

# Legislative history analysis of the operation of foreign higher education institutions in Hungary

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*The legislative changes to the higher education institutions operating in Hungary that entered into force in April 2017 generated a serious policy/political debate both in the public and among politicians and professionals involved in the topic. The goal of my paper is to examine and analyze – both the previous and the current – respective regulation, furthermore to present and evaluate the impact of the changes and modifications from socio-economic and scientific aspects. I present the forms of operation of foreign higher education institutions operating in Hungary under the current regulations and draw my conclusions.*

*Keywords: foreign higher education institutions in Hungary; Hungarian operating permit; cross-border services; Act CCIV of 2011 on national higher education*

## 1. Introduction

The legislative changes to the higher education institutions operating in Hungary that entered into force in April 2017 generated a serious policy/political debate both in the public and among politicians and professionals involved in the topic, thereby triggering a significant national and international public response as well.

The goal of my paper is to examine and analyze – both the previous and the current – respective regulation, furthermore to present and evaluate the impact of the changes and modifications from socio-economic and scientific aspects. Considering that the Act on higher education of 1993 (hereinafter: Higher Education Act '93) was the first independent and comprehensive legal regulation of Hungarian higher education, I will start my analysis by looking at this piece of legislation first.

## 2. Regulation Governing the Foreign Higher Education Institutions Operating in Hungary between 1993 and 2011

### 2.1. Foreign Higher Education Institutions in Hungary based on the Higher Education Act '93

Already the original text of the Higher Education Act '93 as published in the Hungarian Official Gazette (3.VIII.1993) referred to the operation of foreign higher education institutions in Hungary. Pursuant to point j) of Article 74 (1) of the Act, the Minister of Culture and Public Education authorizes the operation

of foreign higher education institutions in Hungary within his public tasks related to higher education. Article 110 specified further rules:

“Article 110 (1) Foreign higher education institutions may offer regular undergraduate, specialization or doctorate programs (on its own or within the framework of or in cooperation with other organization) and may issue foreign diplomas in Hungary, if

a) the institution and the diploma it issues (the academic degree it results in) are officially recognised in the country, where its registered seat is, as higher education institution and as higher education diploma (academic degree) and this has been proven credibly;

b) the Minister of Culture and Public Education authorized such operation of the foreign higher education institution.

(2) Hungarian higher education institutions and foreign higher education institutions may offer joint undergraduate, specialization and doctorate programs, if the cooperating foreign higher education institution meets the criteria specified in point a) of paragraph (1). Such cooperations shall be reported to the Minister of Culture and Public Education.”

Point b) of Article 110 (1) of the Higher Education Act '93 was supplemented by “after obtaining the opinion of HAC” and by the following paragraph (3) as of November 1, 1996<sup>1</sup>:

“Article 110 (3) The Minister issues a decree on recognition and equivalence of foreign diplomas issued with respect to the programs provided based on paragraph (1) that was authorized by the Minister of Culture and Public Education. The annex of this decree lists the institutions and their courses, to which the decree applies.”<sup>2</sup>

According to the reasoning attached to Act LXI of 1996 on the modification of Act LXXX of 1993 on higher education, modification of Article 80 specifying the tasks of the Hungarian Accreditation Committee (hereinafter: HAC) made the modification of point b) of Article 110 (1) of Higher Education Act '93 necessary. (The reason for the modification being that this task expanded the function of the HAC.)

The modifications affecting the function of the HAC derived partially from proposals for amendment relating to other provisions of law (establishment of association, granting permits to start courses, starting accredited higher-level vocational training, etc.) and partially they aimed at increasing the role of the HAC in the continuous control of quality of the higher education program and in the quality assurance (e.g. establishment of faculties, recognition of diplomas, etc.).

The reason for adding the new paragraph (3) to Article 110 of the Higher Education Act '93 was that the higher-level vocational training activity of foreign higher education institutions in Hungary had significantly increased.<sup>3</sup> However, the ministerial decree mentioned in Article 110 (3) was never adopted. Pursuant to Article 1 (2) of Government Decree 47/1995 (IV.27.) on recognition and homologation of academic degrees, certificates and diplomas obtained in a foreign higher education institution, it was still possible in the permission regulated in point b) of Article 110 (1) of the Higher

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<sup>1</sup> Established by Articles 80 (1)-(2) of Act LXI of 1996. Effective from November 1, 1996.

<sup>2</sup> Author's translation. All Hungarian legislation quoted in the paper was translated by the author, except for quotes from Act CCIV of 2011 which is available in English at the website of the Hungarian Accreditation Committee: [http://www.mab.hu/web/doc/hac/regulations/Ftv2012\\_Eng.pdf](http://www.mab.hu/web/doc/hac/regulations/Ftv2012_Eng.pdf)

<sup>3</sup> Reasoning of Act LXI of 1996 on amendment of Act LXXX of 1993 on higher education\* „Acts do not have official justification adopted by the Parliament. We clarified and completed the justification of bills drafted by the person who submitted them in accordance with the adopted amendments.” Source: Legal directory. Wolters Kluwer Kft.

Education Act '93 to recognize – upon request – the certificates and diplomas issued by a foreign higher education institution specified in Article 110 of the Higher Education Act '93. In lack of such provision in the permission, the provisions of Government Decree 47/1995 (IV.27.) also applied to the certificates and diplomas issued by a foreign higher education institution in Hungary. Act C of 2001 on recognition of foreign certificates and degrees (hereinafter: Recognition Act) repealed Article 110 (3) of the Higher Education Act '93 and Government Decree 47/1995 (IV.27.) as of January 1, 2002. The primary reason was the accession of Hungary to the European Union and the harmonization obligations arising therefrom. Hungary undertook during the accession negotiations that it will harmonize its laws with the respective Community legislation until the date of accession to the European Union and that included the recognition of foreign certificates and degrees as well.<sup>4</sup>

Thereafter the regulations of the Higher Education Act '93 relating to foreign higher education institutions did not change substantially until Act CXXXIX of 2005 on the higher education (hereinafter: Higher Education Act '05) entered into force.

## 2.2. Foreign Higher Education Institutions in Hungary based on the Higher Education Act '05

Pursuant to Article 116 (1) of the Higher Education Act '05, “foreign higher education institutions may operate or issue foreign diploma in the territory of the Republic of Hungary, if the institution and the diploma it issues are legally recognized in the country of origin as a higher education institution and as a duly corresponding diploma, and such recognition has been credibly proven, and furthermore, the licence required for commencement of operation has been issued by the registration centre. Unless otherwise provided by law, the establishment of the foreign higher education institution, its education and research activities, the pertaining monitoring procedures, the operation of the institution and the specification of entry requirements shall be subject to the relevant provisions of the state which recognizes the higher education institution as its own.”

Article 116 (2) also provides that if the registration centre ascertained the fulfilment of conditions defined in paragraph (1), the maintainer was granted an authorization necessary to start operation. The HAC and, based on the Recognition Act, the Hungarian Equivalence and Information Centre (hereinafter: HEIC) cooperated as expert bodies in the authorization procedure. The authorization for starting operation could be denied, if the degree of the foreign certificate or the qualification certified by the diploma could not be recognised in Hungary. The Minister of Education was empowered to verify the legality of the functioning of foreign higher education institutions and within such powers he could request – at least once every eight years – the verification of fulfilment of the conditions stipulated in Article 116 (1).

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<sup>4</sup> See further: a) Council Directive 89/48/EEC on the general system for the recognition of higher-education diplomas awarded on completion of professional education and training of at least three years' duration; b) Council Directive 99/42/EEC on a second general system for the recognition of professional education and training to supplement Directive 89/48/EEC; c) Directive 1999/42/EC establishing a mechanism for the recognition of qualifications in respect of the professional activities covered by the Directives on liberalisation and transitional measures and supplementing the general systems for the recognition of qualifications; d) Directive 2005/36/EC on the recognition of professional qualifications.

The Higher Education Act '05 provided a possibility to establish and operate a higher education institution issuing foreign diploma in Hungary on the basis of an international agreement. Higher education institutions established and operating on the basis of an international agreement were ex officio registered by the registration centre as well.<sup>5</sup> The provisions pertaining to the control of lawfulness had to be applied to these institutions unless otherwise prescribed by the international agreement.

Like the Higher Education Act '93, the Higher Education Act '05 also allowed joint programs of Hungarian and foreign higher education institutions resulting in issuance of Hungarian or foreign or joint diploma, provided that all of the following criteria are met:

- a) the higher education institutions are entitled to provide such programs,
- b) the higher education institutions concerned have agreed to organise the program,
- c) the higher education institutions concerned are recognized by the state as higher education institutions in their country of residence,
- d) the diploma issued qualifies as a diploma awarded in higher education according to the national law of the countries concerned,
- e) the agreement expressly specifies, the requirements of which Hungarian undergraduate, graduate or doctorate course or postgraduate specialist training course the joint program meets.<sup>6,7</sup>

An additional paragraph was added to the article cited above on September 1, 2007. Pursuant to this new paragraph, authorization for operation of the foreign higher education institution in Hungary was not necessary in case of joint programs; only the permission of the registration centre needed to be obtained for the joint program, with the HAC acting as expert body.

The Higher Education Act '05 already required the expert opinions of the HAC and the HEIC for the authorization of the operation of foreign higher education institutions in Hungary.<sup>8</sup> The text of the law as published in the Official Gazette included that in case of foreign higher education institutions, the registered seat of which are in a country party to the European Economic Area (EEA), the above bodies shall examine during their procedure “only” whether the higher education institution obtained state recognition in its country of residence.<sup>9</sup> However, this had been deleted from the text that entered into force on March 1, 2006.

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<sup>5</sup> Article 116 (3) of the Higher Education Act '05.

<sup>6</sup> Article 117 (4) of the Higher Education Act '05.

<sup>7</sup> Due to the modification that entered into force on October 1, 2009, point e) was modified as follows: „it is clear from the agreement, the requirements of which Hungarian field of education, higher education level (degree) and vocational training or specialization the joint program meets.”

<sup>8</sup> Those foreign higher education institutions that started their operation based on an authorization obtained from the Minister of Education before the Higher Education Act '05 entered into force, were obliged to go through the licensing procedure required to perform the activity again until December 31, 2010. If they did not meet this condition, they were not allowed to matriculate students to the first grade from the school year that began on September 1, 2011. However, the students matriculated in the previous years could complete their studies under the same conditions and the law did not set a deadline for that. (See: Article 151 (7) of the Higher Education Act '05).

<sup>9</sup> Text in the Gazette of Article 106 (7) of the Higher Education Act '05.

Pursuant to the modification that entered into force on January 1, 2009, the registration centre may decide without the expert opinion of HAC in case of commencement of undergraduate, graduate or equivalent divided program (that does not qualify as joint program) accredited in an EEA state or recognised by the given state as belonging to its higher education system, if the – foreign and Hungarian – higher education institutions concerned have agreed to organize the program and the foreign higher education institution has undertaken in this agreement to issue a foreign diploma with regard to the program provided by the Hungarian higher education institution. This program, the rights and obligations of those participating in the program, the education activity, the monitoring thereof and specification of the entry requirements are governed by provisions of the state which recognized the higher education institution as its own.<sup>10</sup> The above provision has actually introduced a new form of cooperation: the Hungarian higher education institution performs the “foreign” program at the expense of its own infrastructure (meaning: lecturers, lecture halls, etc.) but according to the rules relating to the foreign program, and it is the foreign institution issues that the diploma (thus this is not a joint program). The Hungarian higher education institution performs – by using a common wording – a “licence program”.

During the amendment of the law due to the implementation of Directive 2006/123/EC on services in the internal market<sup>11</sup>, it was declared with regard to higher education institutions established in an EEA state that the issuance of permission necessary to commence operation cannot be denied with reference to it not being possible to recognize the level of education of the foreign diploma issued by the institution in Hungary.<sup>12</sup> The only thing expected from foreign higher education institutions was that if it is not possible to recognize the level of education of the foreign diploma issued in Hungary then the institution shall clearly and verifiably call the applicants’ attention to this fact; and the registration centre monitored the fulfilment of this obligation.<sup>13</sup> According to the reasoning of the amendment, “with adequate information for the applicants, it shall be decided by the students whether to apply for such program or not but the possibility thereof cannot be prohibited.”<sup>14</sup>

Regulation of the activities of a service provider having the right to the freedom to provide services had been added to the Higher Education Act '05 as of September 1, 2009. From this time on, Article 116 (7) provided that “[the] service provider having the right to free provision of services under the Act on the general rules of commencing and pursuing service activities, shall report its intent to perform higher education activities in the territory of the Hungarian Republic within the framework of cross-border provision of services to the registration centre. The registration centre registers the service provider having the right to free provision of

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<sup>10</sup> Article 106 (7) of the Higher Education Act '05 from September 1, 2009.

<sup>11</sup> Article 338 of Act LVI of 2009 on modifications related to the entry into force of Act CXI of 2008 on modification of Act CXL of 2004 on the general rules of administrative proceedings and services and to the implementation of Directive 2006/123/EC on services in the internal market.

<sup>12</sup> Cf. footnote No. 8.

<sup>13</sup> Article 116 (6) of the Higher Education Act '05 from September 1, 2009.

<sup>14</sup> Justification of Act LVI of 2009 on modifications related to the entry into force of Act CXI of 2008 on modification of Act CXL of 2004 on the general rules of administrative proceedings and services and to the implementation of Directive 2006/123/EC on services in the internal market.

services, if the institution and the diploma it issues are legally recognized in its country of origin as higher education institution and as a duly corresponding diploma. The Minister exercises its powers specified in Article 105 over the service provider having the right to free provision of services and within the scope of that power the Minister and the registration centre cooperating in the monitoring may request verification of fulfilment of legitimate conditions of operation based on documents submitted in authenticated copies or in authentic Hungarian translation. The registration centre publishes on its website the list of languages where non-certified Hungarian translation of documents is also accepted.”<sup>15</sup>

### 3. Regulation Governing the Foreign Higher Education Institutions Operating in Hungary based on the National Higher Education Act

#### 3.1. From Entry into Force until the Modification in April 2017 of the NHE Act

The regulation of the operation of foreign higher education institutions in Hungary did not change conceptually with the entry into force of Act CCIV of 2011 on National Higher Education (hereinafter: NHE Act). Providing university training still requires the recognition of the foreign decision authorizing the operation of the institution as a state-recognised higher education institution in its country of origin as well as the authorization of operation by the Hungarian Educational Authority. The Educational Authority recognizes the foreign decision, if the principles of higher education of the given state comply with the higher education principles of the European Higher Education Area. Further condition of the operating authorization is an expert opinion, which declares the human resources and material conditions of the program, the quality of the program as well as the conformity between the operational and program conditions in Hungary and the operating authorization issued in the country of residence. The operating authorization may be refused based on the expert opinion obtained by the Educational Authority.<sup>16</sup>

As a general rule, the authorization of operation may still be refused, if the educational level attested by the foreign diploma cannot be recognized in Hungary,<sup>17</sup> however, issue of the authorization necessary for the commencement of operation of a higher education institution established in another EEA state shall not be refused based on the condition of equivalence. If the educational level attested by the foreign diploma issued by a higher education institution established in another EEA state cannot be recognized in Hungary, the institution shall call the applicants' attention to that clearly and justifiably, and the educational authority shall monitor fulfilment thereof.<sup>18</sup>

Like under the previous regulation, it is possible to establish and operate a higher education institution issuing foreign diploma in Hungary on the basis of an international agreement as well. The educational authority shall register such higher education institutions ex officio and, in lack of provisions to the

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<sup>15</sup> Implemented by Article 338 (2) of Act LVI of 2009; effective from October 1, 2009.

<sup>16</sup> Articles 76 (1)-(2) of the NHE Act.

<sup>17</sup> Article 76 (3) of the NHE Act.

<sup>18</sup> Articles 77 (1)-(2) of the NHE Act.

contrary in the international agreement promulgated in an act, the provisions concerning the supervision of the legality of higher education institutions shall apply.<sup>19</sup>

The conditions of a joint program offered by a Hungarian higher education institution and a foreign higher education institution leading to the issuance of a Hungarian and a foreign diploma or a joint diploma have however been changed by entry into force of the NHE Act as follows:

- a) the higher education institutions involved qualify as state-recognised higher education institutions in their country of residence,
- b) the diploma issued qualifies as a diploma issued in higher education under the national laws of the countries concerned,
- c) both the Hungarian and the foreign higher education institutions are authorised to launch programs, the educational and completion requirements of which are the same as the educational and completion requirements of the program subject to the agreement,<sup>20</sup>
- d) the credit transfer committee of the Hungarian higher education institution states that the credit equivalence between the program authorized to be launched and the program subject to the agreement reaches 75%,<sup>21</sup>
- e) students collect at least thirty credits at the Hungarian higher education institution authorized to launch the program.<sup>22</sup>

In case of the above program, authorization of operation of the foreign higher education institution in Hungary is still not necessary.<sup>23</sup>

Regulation of the activities of a service provider having the right to free provision of services has not changed significantly compared to the Higher Education Act '05. The educational authority registers the service provider having the right to free provision of services, if the service provider meets the condition specified in Article 76 (1).<sup>24</sup>

The text of the NHE Act related to the operation of foreign higher education institutions in Hungary has been modified as of September 1, 2015. The modification resulted in significant changes to the content of the regulation of diplomas issued by higher education institutions and in a clarification of the provisions related to issuing operating authorizations. Pursuant to the new text, “a foreign higher education institution may perform programs leading to a diploma in the territory of Hungary, if it qualifies as a state-recognised higher education institution in its country of origin, the program to be performed in the territory of Hungary (and the diploma issued for its completion) qualifies as a program (diploma) providing higher education degree recognized by the state, and its operation has been authorised by the educational authority. The educational authority shall revoke its decision on the

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<sup>19</sup> Article 76 (6) of the NHE Act.

<sup>20</sup> Point c) was amended by the modification that entered into force on July 1, 2016 as follows: „the Hungarian and the foreign higher education institutions are authorized to launch programs in a field of study or discipline that can be considered as equivalent to the field of study or discipline of the joint program subject to the agreement”. Declared by Article 57 of Act LXXX of 2016.

<sup>21</sup> Repealed by point 17 of Article 82 of Act CXXXI of 2015. Ineffective from September 1, 2015.

<sup>22</sup> Article 78 (3) of NHE Act.

<sup>23</sup> Article 78 (4) of NHE Act.

<sup>24</sup> Article 77 (3) of NHE Act.

operating authorization, if the higher education institution or the program subsequently fails to comply with these conditions.”

Furthermore, the modification – like Article 106 (7) of the Higher Education Act '05 – made it possible again for Hungarian higher education institutions to launch a state-recognised bachelor or master program, or an equivalent two-cycle program not qualifying as a joint program of a higher education institution recognized by a state which is a party to the Agreement on the European Economic Area or to the Convention on the Organisation for Economic Cooperation and Development (OECD) and to register it with the Educational Authority, provided that there is an agreement between the foreign and the Hungarian higher education institutions involved in the organisation of the program and the foreign higher education institution has undertaken in this agreement to issue a foreign diploma with respect to the program performed by the Hungarian higher education institution.<sup>25</sup> In this case the Educational Authority does not “authorize the operation”, it has merely performs the registration.

### 3.2. Amendment of the NHE Act entering into force in April 2017

According to the general reasoning of the draft bill No. T/14686 submitted to amend the NHE Act (hereinafter: bill), “based on the experience of the past period, rules of the NHE Act related to the international relations of the Hungarian higher education need clarification with respect to the higher education institutions of third countries operating in Hungary, as well as to the programs and lecturers thereof.”<sup>26</sup> The controversial amendment, also known as “lex CEU”<sup>27</sup>, which was adopted by the Parliament on April 4, 2017<sup>28</sup> and has received continuous media attention ever since, is supposed to implement the above clarification.

The key points of the amendment are on the one hand the requirement that was added as point a) of Article 76 (1) of the NHE Act, on the basis of which a foreign higher education institution may perform a program leading to a diploma in the territory of Hungary, if – among others – “the contracting parties have acknowledged the binding effect of the international agreement on principle support of its operation in Hungary, concluded by and between the Government of Hungary and the Government of the state where the foreign higher education institution is established (in case of a federal state, if the central government is not entitled to acknowledge the binding effect of the international agreement, a preliminary agreement concluded with the central government is also necessary)”, and on the other hand the provisions of point b) of the same article which proclaims: “it qualifies as a higher education institution recognized by the state that operates and actually performs higher education activities in its country of origin”. It is worth noting that originally the amendment did not contain the provision

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<sup>25</sup> Article 77 (4) of NHE Act from September 1, 2015

<sup>26</sup> The reasoning continues as follows: „It is a key cultural policy objective of Hungary to cooperate with third countries outside the European Union in the field of education and the regulated activities (in Hungary) of lecturers as citizens of third countries and of foreign higher education institutions outside the European Union can be a tool thereof. However, the respective provisions of the NHE Act shall ensure enforcement of the intentions of the Hungarian Government defining and supporting the direction and area of international cooperation in higher education, enforcement of foreign policy goals and timely national security considerations during the students and lecturers’ movement and entry to the country associated with the operation of international relations.”

<sup>27</sup> Act XXV of 2017 on modification of Act CCIV of 2011 on the national higher education (hereinafter: Amending Act).

<sup>28</sup> [http://www.parlament.hu/iromanyok-lekerdezese?p\\_auth=ETj15Ovb&p\\_p\\_id=pairproxy\\_WAR\\_pairproxyporlet\\_INSTANCE\\_9xd2Wc9jP4z8&p\\_p\\_lifecycle=1&p\\_p\\_state=normal&p\\_p\\_mode=view&p\\_p\\_col\\_id=column-1&p\\_p\\_col\\_count=1&pairproxy\\_WAR\\_pairproxyporlet\\_INSTANCE\\_9xd2Wc9jP4z8\\_pairAction=%2Finternet%2Fcpqlsql%2Fogy.irom.irom\\_adat%3Fp\\_ckl%3D40%26p\\_izon%3D14686](http://www.parlament.hu/iromanyok-lekerdezese?p_auth=ETj15Ovb&p_p_id=pairproxy_WAR_pairproxyporlet_INSTANCE_9xd2Wc9jP4z8&p_p_lifecycle=1&p_p_state=normal&p_p_mode=view&p_p_col_id=column-1&p_p_col_count=1&pairproxy_WAR_pairproxyporlet_INSTANCE_9xd2Wc9jP4z8_pairAction=%2Finternet%2Fcpqlsql%2Fogy.irom.irom_adat%3Fp_ckl%3D40%26p_izon%3D14686) (17 October 2017).



applicable to federal states, it only required the contracting parties to acknowledge the binding effect of the international agreement. According to some views, the abovementioned condition – which only affects some American universities among the higher education institutions operating in Hungary – made the authorization of operation of foreign higher education institutions in Hungary subject to an unachievable condition, namely “the United States belongs to those federal states, in which the federal government has the powers reserved by the Constitution only, while any other powers shall be exercised by the states. The 10th Amendment to the United States Constitution (1971) expressly declares that: » The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people. « As the American Constitution does not delegate the powers related to education – including higher education – to the federal government, the bodies thereof cannot conclude international agreements on this subject.”<sup>29</sup>

The phrase “actually performing higher education programs” brings a significant change compared to the previous regulation. As a result, a higher education institution established outside the EEA may perform programs leading to issuance of a diploma in the future only if it performs actual programs (operates campus) in its country of origin as well. This affects (affected) only one institution among the foreign higher education institutions currently operating in Hungary, namely the Central European University (CEU).

The change introduced by the Amending Act affected the right declared in Article 77 (4) of the NHE Act (previously mentioned as “licence program”), namely the states that are party to the Convention on the Organisation for Economic Cooperation and Development (OECD) were removed from the regulation, thereby narrowing the scope of subjects.<sup>30</sup>

Having reviewed the – not just foreign – higher education institutions currently operating in Hungary, it appears that the amendment related to the rules governing the use of name of higher education institutions incorporated as paragraphs (2a) and (2b) of Article 9 of the NHE Act also affects CEU and its Hungarian partner, the Közép-európai Egyetem [KEE] (which means “Central European University” in Hungarian) only. Pursuant to this amendment “[the] name of a higher education institution must clearly differ from the name of other higher education institution. The name of a higher education institution cannot be misleading, cannot give rise to a false appearance of the institution or of its activity. The name of the higher education institution qualifies as misleading or confusing if its name in Hungarian or in foreign languages is the same as the name of an other higher education institution registered at the educational authority.” Article 76 (1a) of the NHE Act added to this provision, according to which, with respect to foreign higher education institutions operating in Hungary, “rules under paragraphs (2a) - (2b) of Article 9 shall also be applied as meaning that the name of the higher education institution cannot be confused with the higher educations under Annex 1 or with a foreign higher education institution performing education activities in Hungary.”

The legislator set January 1, 2018 as the date of implementation of these additional conditions – except for the preliminary agreement to be concluded with the central government of federal states – as defined in the Amending Act. In case of federal states, the parties had six months after the Amending Act entered into force (April 11, 2017) to conclude the required agreement. The foreign higher education institution that does not meet the conditions cannot matriculate students at the first grade of the program of the foreign higher education institution in Hungary after January 1, 2018 but the programs already

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<sup>29</sup> Jakab-Lévay-Sólyom-Szente: *Amicus curiae*... pages 6-7.

<sup>30</sup> Article 77 (4) of the NHE Act based on the modifications that entered into force on September 1, 2017.

commenced in Hungary on January 1, 2018 can be finished under unchanged conditions in ‘end-of-series’ system but not later than in the school year 2020/2021.<sup>31</sup>

Many complaints were raised regarding the amendment because of – in addition to several other criticisms – the very short preparation time period determined for the implementation of the act. The critical voices were not unfounded, which is supported by the opinion of the Venice Commission adopted at its session on October 6, 2017.<sup>32</sup> With regard to this (as well), the Prime Minister of Hungary submitted a proposal for amendment to modify the deadlines set forth by the NHE Act and the Amending Act. The Parliament approved the proposal.<sup>33</sup> Accordingly, the original deadlines were changed to January 1, 2019 and the school year 2020/2021 was changed to school year 2021/2022. The text “within six months after the entry into force” set forth for the preliminary agreement with respect to federal states is replaced by August 31, 2018. Based on the general reasoning, this was necessary because “the international agreement under the Amending Act was concluded in case of the McDaniel College Budapest only, the other international agreements are at most at negotiation stage; the Government [...] finds it justified to extend the deadline for the obligations imposed, thereby facilitating compliance with the law.” This seems to contradict that according to the text of the American-Hungarian draft agreement on supporting the operation of CEU available since September, the agreement shall be ratified until November 15,<sup>34</sup> thus the extension of the deadline seems rather unnecessary. In addition to that, the detailed justification of the proposal explains that „the changes introduced by the Amending Act create equal conditions for operation of foreign higher education institutions in Hungary”, however the facts described above show that we cannot talk about equality with respect to higher education institutions established within the EEA and outside the EEA.

## 4. Summary: Forms of Operation of Foreign Higher Education Institutions Operating in Hungary under the Current Regulation

### 4.1. Operation of Foreign Higher Education Institutions possessing a Hungarian Operating Permit

Based on Article 76 and Article 77 (1)–(2) of the NHE Act a foreign higher education institution may provide a higher education program by permanently settling in Hungary. In this case, the foreign higher education institution may conclude a cooperation agreement with a Hungarian partner (which may be any Hungarian higher education institution, company or other organization) thus the program (education) takes place at the campus ensured by the partner but the higher education institution may also establish its campus for education independently.

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<sup>31</sup> Article 115 (7) of the NHE Act.

<sup>32</sup> European Commission for Democracy through Law (Venice Commission) Hungary Opinion on Act XXV Of 4 April 2017 on the Amendment of Act CCIV of 2011 on National Tertiary Education. Endorsed by the Venice Commission at its 111th Plenary Session (Venice, 6-7 October 2017).  
[http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2017\)022-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2017)022-e) (17 October 2017).

<sup>33</sup> Act CXXVII of 2017 on modification of Act CCIV of 2011 on the national higher education and of Act XXV of 2017 on amendment of Act CCIV of 2011 on the national higher education

<sup>34</sup> CEU considers the Government’s act suspicious. October 16, 2017  
[http://hvg.hu/itthon/20171016\\_Nagyon\\_gyanus\\_a\\_CEU\\_nak\\_a\\_kormany\\_lepese](http://hvg.hu/itthon/20171016_Nagyon_gyanus_a_CEU_nak_a_kormany_lepese) (17 October 2017).

Over the course of such an educational program, the foreign law shall apply to the entrance exam, the performance of the educational program, the examination and to the requirements for issuing a diploma. The students enter into a legal relationship with the foreign higher education institution and get a „foreign” diploma after the successful completion of the program.

In this case an official authorization of operation issued by the Educational Authority is necessary in Hungary. The condition for the operating authorization to be issued is that the foreign institution qualifies as a state-recognized higher education institution in its country of origin and that the program and diploma to be performed by the foreign institution in Hungary qualify as a state-recognised higher education program and diploma.

The abovementioned requirements apply to all of the foreign higher education institutions holding an operating permit in Hungary on September 1, 2017. The legal requirements have become more stringent after April 2017 therefore a foreign higher education institution that intends to newly perform a program in the territory of Hungary, may start educational activities leading to a diploma, if it qualifies as a state-recognized higher education institution operating and actually performing higher education program in its country of origin and the program it intends to perform in the territory of Hungary and the diploma issued for the completion thereof qualify as a state-recognized higher education program. If the foreign higher education institution is a higher education institution having its registered seat outside the EEA, then other condition of operation in Hungary is that the contracting parties acknowledge the binding force of the international agreement on principal support for the operation in Hungary concluded by and between the Government of Hungary and the Government of the state where the registered seat of the foreign higher education institution is – in case of federal states, if the central government is not entitled to acknowledge the binding force of the international agreement, then a preliminary agreement concluded with the central government thereof is also necessary.

The foreign higher education institutions that held a valid operating authorization in Hungary on September 1, 2017 shall fulfil the above conditions until January 1, 2019. In case of federal states, the underlying preliminary agreement shall be concluded until August 31, 2018. The educational authority revokes the operating permit of those foreign higher education institutions that do not fulfil the conditions and after January 1, 2019, students cannot be matriculated to the first grade of the program of the foreign higher education institution in Hungary, however the programs already commenced on January 1, 2019 in Hungary may be completed under unchanged conditions in an 'end-of-series' system but not later than in the school year 2021/2022.

Issuance of the operating permit may be refused on the grounds of the expert opinion from a higher education accreditation organization in the country of origin or from other higher education accreditation organization complying with ESG,<sup>35</sup> if it can be concluded that the operating and program conditions applicable in the country of origin significantly differ from those applied in Hungary. The Hungarian operating permit for a foreign higher education institution having its registered seat outside the EEA can also be refused, if the level of education of the foreign diploma cannot be recognized in Hungary.

It is important to note that majority of the foreign higher education institutions currently holding an operating permit in Hungary obtained their operating permits under the Higher Education Act '05, which did not require that the diploma issued must lead to higher education level; it only required the possibility to recognize the level of education of the foreign diploma in Hungary. (The requirement of the program (diploma) awarding higher education level was added to the NHE Act only on September 1, 2015 as

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<sup>35</sup> Standards and Guidelines in the European Higher Education Area, the European standard of higher education quality assurance.

well.) Furthermore, it shall be stated that the registration centre/educational authority did not have the possibility between January 1, 2009 and August 31, 2012 to obtain accreditation expert opinion with respect to the foreign program. Thus in case of those higher education institutions that obtained an operating permit during this time, not only the diploma leading to higher education level but the existence of accreditation may also be missing.

The educational authority shall review the operating permits at least every five years in order to confirm compliance with the conditions specified above.<sup>36</sup> If the foreign higher education institution or the program thereof does not comply with the current legal requirements, then the previous operating permit may be revoked.

## 4.2. Operation of a Foreign Higher Education Institution within the Framework of Cross-Border Services

This covers a form of higher education program performed on the basis of Article 77(3) of the NHE Act, the essence of which is that the foreign higher education institution performs activities for a short period and on ad hoc basis. This form of program also involves presence in Hungary but the freedom of provision of services within the EEA provides an opportunity for the foreign higher education institution to perform higher education activity without an authorization procedure, following a notification sent to the educational authority, if it performs it as cross-border service.<sup>37</sup> In addition to the notification obligation, the condition of the program is that the foreign higher education institution qualifies as a state-recognized higher education institution actually operating and performing higher education program in its country of origin and the program it intends to perform in the territory of Hungary and the diploma issued with respect to that qualify as state-recognized program awarding higher education level.

The problem with this type of program is that due to the school-based training nature of higher education it is difficult to accomplish actual higher education activity – especially in case of full-time programs – without settling down and without permanent infrastructure.<sup>38</sup>

## 4.3. The „Licence Program”

This is a form of higher education program based on Article 77 of the NHE Act, under which a Hungarian higher education institution performs the state-recognized program of a higher education institution recognized by a state which is a party to the Agreement on the European Economic Area<sup>39</sup> based on an agreement concluded with a Hungarian higher education institution in such a way that the foreign higher education institution issues a foreign diploma for completion of the program. Thus the

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<sup>36</sup> Specified by: Article 67 of Act CXXXI of 2015. Effective from: 1 November 2015.

<sup>37</sup> Pursuant to point e) of Article 2 of Act LXXVI of 2009 on the general rules of commencement and performance of services, cross-border services mean: performance of service activities without settling, on a temporary or *ad hoc* basis.

<sup>38</sup> Notification of only one foreign higher education institution was acknowledged since the regulation entered into force, namely the notification of Fernuniversität in Hagen foreign higher education institution, which performs distance education only in its country of origin as well. (Source: Educational Authority).

<sup>39</sup> Prior to September 1, 2017, the programs of a higher education institution recognised by a state that is party to the Convention on the Organisation for Economic Cooperation and Development (OECD) could also be performed within the framework of licence program. See: point a) of Article 7 and Article 8 (2) of Act XXV of 2017 on modification of Act CCIV of 2011 on the national higher education.

foreign higher education institution is not settled in Hungary but it entrusts the Hungarian institution to organize the program, however the student has a student relationship with the foreign higher education institution. The disadvantage of the program is that it applies only to organization of a state-recognized bachelor or master program, or an equivalent two-cycle program, not qualifying as a joint program of a foreign higher education institution.

The rules of the country of origin shall apply to the establishment of foreign higher educations, the educational and research activities performed by them, the supervision of such activities, the operation of the institution, and the conditions for admission. Thanks to the licence program, the foreign higher education programs may be available in Hungary without an operating permit obtained by the foreign institution.

#### 4.4. Joint Program in Cooperation with a Hungarian Higher Education Institution

This is a type of higher education program based on Article 78 (3) of the NHE Act, where the foreign higher education institution and the Hungarian higher education institution launch a joint program, and students study in more than one institution. (The rules of establishing a legal relationship are aligned with the laws of the country of origin and the student must have an active student status in Hungary by the last semester at the latest.) The diploma awarded is a joint diploma (joint degree) or multiple diploma (multiple degree).

The following cumulative conditions must be met to launch such a joint program:

- 1) the higher education institutions involved qualify as state-recognized higher education institutions in their country of origin,
- 2) the diploma issued qualifies as a higher education diploma pursuant to the national laws of the countries concerned,
- 3) both the Hungarian and the foreign higher education institutions are authorized to launch programs in a field of study or discipline that can be considered as equivalent to the field of study or discipline in which the joint program subject to the agreement is launched,
- 4) students collect at least thirty credits at the Hungarian higher education institution authorized to launch the program.

#### 4.5. Dual Program in Cooperation with a Hungarian Higher Education Institution

Finally, this is a form of higher education program based on student mobility and activity, which, based on mutual credit recognition – with respect to at least partially matching professional content – provides the opportunity for students to obtain the diploma of a Hungarian and a foreign higher education institution usually in shorter time than completing the two programs successively. In this case, the student must be admitted to both the Hungarian and the foreign programs. Accordingly, the student is a student (with respect to the institution's own program) and guest student (with respect to the program of the partner higher education institution) at the same time at the Hungarian and foreign higher education institutions. In case of the Hungarian program, the condition for obtaining the diploma is that

the student obtained at least one third of the credits to be acquired at the Hungarian higher education institution. The student receives two diplomas after completing the programs: a Hungarian diploma with respect to the Hungarian program and the diploma of the foreign higher education institution with respect to the foreign program.

## 5. Conclusions

It is clear from my paper that the rules on foreign higher education institutions did not undergo major conceptual changes from 1993 until the modifications made this year. However, it can be clearly stated that the legal environment has become more stringent in recent years. The reason thereof may be – among others – that the mobility of students and lecturers and the continuous development of the European higher education area encourage the higher education institutions to keep up with this process, which can for example be realized through cross-border programs,. With respect to that, some countries needed to regulate the operation of higher education institutions „coming from abroad” in their national legal systems in more detail compared then previously.

In summary, I draw the following conclusions:

1. It is a significant problem relating to the operation of foreign higher education institutions in Hungary that the foreign higher education institution does not perform its higher education program within the appropriate legal framework. Namely, in fact it does not operate in Hungary, the foreign program or a major part thereof is executed by the Hungarian partner and in most cases the majority of the lecturers are lecturers of the Hungarian institution. In case of those programs, where the foreign higher education institution is not actually present in Hungary, their programs should be registered as licence program or dual program, provided the legal requirements thereof are met. In this case, the foreign higher education institution does not (or should not) have to obtain an operating permit in Hungary.
2. It is also a common deficiency with respect to the operation of foreign higher education institutions that the document issued by the foreign higher education institution is not a state-recognized diploma (degree). In case of the higher education system of some European countries (e.g. France, Austria), a higher education degree (qualification) is not only a matter of content but a formal issue as well. In these countries, only the programs of public (i.e. state-run) higher education institutions may provide a state-recognized higher education degree (qualification), the programs of private higher education institutions may not. Therefore, it may happen that the private higher education institution intending to settle in Hungary may not obtain operating permit or its existing previously obtained operating permit must be revoked due to the lack of state-recognized higher education degree (level). It is a similar phenomenon, when the foreign higher education institution does not qualify as state-recognized higher education institution in its country of origin. In this case, it is not possible to authorize its operation or to authorize it to issue diplomas in Hungary within the current legal framework.