ – a specific call for proposals related to social inclusion first appeared in the 2016 work programme. The addition of this specific action was preceded (and invoked) by the adoption of the so-called Paris Declaration (officially titled *Declaration on promoting citizenship and the common values of freedom, tolerance and non-discrimination through education*) – a non-binding political declaration adopted at an informal meeting of the member state ministers responsible for education on 17 March 2015.

The Paris Declaration pinpoints four areas where EU level cooperation is necessary:

- Ensuring that children and young people acquire social, civic and intercultural competences, bypromoting democratic values and fundamental rights, social inclusion and non-discrimination, as well as active citizenship;
- Enhancing critical thinking and media literacy, particularly in the use of the Internet and socialmedia, so as to develop resistance to all forms of discrimination and indoctrination;
- Fostering the education of disadvantaged children and young people, by ensuring that European education and training systems address their needs;
- Promoting intercultural dialogue through all forms of learning in cooperation with other relevant policies and stakeholders.[6]

[6]European Commission (2015). Declaration on Promoting citizenship and the common values of freedom, tolerance and non-discrimination through

For the successful achievement of these objectives, the two most recent work programmes have included a call for proposals to support transnational cooperation projects in the education, training or youth sectors, for developing, testing, evaluating and disseminating innovative approaches – including the support of grass-root activities. In the case of grass-root activities, the supported projects should show potential for being replicated at a larger scale in similar or different contexts. The work programmes encourage cross-sector approaches with a view to exploring synergies between education, youth, culture and sport.[7]

An important question is: who may apply for a grant related to social inclusion? The current work programme allows for applications from both public and private organisations active in the fields of education, training and youthor other socio-economic sectors, and organisations carrying out cross-sector activities – for example, research, cultural and sport organisations. All applicants must be established in an EU member state, EFTA/EEA country or certain EU candidate countries (Turkey and Macedonia) and projects generally must involve a minimum of 4 participating organisations representing 4 different programme countries.

Examining the amount of funding provided by the European Union related to this specific action, we can establish that it is not only a novelty, but an area of increasing importance. While the original proposal of the 2016 working programme[8] allocated only €3 million to social inclusion projects, a later amendment[9] provided a further €10 million. The 2017 programme[10] provides another €10 million in total funding for this field of action – 8 million of which is to be allocated to projects in the field of education and training, while the remaining €2 million are to fund initiatives in the field of youth. The programme also specifies that the specific call for proposals in the field of youth will focus on two thematic priorities in line with the previously mentioned overall policy objectives: one on the role of volunteering and one to prevent violent radicalisation – again, a key issue in the light of recent geopolitical events.

Another question is: what can we know about the projects that receive a green light from the Commission? In 2016, 22 education and training-related and 6 youth-related projects received European Union funding under this specific action. Among these,

education.http://ec.europa.eu/dgs/education_culture/repository/education/news/2015/documents/citizenship-education-declaration_en.pdf [accessed December 19, 2017]

[7]European Commission (2016). Education and radicalisation - the Paris Declaration one year on.https://ec.europa.eu/education/news/20160316-paris-declaration-education_en [accessed December 19, 2017]

[8]European Commission (2015). 2016 annual work programme for the implementation of 'Erasmus+': the Union Programme for Education, Training, Youth and Sport. http://ec.europa.eu/dgs/education_culture/more_info/awp/docs/c-2015-6151.pdf [accessed December 19, 2017]

[9]European Commission (2016). Amendment of the 2016 annual work programme for the implementation of 'Erasmus+': the Union Programme for Education, Training, Youth and Sport. https://ec.europa.eu/programmes/erasmus-plus/sites/erasmusplus/files/library/c-2016-1122_en.pdf [accessed December 19, 2017]

[10]European Commission (2016). 2017 annual work programme for the implementation of 'Erasmus+': the Union Programme for Education, Training, Youth and Sport. http://ec.europa.eu/dgs/education_culture/more_info/awp/docs/c-2016-5571_en.pdf [accesssed December 19, 2017]

projects dealing with the issues faced by migrant children and youthare the most numerous, while the remainder of the greenlighted projects deal with a multitude of social issues – among others, Roma integration, volunteering and the prevention of violent radicalisation.[11]

The selection results of the 2017 call for proposals were released recently: 18 projects in the field of education and training and 4 in the field of youth received funding this year, with the majority of supported projects taking a more generalized approach to inclusive formal and informal education, training and volunteering – developing and promoting evidence-based policiesand creative educational toolkits with a potential for universal application instead of focusing specifically on certain vulnerable social groups. Among the remaining projects, initiatives focusing on migrants (or more specifically, refugee children and unaccompanied minors) are still the most prominent.[12]

To further highlight the importance of the Erasmus+ Programme's support of social inclusion projects, we should examine in greater detail one of the greenlighted initiatives: the Central European University's project funded under the working title Refugee Education Initiative. The proposal, receiving €440,000 in Erasmus+ funding, strove to expand the CEU's academic outreach programme titled Open Learning Initiative (OLIve).[13] The original OLIve programme (OLIve-WP), funded exclusively by the university's own Intellectual Themes Initiative, provided weekend classes to refugees and asylum seekers registered in Hungary, including academic tutoring courses in various disciplines, English language classes and a human rights course. With the funding received through an Erasmus+ grant, the University could launch a new, more ambitious form of academic outreach: the new programme, titled OLIve-UP, provides an intensive, full-time and fully funded university preparatory course to students with refugee status in any of the EEA countries. The course lasts for a full academic year, and focuses on English language, human rights advocacy training and academic preparatory classes. Ensuring the effectiveness of the OLIve-UP programme is the fact that its curriculum is based on a long-running, successful CEU initiative: the Rome Access Program (RAP), which has been offering university preparatory courses to outstanding Roma students for over a decade. As mentioned before, all initiatives funded under this specific action require the participation of at least four organisations representing four programme countries: in this case, the CEU is joined by the University of Vienna (UV), the University of East London (UEL) and the European Network Against Racism (ENAR) in the realization of the OLIve-UP programme. Similarly to CEU, the UV and UEL base their OLIve-UP courses on previous, well-

[11]EACEA (2016). Selection results – Key Action 3: Social Inclusion through Education, Training and Youth.https://eacea.ec.europa.eu/erasmus-plus/selection-results/selection-results-%E2%80%93-key-action-3-social-inclusion-through-education-training-and-youth-0_en [accessed December 19, 2017]

[12]EACEA (2017). Social inclusion through education, training and youth.https://eacea.ec.europa.eu/erasmus-plus/selection-results/social-inclusion-through-education-training-and-youth_en [accessed December 19, 2017]

[13]CEU (2016). CEU Receives €440,000 Erasmus + Grant For University Preparation Program for Refugees.https://www.ceu.edu/article/2016-11-30/ceu-receives-eu440000-erasmus-grant-university-preparation-program-refugees[accessed December 19, 2017]

established university preparatory programmes, with the UEL even providing a guaranteed place to successful OLIve graduates a place in its BA/BSc degree programs; while the ENAR produces policy papers relating to the initiative andprovides internships and advocacy training sessions to OLIve participants.[14]

Other specific actions related to social inclusion

While the directed funding of social inclusion projects can be considered a novelty, this specific action is not the only way the Erasmus+ programme is supporting a more inclusive education, training and youth field. Of particular importance is the programme's Inclusion and Diversity Strategy which – as the successor of the Youth in Action programme's similar instrument – aims to ensure the accessibility of Erasmus+ funded projects to young people with fewer opportunities, primarily in the field of youth (as a tangible example, this might mean the participation in informal learning programmes or volunteering projects). As the SALTO-YOUTH resource centres play a particularly important role in the development and implementation of the strategy, the funding provided to these institutions is tantamount to the efficient assessment and realization of inclusion projects in the field of youth. The funding of the resource centres constitutes part of Key Action 3 (Supporting Policy Reform), and amounts to 2 million euros per each yearly work programme.

Another specific call for proposals under Key Action 3 with a potential to play a significant role in the promotion of social inclusion and diversity was "European Policy Experimentation", running from 2014 to 2016. This call covered field trials of experimental policies, led by authorities from the programme countries, carried out simultaneously in the participating countriesusing commonly agreed evaluation methodologies, to assess the relevance, the cost-effectiveness and the potential impact of these innovative policy actions. The priority areas of this call were different each year: in 2016, several of these priorities were based directly on the objectives of the Paris Declaration, especially "Promoting fundamental values through Education and Training addressing diversity in the learning environment" and "Reaching out: developing capacity for tackling and preventing marginalisation and violent radicalisation among young people". This specific call received €14 million in Erasmus+ funding in 2016 – €12 million in the fields of education and training and €2 million in the field of youth – out of which more than €7 million was awarded to projects based on the aforementioned two priority areas.

Starting from 2017, the "European Policy Experimentation" call has been reworked into "Forward Looking Cooperation Projects" (FLCP). This new call for proposals remains focused on identifying, testing, developing and assessing innovative policy approaches, while providing an opportunity to participate for a broader range of applicants: while the previous call only allowed for applications coordinated and submitted by a programme country's highest level authority in charge of development

[14]Marketwired (2016). CEU Receives EUR440,000 Erasmus + Grant For University Preparation Program for Refugees.http://www.marketwired.com/press-release/ceu-receives-eur440000-erasmus-grant-for-university-preparation-program-for-refugees-2179635.htm [accessed December 19, 2017]

and implementation of education, training or youth policies (or a network of such authorities), the new call accepts applications from both public and private organisations established in the programme countries, with the only added requirement being that all projects should be led by high profile, representative stakeholders with state of the art knowledge, the capacity to innovate or generate systemic impact through their activities and the potential to drive thepolicy agendas in the fields of education, training or youth. While the 2017 priorities of this call aren't directly connected to social inclusion (although projects accepted under the priority "Acquisition of basic skills by low-skilled adults" may further the cause), the programme's tendency to establish new priorities each year makes it probable that the FLCP call will tackle further inclusion-related issues until 2020.

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AN ATYPICAL MARRIAGE IN LABOUR LAW – COUPLING ATYPICAL FORMS OF EMPLOYMENT WITH THE SPHERE OF LABOUR INSPECTIONS?*

Petra Ágnes Kanyuk[1]

„In some areas of life, a strong weight toward similarity and against difference may work out fine. But creative work depends on exchanges across an expanse, on the coming together of strangers."[2]

The above insight – coming from an inspiring writing of these days entitled Powers of Two – may seem surprisingly valuable in the world of labour law. Coupling atypical forms of employment with the sphere of labour inspections may at first glance seem unusual, it may however, reveal typical flaws of new forms of employment, and as is customary with good couples, labour inspections will contribute to the fulfillment of the imaginary 'better half'; will ensure that these forms of employment differ only from the typical and not from their own selves; and will ensure that the festive bridal white would not turn into gray or black by any chance. Upon completing the inspection of the relationship we will hopefully not be let in any doubts that the peculiarity of this atypical marriage is not meant in the Mikszáthian sense of miseries of enforced marriages;[3] *and it may bear fruits for the entirety of labour law.*

The atypical forms of employment constitute one of the most exciting issues in the world of labour law nowadays. The growth of these relationships is the outcome of multiple forces. It reflects changes in the world of work brought about by globalization and social change – such as the increased role of women in the world's labour force – but also legislative changes,[4] which characterises the Hungarian situation as well.The 1992 Labour Code regulated five atypical employment relationships: part-time employment, open-ended employment relationship, telework, temporary agency work and the employment relationship of executive employees. Furthermore, some other laws determined other forms of atypical employment (e.g. work from home, casual work). The new Labour Code, which came into effect on the 1st of July 2012,

* DOI 10.21868/PGnG.2017.1.4.

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[2]Shenk, J. W. (2014). *Powers of Two: Finding the Essence of Innovation in Creative Pairs*. London: Hodder And Stoughton Ltd. pp. 49.

[3]Kálmán Mikszáth (2008): *Különös házasság [A Strange Marriage]*. Budapest: Osiris.

[4] ILO (2016). Non-standard employment around the world: Understanding challenges, shaping prospects. Geneva: International Labour Office. pp. 2-3. http://www.ilo.org/global/publications/books/WCMS_534326/lang--en/index.htm [accessed September 9, 2017]

expanded the list of atypical employment relationships:[5]

Chart1

Attributes of typical employment relationship	**Atypical employment which differs by such attribute**
Open-ended employment relationship	Fixed term employment relationship
	Simplified employment
Full time employment	Part time employment
	On-call work
	Job sharing
Work at employer's premises	Telework
	Home work
Work for one employer	Temporary agency work
	Employment relationship with more employers

Source: Author

With this abundance of atypical forms in the new Labour Code, the legislator obviously strives towards the full regulation of employment relationshipswhich may give some stability to the otherwise regularly changing provisions. What is more, there is an assumption that these forms may be the main generative force behind the "*one million new jobs"* in Hungary, as the employability of the disadvantaged groups of employees on the labour market – such as women with small children, young workers, elder workers some years before the pensionable age, workers whose employability has changed due to an accident etc. – could be enhanced by the extension of flexible forms of employment.[6] However, some rules on atypical forms of employment, especially regarding on-call work, job sharing and joint employment, are excessively sketchy, therefore it is doubtful whether the adoption of these new forms will generate the expected employment effect.

The labour inspections in Hungary are carried out by the labour inspectors based on the Act LXXV. of 1996 on the Labour Inspection and the annually (until 20 February for the coming year) published controlling directives. These directives include the objectives, changes in regulations and employer-employee misdemeanours on which the inspections must focus during the given year. The directives emphasise the whitening of undeclared employment through the detailed inspection of single work contracts, companies' obligatory reporting about employment, and whether the employment keeps to the regulations concerning the employees' right to wages. According to the results of the inspections or changes in focus, the authority can order

[5] Gyulavári, T. – Kártyás, G. (2015b). *Effects of the new Hungarian Labour Code: the most flexible labour market in the world? Lawyer Quarterly* 5(4): pp. 241.

[6] Gyulavári, T. – Kártyás, G. (2015a). The Hungarian Flexicurity Pathway? New Labour Code after Twenty Years in the Market Economy. Budapest: Pázmány Press. pp. 42-43.

specific or ad hoc inspections during the year focused on undeclared employment in a specific field or sector of the labour market.[7]

There have been frequent and profound structural changes in Hungary's labour inspection system. As the National Labour Office (NMH) was closed on 1 January 2015, the Ministry of the National Economy took charge of, among others, employment and labour market-related activities, safety at work and overall labour inspection.

Labour inspectors can hold an inspection at any site, at any time without prior notification. The inspector has to announce cases when an employer breaches the obligation employment and set a fine. Another characteristic measure carried out by the Labour Inspectorate is to qualify the relationship between the parties. The type of the contract should be determined by taking into account all the circumstances of the case, not just the name of the contract. The delineationof labour relations governed bycivil and labour code can only be done by case, taking into account the actual parts of legal relations.[8]

It is definitively concluded that labour inspections perform a key role in identifying and deterring undeclared work, however, the main obstacles are hidden in the fact that undeclared employment often does not appear in the scope of the inspections. Employers and employees working undeclared expect such inspections and are prepared with dummy work contracts and attendance sheets, etc., or are running off from the scene.[9] Moreover, it is critical that labour inspectors are seen as facilitating compliance with legislation rather than obstacles to business activity.[10]The effectiveness of labour inspections depends largely on the expertise of labour inspectors and their capacity to carry out these inspections,[11] therefore appropriate financial support is essential in their case.

[7] Hajdú, J. (2011). *Labour Law in Hungary*. The Netherlands: Wolters Kluwer. pp. 75.

[8]Rácz, Z. (2007). *Kritikai észrevételek a magyar munkaügyi ellenőrzés rendszeréhez [Critical analysis of the Hungarian labour inspection system]*. *Publicationes Universtitatis Miskolciensis Sectio Juridica et Politica* 25(2): 707-717.

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[10]*Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and The Committee of the Regions on an EU Strategic Framework on Health and Safety at Work 2014-2020*. Brussels, 6.6.2014 COM (2014) 332 final. pp. 8 http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52014DC0332 [accessed September 8, 2017]

[11]*Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and The Committee of the Regions on an EU Strategic Framework on Health and Safety at Work 2014-2020*. Brussels, 6.6.2014 COM (2014) 332 final. pp. 9http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52014DC0332 [accessed September 8, 2017]

The parties under review have dual bonding: atypical forms of employment on the one hand strongly increase the body of forms to be inspected,[12] and on the other, true to their originally intended purpose, they join the mission of labour inspections by offering a realistic and at the same time legal alternative to undeclared employment amidst changing needs.[13] After establishing this common ground, the thesis walks through the catalogue of legally regulated atypical forms of employment, emphasising the distinguishing features between typical and atypical, their specialties with respect to labour inspections; thereby unveiling their typical flaws and at the same time also their potential for labour inspections.

In sum, it stands to reason that examining the two features simultaneously, though unusual, is definitely not an enforced marriage. As a result of this peculiar coupling we get closer to the actual world of labour; uncovering typical flaws will facilitate the correction thereof while discovering several effective means of labour inspections. There is one more common point in their relationship, the mission of performing work in a more complete, colourful, free and safe way. As Apostle Peter tells Adam in Madách's *The Tragedy of Man:*

> *„Set your aim: Glory for the Lord,*
> *Work for you. The individual is free*
> *To bring out all that is within."*[14]

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PUBLIC SECTOR REFORM IN HUNGARY AND ITS FINANCIAL: RAILWAYS?*[1]

Ferenc Simó[2]

Herwig C.H. Hofmann and Alexander H. Türk[3] *argue that "the development towards today's system of integrated administration of the EU has been defined through the evolution of legal, political and administrative conditions of administering joint policies. Legal problems of an integrated administration exist against the background of the transformation of both the EU Member States and the E(E)C and EU in the process of European integration.*[4] *". Thus, one can claim that cultural, legal, historical and social are all identified as "modifiers" in the way of integrated administrative conditions. In the case of Hungary, it also crucial to explore the function of the Hungarian administration and its efficiency, since its influence as one of the regulatory bodies in the public sector can undermine the attempt to implement new public management style reforms.*

I also argue that centralization of power (especially in Hungary) is against the separation of powers and it allows for the emergence of too much regulatory power centralized. Moreover, it may lead to the creation of obstacles for the involvement of the private sector, and as a consequence, it may generate more administrative power without being cost effective and fairness of competition.

Levels of administration in Hungary

In order to offer a wider picture for understanding reforms and the urgent needs of them, one needs to analyze the structure of administration as well. Even its complexity may seem suggestive, since I argue that the future of new management may hang on a balance by the existence of over-regulation in the case of Hungary.

As a start Hungary is often declared to be a unitary, parliamentary republic. Its executive branch is divided into three levels. As the first level, the Hungarian central government subsystem has divisions of ministries, the number of which ranged between 12 and 18 between 1990 and 2010; at the main core of which lied the Prime Minister's Office (PMO) with the head of the Cabinet, the Prime Minister, as its peak. Ministries are predominantly responsible for policy-making while most of the

* DOI 10.21868/PGnG.2017.1.5.
[1]The paper was created within the framework of programmes aiming the increasing of quality of lawyer education (IX - 14/6/2/2017. contract number).
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[3]Herwig C.H. Hofmann and Alexander H. Türk (2009). *Legal Challenges in EUAdministrative Law: Towards an Integrated Admininistration*. London: Edgar Elgar publication. pp. 1-2
[4]Ibid.pp. 1-2.

implementation tasks – especially those with a territorial dimension – are carried out by agencies.[5]

At the second, sub-ministerial level, one finds a number of agencies – public organizations with nation-wide competence supervised by a ministry or the Cabinet. Several of these central agencies have field offices on county or even lower (local) administrative levels, employing a significant share of civil servants. Between 1990 and 2006 the proliferation of these agencies was a regular trend in Hungary. During this period there were various organizations possibly regarded as agencies, but there were a lack of overarching legal framework for agency type organizations.[6]
That is to say, not until the very beginning of the 21th century, when in 2006 and as part of its attempts to (re)gain control over government apparatuses the second Gyurcsány cabinet attempted to launch a law regulating the basic structural features of government organizations.

At the third level of administration we can find the local governments. The local government system is a two-tier one involving, at the upper tier, nineteen counties and the capital city Budapest, and, at the lower, municipal tier almost 3200 local governments governed by elected councils.

Since 2011 a sweeping wave of centralization reached the local government system, as a result of which much of the health and education services having been taken over by the central government.

Some relevant alterations can be identified from 2010s with the inauguration of the second Orbán Cabinet, which brought a new policy on administrative reform and on cornerstones of the state structure. The emergence of this impressive change was driven by a quest to further enhance the political control of administrative apparatuses, and, unlike previous attempts, was supported by a two-third majority enabling the Cabinet.

Moreover, it is essential to note that similar attempts could already be observed in the previous years. Especially, the second Gyurcsány Cabinet took a number of attempts at strengthening central political control over apparatuses and policies. However these efforts, just like most of the above mentioned cases, were doomed to fail because of the lack of political potency required to break through the built-in barriers against major change.[7]

The wide-scope structural changes having taken place in 2010-2011 might best be understood in a broader framework characterized by a decisive and successful endeavor to get rid of the extremely status quo oriented system of checks and balances, and to strengthen hierarchical and political control in all spheres and segments of state organization.

[5] Hajnal, György (2013).*Public Sector Reform in Hungary: Views and Experiences from Senior Executives Country Report* as part of the COCOPS Research ProjectMay 2013, pp. 7-8
[6]Ibid.pp. 7-8
[7]Ibid.pp. 8-10

Several of the reform measures necessitated fundamental constitutional changes or, at least, involved the adoption by the governing parties with a two-third majority. As a consequence, the mentioned series of reforms resulted, in December 2011, in the adoption of a completely new constitution, which involves a range of elements partly extending even beyond the executive branch. Firstly, the ministerial structures underwent far-reaching structural changes, as a result of which eight integrated 'superministries' emerged. At the same time the PMO was re-structured into a Ministry of Public Administration and Justice (MPAJ) with a broader task portfolio. Thus, the Prime Minister's Office came into existence again, assuming control over a number of politically highly salient areas. The regional (middle-tier) branches of agencies have been integrated to the 20 county level (so-called) 'Government Offices' strictly controlled directed by the government and headed by political appointees, and, according to the new Local Government Act No. CLXXXIX of 2011 (in effect from 2013) local governments' scope of duties and competencies are dramatically reduced, leading to a kind of recentralization of power, so local governments do not have a broader set of responsibility for public service provision tasks any longer. The policy to cut down on the responsibilities of local governments may bring up certain difficulties in connection with projects as complex as the development of a national railway system.

The case of railways in Hungary: the (pre-existing) regulatory body

The independent railway regulatory body (Hungarian Rail Office) was set up in 2006. In 2008, the tasks and responsibilities of the regulatory body were transferred to the National Transport Authority. Regulatory and safety issues are handled in one organization but independently from each other.[8]

Unit for Railway Regulation

The regulation of the railway market was the duty of the Unit for Railway Regulation within the Central Office[9] where the legislative basis is given by the Government Decree No. 263/2006 on National Transport Authority and the Act on Railway Transport No. CLXXXIII of 2005. The main tasks and responsibilities of the regulatory body are complex, since it provides licences for regional suburban and local activities.[10]

[8]National Transport Authority (2017). http://www.nkh.gov.hu/web/english/railway[accessed November 25, 2017]

[9] The Central Office was the central body of National Transport Authority (see § 2(3) of Government Decree No. 263/2006)

[10]Ibid..

Table 1

Main tasks and responsibilities of the regulatory body

1. Licensing	The Unit for Railway Regulation (in the following: the Unit or the authority) issued licenses that were valid in the European Economic Area, and licences for regional suburban and local activities.
2. Market monitoring	In the framework market monitoring activity the Unit permanently checked whether infrastructure managers, railway undertakings, and the capacity allocation body complied with the railway legislation in force. The aim was to discover the non-compliant operations. Within the market monitoring, the Unit also collected data on the railway market and analyze market developments. The authority participated in the EU-wide data collection of the Rail Market Monitoring Scheme and in the market montoring activity of Independent Regulators' Group – Rail (IRG-Rail).
3. Market supervision	The market supervision tasks consisted of the enforcement of compliant market behaviour of infrastructure managers, railway undertakings and the capacity allocation body. The supervision of non-discriminatory access, the content of the Network Statements and track access contracts and the checking of the charge setting, in particular regarding the costs of the infrastructure managers were in the focus of our market supervision activity.
4. Enforcement of rail passengers' rights	The activity in the field of enforcement of passengers' rights was to check the compliance with Regulation 1371/2007/EC, national legislation and the General Terms and Conditions of Carriage of the railway undertakings. The Unit was also responsible for the investigation of complaints had been lodged by rail passengers.

Source: Author, based on http://www.nkh.gov.hu/web/english/railway

Department for Railways

The Department of Railways was the body within the Roads, Railways and Shipping Authority of the National Transport Authority responsible for administrative issues. The mission of the department was to give insurance through its administrative activities with meeting the requirements/acts/regulations set up by the transport policy of the EU and Hungary as well. Its aims also include many-folded contributions to the improvement of efficiency and traffic safety of the transport infrastructure.[11]

As far as the function of the departmentis concerned, one can state that this body functioned both as a regulatory and an administrative body (despite the fact that the 'official' regulatory body is the Unit for Railway Regulation below). In the light of this,

[11]Ibid.

I argue that it is necessary though, the more administrative functions are given, the more problems/obstacles may arise in connection with the involvement of private interests, not to mention its anti-competitive nature as well. These statement, I assume, seem true in the case of Hungary, moreover, it looks to follow the same direction, too.

The department provided technical supervision of railways at first instance level is performed by the Department for Railways of the Roads, Railways and Shipping Authority, and gave administrative assistance through the country the licensing of railway track networks of national, regional, suburban and local relevance and private railway tracks connected to them.[12]

This body had a role as well as a maker of proposals on introduction and amendment of regulations, rules and technical specifications, and, it participated in their elaboration, determined strategies, guidelines and requirements relating to the curriculum and further professional requirements for education and training courses of the railway personnel. It also approved internal instructions of railway companies on education and training of railway technical personnel and on activities related to the safety of railway traffic, supervised and controlled training and testing of locomotive drivers and of the personnel engaged in professions related to safety of railway transport.[13]

Does not exist anymore...

The National Transport Authority has ceased to exist from 1 January 2017, as a result of Government Decree No. 382/2016 on the designation of bodies carrying out administrative duties in connection with transport management tasks. The Authority has been succeeded by the Ministry of National Development. That means that an independent regulatory body in the field of railways does not operate anymore in Hungary, not even in a formal sense.

Railway development plans in Hungary in 2016

The urgent need to develop the means of transportation, especially on a regional level, is a fact, and there are not too many nay-sayers to reject the idea of it. In January of 2016, a total sum of HUF 1100 billion was declared to be spent on Hungarian transport development. It was stated by the government that 2016 will see the beginning of 1100 billion forints (EUR 3.5bn) of investment in transport throughout Hungary, 670 billion (EUR 2.1bn) of which will already be spent in 2016".
It was announced as well that the development of some 300 kilometres of road and 370 kilometres of railway would begin next year at a cost of 520 billion forints (EUR 1.65bn) and 600 billion forints (EUR 1.9bn), respectively,. Also, it was mentioned that the government was planning to spend HUF 2600 to 2800 billion (EUR 8.2-8.9bn) on transport development by 2020. One must not fail to remember that the difficulties of the sector of public transport might have started as early as the mid 1960s, and this sector was always

[12]Ibid.
[13] Ibid.

seen as a solely public matter governed by the Hungarian authorities on different level. According to the assessment of the Minister of State, the transport sector had an outstanding year in 2015. The drawdown of the transport investments budget of approximately HUF 2 100 billion available for the 2007 2013 EU planning period is expected to be 100 percent.[14] Some 853 kilometres of new road has been constructed and more than 2800 kilometres of road has been renewed using both domestic and EU funding since 2007, 63 kilometres of new motorway were delivered in 2015, as well as the section of the M43 between Makó and the national border and the section of the M85 between Győr and Csorna. Some 70 kilometres of bypass roads have been completed, such as in Győr, Kecskemét, Mórahalom and Nyíregyháza. Almost 300 kilometres of main road surface has been reinforced. The Minister of State emphasized the fact that the first phase of the South Balaton renovation project, designed to improve the approach to Lake Balaton by rail, was completed last year and work on the second phase has already started. The modernisation of the railway line up to Püspökladány has been completed and is continuing up to the Debrecen-Apafa stations, too.

*Source:*http://www.kormany.hu/en/ministry-of-national-development/news/huf-1100-billion-to-be-spent-on-hungarian-transport-development[accessed November 25, 2017]

Conclusion

I firmly state that in the case of Hungary, it also vital to re-investigate the function of the Hungarian administration and its efficiency, since its influence as one of the regulatory bodies in the public sector seems to undermine the attempt to realize new public management style reforms. I also argue that centralization of power (especially in Hungary) is against the separation of powers and it allows for the emergence of too much regulatory power centralized. In the case of railways, the involvement of the state is a must, since it is unquestionably related to public interest by its virtue, but the measure of involvement by regulatory bodies (administrative bodies) needs revision, especially in Hungary, where the cooperation of public and private sector is jeopardized by mistrust.

It is evidently seen that the cooperation of public and private sectors may be destabilized by the fact that, for example, citizen participation, social cohesion and internal bureaucracy reduction are all viewed not to have improved, or rather to gone further from their targeted aims. These issues appear relevant, since the obstruction built in the system by using too much bureaucracy may create superfluous paperwork, over-regulation and unbalanced/unfair competition. And, in addition, these are enough to undermine the cooperation of public and private sector, which might be a preferred one by the advocates of the new public management.

[14]Ministry of National Development (2016.) http://www.kormany.hu/en/ministry-of-national-development/news/huf-1100-billion-to-be-spent-on-hungarian-transport-development [accessed November 25, 2017]

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