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*The main characteristics of publicly
owned companies in Hungary*



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1. Introduction

Publicly owned companies play an important role in Hungary's national economy, regarding these enterprises produce the significant part of the GDP and their role in employment is considerable.² Also, these legal persons often act in order to pursue different public policy objectives.³ The activities carried out by publicly owned corporations are widely different from organizing public transportation⁴ to providing municipal services,⁵ but we can name a winery – Grand Tokaj Zrt. - owned by the Hungarian State as well. The state and local governments have membership rights in several enterprises, however, not all these entities count as publicly owned. The Act CXXII of 2009 on the more economical operation of publicly owned enterprises (hereinafter: Taktv.) defines publicly owned enterprises and according to this definition those entities are considered publicly owned in which the state and/or local government possess more than 50 % of voting rights.⁶ It means that if the state and/or local government have exactly 50 % or less voting rights in a company, it is not publicly owned, it is a company operating with the participation of the state or local government. We must emphasize that these enterprises can also play an important role in the economy – for example MOL Nyrt. is not a publicly owned company, yet its significance is undebatable – but their regulation is not identical to the publicly owned enterprises.

Publicly owned enterprises operate as companies, so the provisions of the Act V of 2013 on Civil Code (hereinafter: Ptk.) lay out the general rules for these entities as well. However, these corporations have a lot of specialties compared to the privately owned, commercial

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² Ádám AUER – Tekla PAPP: A corporate governance jelentősége köztulajdonban lévő gazdasági társaságoknál. 218.p. *Jogtudományi Közlöny*. 2017/5. 210-219.pp.

³ MILHAUPT, Curtis J. – PARGENDLER, Mariana: RPTs in SOEs: Tunneling, Propping, and Policy Channeling. *ECGI Working Paper Series in Law*. March 2018. [Working Paper No. 386/2018.] 2.p. Source: http://ecgi.global/sites/default/files/working_papers/documents/finalmilhauptpargendler.pdf [Downloaded: 2018. 04. 18.]

⁴ For example: DAKK Dél-alföldi Közlekedési Központ Zrt., Dél-dunántúli Közlekedési Központ Zrt.

⁵ For example: MVM Magyar Villamos Művek Zrt., DMRV Duna Menti Regionális Vízmű Zrt.

⁶ Taktv. 1. § a) and b) points



companies. The rules of the Third Book of Ptk. are designed to regulate these profit-oriented commercial companies – similarly to the previous Company Acts -,⁷ so the lawmaker had to lay out some special rules in different acts, authoritative to state-owned enterprises. Amongst others, the Act CVI of 2007 on state assets (hereinafter: Ávtv.), the Act CXCVI of 2011 on national assets (hereinafter: Nvtv.) and the previously mentioned Taktv. also consist specific rules regarding publicly owned companies. The provisions of these statutes are special compared to the rules of the Ptk. since these orders are formed directly to the state-owned enterprises.

In this essay we examine some of the most specific features of publicly owned enterprises in order to enlighten the differences between state-owned and privately-owned corporations. Our aim is not to present a full and complex picture of these legal entities, rather to point out some of their most important characteristics.

2. Subjective additions to the definition of publicly owned enterprise

Examining the definition given by the Taktv., we shall make two amendments and one comment. Firstly, these companies usually operate in two forms, they are either limited companies or private limited companies.⁸ According to the provisions of the Ávtv.⁹ and the Nvtv.¹⁰ the liability of the state and local government can not exceed the amount of contribution provided by the state or the local government. Limited companies and private limited companies are those two corporate forms in which the state or the local government is not liable for those liabilities, which are not covered by the company's assets. Secondly, in our opinion, those companies, in which the state became member due to succession,¹¹ are not real publicly

⁷ Tamás SÁRKÖZY: A közérdek érvényesítésére kötelezett gazdasági társaságokról. 310.p. In: Balázs BODZÁSI (ed.): *Ünnepi tanulmányok Balásházy Mária tiszteletére*. Budapest. Budapesti Corvinus Egyetem Gazdasági Jogi Intézet. 2010. 310-319.pp.

⁸ According to the portfolio of the Magyar Nemzeti Vagyonkezelő Zrt. [Hungarian National Asset Management Inc.], there is only one public limited company, which counts as publicly owned, this company is RÁBA Járműipari Holding Nyrt. Source: http://www.mnvzrt.hu/felso_menu/tarsasagi_portfolio/felso_menu/tarsasagi_portfolio/mnvportfolio/tarsasagiportfolio/tobbsegi_tulajdonu_tarsasagok [Downloaded: 2018. 05. 01.]

⁹ Ávtv. 29. § (1)

¹⁰ Nvtv. 9. § (2)

¹¹ On average, the state inherits approximately 100-120 shares per year. See: Anita BOROS: OECD Guidelines on Corporate Governance of State-Owned Enterprises from Hungarian State-Owned Enterprises' Point of View. 8.p. *Pro Publico Bono Public Administration*. 2017/1. special edition. 6-25.pp.



owned enterprises. In these cases, the state did not make any decision regarding its membership in these companies, the state inherits these shares necessarily. Because of this, in our view, the special provisions concerning publicly owned enterprises are not normative to these legal entities. Thirdly, we would like to point out from the definition that the percentage of voting rights is determining instead of the percentage of shares owned by the state or local government. As a general rule, the extent of voting rights is oriented by the amount of contribution provided by the member,¹² so the extent of voting rights is proportional to the amount of shares. However, this general rule can be overruled for example with the provisions of a syndicate agreement¹³ or by issuing preference shares, which provide special voting rights to their owners.¹⁴ The reason why we mention this difference is that the extent of voting rights is not as transparent and not as accessible as the amount of shares owned by a person or a legal entity, especially in those cases, when the provisions of a syndicate agreement – which are usually known only by the involved parties - affect the voting rights. If the company has only one member, then this question does not arise, however, in those cases, when the company has more members, only by the amount of shares owned by the state we can not say for certain that the corporation is publicly owned.

We must stress that publicly owned enterprises are very different from the state-owned enterprises which existed in the socialist era before the political transition. Without the detailed introduction of the mentioned entities, the main difference is that those companies were not real companies, rather institutional-type legal persons.¹⁵ Publicly owned enterprises – even though they are different from commercial corporations – operate as companies regulated mainly by the provisions of Ptk.

¹² Ptk. 3:110. § (2)

¹³ For further details about the syndicate agreement see: Tekla PAPP: A szindikátusi szerződés. In.: Ádám AUER – Balázs BALOG – Petra JENOVAI – Ágnes JUHÁSZ – Tekla PAPP – Krisztina STRIHÓ – Ágnes SZEGHŐ: *Atipikus szerződések*. [Ed.: Tekla PAPP] Budapest. Opten Informatikai Kft. 2015. 224-235.pp., Krisztina NAGY BARNA: A konzorciumi és a szindikátusi szerződés a polgári jogi társaság relációjában I. *Céghírnök*. 2016/11. 9-11.pp.

¹⁴ Ptk. 3:232. §

¹⁵ Tamás SÁRKÖZY: *A korai privatizációtól a késői vagyontörvényig*. Budapest. HVG-ORAC. 2009. 26.p.



3. The asset management of publicly owned enterprises

One of the most important features of publicly owned companies is that they manage public funds. Because of this attribution and their economic significance, the Fundamental Law of Hungary contains the basic principles of asset management of companies owned by the state or local governments. Article 38 Section (5) prescribes that: “Business organisations owned by the State or local governments shall manage their affairs in a manner determined in an Act, autonomously and responsibly according to the requirements of lawfulness, expediency and efficiency”.¹⁶ In our opinion, state-owned enterprises must fulfill these requirements during the whole course of their operation. Regarding that the company is a legal person which does not have its own will and can not act or decide on its own,¹⁷ satisfying the above-mentioned principles is the duty of those, who have the authority and the competency to make decisions, so the supreme body and the executive officer(s) of the company. However, the supreme body is not a continuously working organ and its importance is rather marginal in single-member companies. It means that in our view, satisfying the special requirements regarding the asset management is an additional duty of executive officers next to their regular tasks. The relevant acts do not link the principles of asset management to the executive officer but in our opinion, executive officers have the authority to make decisions concerning the company on a daily basis, so they have a notable impact on its asset management as well.

Besides the Fundamental Law of Hungary, other acts also contain special provisions for the asset management of publicly owned enterprises.¹⁸ As an example for this, the rules of Taktv. are designed to achieve and support the more economical operation of state-owned enterprises. In order to reach this purpose, the act regulates the disclosure of certain documents and data,¹⁹ maximizes the remuneration of the members of certain corporate bodies²⁰ and

¹⁶ According to the wording of the paragraph, it is not clear whether fulfilling these requirements are obligatory only for publicly owned companies or for every company in which the state or local government owns a share. For further details about this issue see: Zóra Zsófia LEHOCZKI: Az állami részvétellel működő gazdasági társaságok csoportosítási nehézségei. 186-187.pp. In.: Péter MISKOLCZI BODNÁR (ed.): *XII. Jogász Doktoranduszok Országos Szakmai Találkozója*. Budapest. Patrocinium Kiadó. 2018. 185-195.pp.

¹⁷ For further details about this and other attributions of legal persons see: Tekla PAPP: Vázlatos áttekintés a jogi személyről az új Polgári Törvénykönyv apropóján. *Pro Publico Bono*. 2014/2. 150-159.pp.

¹⁸ For the detailed analysis of these principles see: Zóra Zsófia LEHOCZKI: Az állami és az önkormányzati részvétellel működő gazdasági társaságok vagyongazdálkodására irányadó alapelvek. In.: Ádám AUER – Anita BOROS – Eszter SZÓLIK (eds.): *Az önkormányzati vagyongazdálkodás aktuális kérdései*. Budapest. Dialóg Campus. 2018. 101-111.pp.

¹⁹ Taktv. 2. §, 5. § (3)

²⁰ Taktv. 6. §



contains special provisions regarding the organizational units²¹ of publicly owned enterprises. In our view, the provisions of the Taktv. are not enough on their own to fulfill the principle of economic operation but they certainly contribute to this goal.

The State Audit Office of Hungary regularly monitors the state-owned and local governmentally-owned enterprises regarding their activity of managing national assets.²²

4. The organization of publicly owned enterprises

As we mentioned in the previous point the Taktv. contains special rules regarding the organization of publicly owned enterprises. These specific regulations affect two organs: the operative organ and the supervisory board. In order to enlighten why these rules are specific, we will compare them to the provisions of Ptk.

4.1. The operative organ of publicly owned companies

Regarding the operative organ, the Taktv. regulates only the private limited companies, it does not state any specific rules for limited companies. According to the private law codex, the operative organ of private limited companies is the management board.²³ The members of the company can overturn this rule by stating in the articles of association that a general director is managing the company instead of a management board,²⁴ but the general rule is that the operative organ of a private limited company is the management board. Unlike the Ptk. the Taktv. prescribes that the operative organ of a publicly owned private limited company is the general director and a management board is chosen only if the size, the importance or the style of operation of the company justifies it.²⁵ In our opinion, the cited section of the act leaves it to the member(s) to decide whether the above-mentioned conditions are applicable to the company or not, so the company shall be managed by one person or an organizational body.

²¹ Taktv. 3-4. §§

²² Act LXVI. of 2011 on State Audit Office of Hungary 5. § (4)

²³ Ptk. 3:282. § (1)

²⁴ Ptk. 3:283. §

²⁵ Taktv. 3. § (1)



Besides the form, the number of the members of the management organ is also different. The Ptk. prescribes that the management board consists of three persons. The company can deflect from this rule only in one direction: the operative organ can operate with more than three members, but it must contain at least three, the provision of articles of association regulating a management board with less than three members is null and void.²⁶ However, the decision-making autonomy of the members of publicly owned enterprises is narrower, since the Taktv. prescribes that the management board contains from three to five members depending on the size, the importance or the style of operation of the company.²⁷ So the act - unlike the Ptk. - also regulates the biggest size of the organ with one exception: if the legal person is outstandingly important from the view of national economy, the management board can have seven members at most.

4.2. The supervisory board of publicly owned companies

The regulation of the supervisory board of publicly owned enterprises is also different from the rules of the private law codex. Firstly, we would like to point out that in the case of privately owned business enterprises it is mainly the decision of the members whether they establish a supervisory board or not. However, there are some circumstances when the establishment of the inner monitoring organ is obligatory. For example, “a supervisory board must be established if the annual average number of full-time employees employed by the business association exceeds two hundred, and the works council did not relinquish employee participation in the supervisory board”.²⁸ Another exception is the case of public limited companies since they have to install a supervisory board according to the provisions of the act.²⁹ Last but not least, we would like to point out that “in the case of private limited companies, if so requested by a group of shareholders together controlling at least five percent of the voting rights, a supervisory board shall be installed”.³⁰ These cases are not relevant regarding the publicly owned enterprises since they must establish a supervisory board according to the provisions of Taktv.³¹ So unlike the case of privately owned business enterprises, it is

²⁶ Ptk. 3:282. § (1)

²⁷ Taktv. 3. § (3)

²⁸ Ptk. 3:119. §

²⁹ Ptk. 3:290. § (1)

³⁰ Ptk. 3:290. § (3)

³¹ Taktv. 4. § (1)



mandatory to install a supervisory board for publicly owned companies, only with a few exceptions.³²

Besides the establishment of the inner monitoring organ the provisions concerning the number of its members are also different. The supervisory board of privately owned corporations contains three members.³³ Opinions in legal literature are divided whether the members can deflect from this rule in only one direction or both directions. Some say that the supervisory board can have three or more members but not less than three.³⁴ Other authors suggest that since the members of the company are allowed to deflect from the provisions of the Ptk. in several cases, they are allowed to establish a supervisory board with only one or two members and with more than three members as well.³⁵ This question does not arise in connection with publicly owned enterprises since the Taktv. states that the supervisory board contains three members. If the registered capital of the company is more than two hundred million forints, then the supervisory board has at least three and at most six members.³⁶ In the latter case the members of the company have the authority to decide the exact size of the organ. In our opinion, the amount of capital is a very important indicator of the legal person but companies have other attributes, which would indicate the installment of a supervisory board with more than three members, for example the type of activity carried out by the enterprise or its role in national economy. So, we think that the decision regarding the number of members shall be linked – similarly to the above-mentioned case of the management system – to the size, the importance or the style of operation of the company.

³² Tattv. 4. § (1a)

³³ Ptk. 3:121. § (1)

³⁴ See among others: Tekla PAPP: A jogi személy általános szabályai. 422.p. In.: András OSZTOVITS (ed.): *A Polgári Törvénykönyvről szóló 2013. évi V. törvény és a kapcsolódó jogszabályok nagykommentárja*. 1. kötet. Budapest. Opten Informatikai Kft. 2014. 359-460.pp., Gábor TÖRÖK: A gazdasági társaságok közös szabályai. 7.p. *Gazdaság és Jog*. 2013/7-8., 3-9.pp.

³⁵ See among others: Tibor NOCHTA: A gazdasági társaságok közös szabályai. 537.p. In.: OSZTOVITS (ed.) supra 487-552.pp., András KISFALUDI: A gazdasági társaságok közös szabályai. 338.p. In.: Lajos VÉKÁS – Péter GÁRDOS (eds.): *Kommentár a Polgári Törvénykönyvhöz*. 1. kötet. Budapest. Wolters Kluwer Kft. 2014. 305-352.pp., Tamás TÖRÖK: *Felelősség a társasági jogban*. Budapest. HVG-ORAC. 2015. 416.p.

³⁶ Taktv. 4. § (2)



5. Rules of remuneration

The Taktv. regulates not only the form and the number of members of the management organ and the supervisory board, but also contains provisions to the remuneration of the members of these units. The Taktv. prescribes the maximum amount of the monthly payment for the president and the members of the management board and for the president and the members of the supervisory board. The act does not specify an exact amount, it correlates the maximum amount of monthly earnings to the all-time mandatory minimum wage. The monthly remuneration of the president of the management board can not exceed the amount of the all-time mandatory minimum wage multiplied by seven, the income of other members of the management board can not be more than the mentioned sum multiplied by five times.³⁷ The remuneration of the president of the supervisory board can not be more than the all-time mandatory minimum wage multiplied by five, in case of other members the mentioned amount multiplied by three.³⁸

We have some concerns whether these monthly wages are enough to guarantee that the most well-trained, experienced and competent persons take on the mentioned positions of publicly owned enterprises. The remuneration offered by the members of private sector are often much higher, so the best professionals are very likely to be employed by a private business entity, rather than a public one. Another issue is that the above-mentioned rates are obligatory only for publicly owned companies, not for all state-owned enterprises. So, the members of the management board and the supervisory board of a company in which the state owns exactly 50 % or less of the voting rights can have more significant remuneration since the effect of Taktv. is not binding them. On the other hand, according to requirements of asset management state-owned companies shall operate economically, but without an exact regulation, the sum of the monthly salary is more flexible in those legal persons, which are not considered publicly owned.

³⁷ Taktv. 6. § (1)

³⁸ Taktv. 6. § (2)



6. Closing remarks

In our essay, we pointed out the most significant features of publicly owned enterprises by comparing them to private business entities and in some cases to other state-owned corporations, which are not considered publicly owned. Our aim with these comparisons is to emphasize how special these entities are regarding their asset management, their structure and even their rules for remuneration. Publicly owned companies are rarely examined separately from other business associations, even though their type of activity and their importance in national economy would suggest otherwise. In our opinion, the issues connecting to national assets are highly important in a country's life, so the operation and the asset management of state-owned and local governmentally-owned companies shall be considered as an important topic from the view of national asset management and from the aspects of company law as well.

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