

LEGAL PROFESSIONAL PRIVILEGE IN HUNGARY – SCOPE TO BROADEN SIGNIFICANTLY AS FROM 1 JANUARY 2018

Issues for Competition Lawyers

A new Attorney's Act came into force in June 2017 and with like effect from 1 January 2018. The new Act is relevant for attorneys and also for companies, as it will change the status of in-house counsel and companies' procedural rights, due to the new broadened scope of legal professional privilege (LPP).

1. BACKGROUND

The communication between attorneys and their clients has been subject to legal professional privilege under Hungarian law in criminal matters for many decades. LPP was first introduced in competition investigations in 2005. Under those provisions, documents prepared for the purposes of communication between the attorney and the client for defence purposes (as well as records of such communication) benefitted from LPP, provided that the privileged nature was clear from the document, and also that such communication was in the possession of the client or the attorney. Communication between the company and its in-house counsel did not benefit from LPP. A document subject to LPP could not be reviewed by the Competition Authority and could not be used as evidence.

2. THE NEW RULES

1 January 2018 will bring key changes in the rules applicable to LPP. The regulation is set out in the new Attorney's Act¹. The main elements of the new LPP regime are as follows:

- **Scope of LPP.** LPP will cover documents and parts of documents created in the course of communication (or recording such communication) prepared in the interest of or within the framework of defence during regulatory proceedings (i.e. not just during competition or criminal investigations).
- **Proceedings and sectors covered.** The protection of LPP will be introduced in all authority procedures and all court procedures launched by Hungarian authorities or before Hungarian courts. Such proceedings include, in particular, **competition, data protection and tax** related proceedings, and regulatory proceedings relating to the **financial services, energy, food, gambling, insurance, pharmaceuticals** and other sectors.
- **Legal advisors.** LPP will continue to apply to communication between the **attorney** and the client. As a new element, LPP will be extended to communication between the client and its **in-house counsel** if the in-house counsel is registered with the **Bar Association** to perform attorney-activities under the new Attorney's Act.
- **Age of documents.** After 1 January 2018, LPP will also cover documents and parts of documents that were created before 1 January 2018, including all communication with in-house counsel.

¹ Act 78 of 2017

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3. SIGNIFICANCE / PRACTICAL MATTERS

The new Attorney's Act will prevent Hungarian authorities from reviewing or using as evidence communication containing legal advice relating to defence in regulatory proceedings. Such scope is wider than before both in terms of both the regulatory procedures and the persons covered.

Companies are advised to take steps to ensure the maximum benefit of the new rules, including:

- considering the registration of in-house counsel with the Bar Association (i.e. identifying in-house counsel whose compliance-related communication should benefit from LPP and/or whose pre-2018 communications could usefully benefit from LPP under the new rules);
- review internal communications policies and practices (i.e. maximising the benefits of LPP by ensuring that communication takes place with lawyers enjoying the appropriate status); and
- set up practices that ensure that the new rules are enforced during an authority inspection (e.g. ensuring that material likely to benefit from LPP is clearly identified as such, and that employees are trained to refer to the benefit during authority proceedings).

Lakatos Köves and Partners are pleased to assist in relating to any of the points above. For further information, please contact us.

Legal Professional Privilege in Hungary – scope to broaden significantly as from 1 January 2018

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