



HUNGARIAN WATCH

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Masters of Collaboration

Hungarian Watch Autumn 2018

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Hungarian Watch is a quarterly issued brochure. It contains comprehensive, up-to-date information about Hungary, focusing on breaking news in the fields of law, economics, business and other situations which could have a major impact on the course of Hungarian events.

Hungarian Watch is primarily prepared for those who are thinking about Hungary from an investment point of view. The investment perspective runs through this brochure by leading the reader through the Hungarian business climate including current business and investment opportunities.

We hope that Hungarian Watch will keep you regularly informed on relevant Hungarian news, enabling you to know how and when to seize a business opportunity before it vanishes.

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Summary



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GDPR is and will remain a hot topic for every business in the EU. VJT & Partners closely worked with the consulting software developer company Simplexxy to develop the “Data Hawk” (“Adatsólyom” in Hungarian) software. [Read more...](#)



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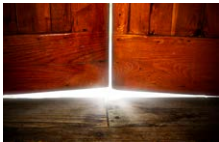
After a long uncertainty, the Hungarian Parliament finally adopted the first national GDPR implementation package. Has it cleared up everything? May businesses focus now on other non-privacy challenges in this turbulent time? It seems rather unlikely. [Read more...](#)



[New rules of game for non-EU investors](#)

[Hungarian bill on screening foreign direct investments](#)

A Hungarian draft bill proposed screening of foreign acquisitions by non-EU investors in strategic Hungarian sectors (such as energy, finance, telecommunication, military technology). If the draft bill is approved by the Hungarian Parliament, it may become effective already in October 2018. [Read more...](#)



[It's time to revise the trade secret protection strategy!](#)

[New trade secret regulations came to Hungary](#)

Hungary adopted the long-awaited regulation. The Trade Secret Act is here, making the trade secrets protection more efficient. It is time to revise the trade secret protection strategy. [Read more...](#)

A Hungarian software offers GDPR compliance solutions

Interview with János Tamás Varga, head of VJT & Partners

GDPR is and will remain a hot topic for every business in the EU. VJT & Partners closely worked with the consulting software developer company Simplexxy to develop the “Data Hawk” (“Adatsólyom” in Hungarian) software. Based on its installed know-how, Data Hawk screens the data processing of the companies and makes proposals on an automated basis, without any human intervention. This revolutionary law-tech solution has never been seen before. The mid-term plan is to launch Data Hawk in other Member States also.

In this interview, János Tamás Varga, head of VJT & Partners – the law firm responsible for the content of the software – shared his experience about Data Hawk.



Could you please briefly introduce Data Hawk?

Data Hawk is a stand-alone software that provides significant help especially for small- and medium-sized Hungarian enterprises and non-profit organizations in preparing for GDPR. An online questionnaire that can be used to assess GDPR compliance readiness of businesses and get an action plan on exactly what needs to be done to meet GDPR requirements.

Its main motto: “You do not have to understand GDPR. It is enough to know your own business”.

Where did the idea of the Data Hawk come from?

As a lawyer in the field of data protection, when I was in the process of adopting GDPR regulations, I realised that small- and medium-sized enterprises would certainly not be able to meet the requirements of GDPR without external assistance. Paying huge penalties would mean the end of many businesses. The idea came to me to develop a stand-alone and easy-to-use online software that comes with a full GDPR screening, yet which reaches the quality of typical GDPR audits. The one filling out the questionnaire does not have to stand in line for the advice of a privacy expert, he simply answers the questions online and Data Hawk makes proposals on an automated basis, without any human intervention.

Which areas can we examine with the Data Hawk?

Data Hawk examines dozens of areas that are problematic in terms of data protection, including the most important employment and marketing areas. There are several hundred questions in the software, and the user can choose among several pre-defined answers to each question. Of course, not all questions need to be answered: our questionnaire leads you - the user, according to your responses, only to those questions that are relevant to your business.

It is enough to know your own business

No standing in line for expert GDPR advice

Data Hawk, comprehensive and easy to use

Was it a big work to create such a compliance tool?

Gigantic work

I would call it gigantic. We processed hundreds of pages on GDPR regulation and the Hungarian and European data protection practice, and then transferred the whole material into questions and responses to make it clear to everyone. Questions, answers, suggestions are all written in clear and plain language, explained in layman's terms. We also help the user with examples to clarify more complex issues.

What is special about Data Hawk?

A new milestone in the legal-tech area

Data Hawk is a new milestone in the legal-tech area, a high-quality legal service that only a limited number of large and multinational companies could have afforded is now equally available to small- and medium-sized enterprises.

How much time does it take to use Data Hawk?

Find legal gaps in 2-3 hours

You can go through the questionnaire within 2-3 hours. This is realistic because in the case of a small business, the user of the questionnaire knows much more about all the ins and outs of a company than in the case of a large company where the full picture can only be grasped with the involvement of several different departments.

On the other hand, Data Hawk speeds the auditing work of large companies. When we make GDPR compliance audit projects for large companies, we always ask them to use Datahawk as a first step, as it is much faster and easier to find and solve the problematic areas.

After using the questionnaire, Data Hawk processes the answers and gives an evaluation report. What can we learn from this assessment?

The evaluation includes a specific task list, accurate, personalized tasks about what to do to meet GDPR requirements. Most of these tasks can be done by the company's owner and staff. Of course, there are also more complex tasks where an expert's help is inevitable. But in this case, the expert gets the Data Hawk report (containing legal gaps) which makes the whole process more affordable and faster.

Can you tell about such a diversified product that it is ready?

Launching Data Hawk in other Member States

Data Hawk is ready, but our plan is to continuously improve and update it to emerging needs. We are also paying attention to our customer feedback, and on that basis we will further improve the software. We also have the mid-term plan to launch this product in other Member States as businesses struggle there with similar GDPR compliance problems.

For further information about how Data Hawk can help your business in GDPR compliance, please contact:

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Turbulent times in Hungarian privacy world

Hungary finally adopted national GDPR implementation legislation

After a long uncertainty, the Hungarian Parliament finally adopted the first national GDPR implementation package. Has it cleared up everything? May businesses focus now on other non-privacy challenges in these turbulent times? It seems rather unlikely. In this transition period, businesses will continue to face GDPR related challenges for a long time, and the booming demand for highly qualified privacy experts may just be on the rise.



The amendment to the Data Protection Act did not come easy. As we mentioned in our [Winter edition](#), despite the fact that Hungary is one of the strictest privacy watchdogs in the EU, the Hungarian privacy awareness is still in its infancy and the preparation of Hungarian businesses for the GDPR remains chaotic. Hungarian law makers have not rushed the GDPR preparation either. The deadline of 25 May approached quickly, then passed, GDPR arrived, and Hungary was still without a modified Data Protection Act.

It took almost two more months to receive some tangible information on how Hungary envisages the application of GDPR. In July of 2018 the Parliament finally adopted the amendment of the Data Protection Act which implemented some important substantive and procedural rules for the GDPR application.

In a nutshell, here are the most important unique provisions compared with GDPR:

Preparation for GDPR remains chaotic

	GDPR	Data Protection Act
Material scope	The GDPR applies to the processing of personal data wholly or partly by automated means and the processing other than by automated means of personal data which form part of a filing system or are intended to form part of a filing system.	The Data Protection Act applies to non-automated means of processing of personal data as well, even if that does not form, or is not intended to form part of a filing system. Effectively, this means the extension of the scope of the GDPR.

	GDPR	Data Protection Act
Processes based on the legal base of necessity for compliance with legal obligations	<p>Legal obligations under GDPR (article 6 (1) c) of the GDPR) are not restricted to certain types of legislation.</p> <p>No periodic revision of the processing is necessary (article 6 (1) c) of the GDPR).</p>	<p>Data processing based on the legal base of necessity for compliance with legal obligations (article 6 (1) c) of the GDPR) must be required either by the act of Parliament or by a municipality decree.</p> <p>This provision of the Act in practice goes against the GDPR, as it narrows down what may be considered as a legal obligation.</p> <p>If the duration of the processing is not defined by the relevant law/municipal decree, the data controller must periodically at least every 3 years, review the necessity of processing.</p>
Central data protection register	<p>Not required to register the data processing activities with the supervisory authority.</p>	<p>Previously, in Hungary certain data processing activities had to be registered with the Hungarian Data Protection Authority. This requirement now ceased to exist, but the previous register may still be used by the Hungarian DPA in cases concerning data processes that were filed before 25 May 2018.</p> <p>This, however, does not mean that it got easier for companies to fulfill their obligations, as the register still needs to be kept internally within the company.</p>
Children	<p>Age of consent of children may vary between 13 and 16 years within the EU, and the Member States may state their own age limits.</p>	<p>Age limit for consent in Hungary has not changed – it stayed 16 years of age.</p>

	GDPR	Data Protection Act
Privacy rights of deceased people	GDPR allowed Member States to extend privacy rights to deceased people.	The Data Protection Act allows the relatives of the deceased or the representatives of the deceased to exercise certain privacy rights on behalf of the deceased person within 5 years from his death.

A glass half full

Although the amendment does provide relevant information, many questions remained unsolved.

Sectorial rules have not been changed, which may mean either collision with the GDPR (such is the case in advertising, where the present Advertising Act state that only consent is the acceptable legal ground for sending marketing materials which is against recital 47 of the GDPR) or ambiguous legal environment (which we can find in the area of healthcare, where even basic concepts are not in line with the data protection regulation). These issues will be subject to a broader data protection reform that is expected in the autumn session of the Parliament.

Busy autumn session for the Hungarian Parliament

At the same time there are many novel concepts, such as the privacy by default or data privacy impact assessment, which need further guidance from the supervisory authorities. Broad concepts such as transparency, accountability or legitimate interest also opens room for different interpretation. The Hungarian DPA started to generate some guidelines but in many instances, it simply turned the table to the court of the European Data Protection Board.

Businesses are slowly getting the picture that just as they need an accountant to record every financial detail, they also need a privacy lawyer to manage the similar administrative burden. But in contrast to accounting 'digital accounting' is far from being a uniform application and it is a very challenging task to find a good 'digital accountant'.

Big challenges for new digital accountancy

Overall, both the data protection legislative reform and shaping of the data protection practice have moved rather slowly. In these turbulent times Hungarian businesses will continue to face GDPR related challenges even for a long time after 25 May and the booming demand for privacy experts may just be beginning to rise.

Demand for privacy experts booming

New rules of game for non-EU investors

Hungarian bill on screening foreign direct investments

A Hungarian draft bill proposed screening of foreign acquisitions by non-EU investors in strategic Hungarian sectors (such as energy, finance, telecommunication, military technology). If the draft bill is approved by the Hungarian Parliament, it may become effective already in October 2018. Since future and currently negotiated transactions might be affected, non-EU investors need to keep a close eye on it.



Whilst in September 2017 the European Commission published a proposal for establishing a legal framework for the screening of foreign direct investment (FDI) inflows into the EU, the Hungarian Government introduced a very similar draft bill.

The draft bill proposes a ministerial approval for certain investments by non-EU investors. It aims to prevent acquisitions by non-EU investors concerning Hungarian national security or public policy. Currently this cannot be effectively managed due to the limited and unsatisfactory system of rules available to screen and supervise the FDI in Hungarian strategic sectors. Unlike big trade powers such as USA, Canada or Japan, Hungary has no screening mechanism in place for FDI (although, there are some regulatory controls in sectors like energy and banking in which acquisition of certain controlling interest is subject to prior approval).

The bill gives the definition of the targeted foreign investor. According to this definition, the law is applicable only for non-EU/EEA investors meaning a citizen, company or other legal entity outside the European Union (EU), the European Economic Area (EEA) or Switzerland. To avoid circumvention of this law, the definition also includes legal entities registered in the EU/EEA or Switzerland, but having a non-EU/EEA owner with majority influence.

The following types of investments require ministerial approval:

- investment resulting in more than 25% ownership (10% in case of public limited company) of the foreign investor(s) in a Hungarian company;
- investment resulting in a Hungarian company having a non-EEA owner with dominant influence; or
- establishment of a Hungarian branch office by a foreign investor.

The proposed bill will apply exclusively to specific sensitive sectors, such as: production of weapons, munitions, other military or secret service instruments, financial services, energy sector, telecommunication, and electronic information systems.

The affected investments will require a prior ministerial approval meaning that the transaction cannot be closed in lack of or before the approval. The minister may block the transaction if it 'harms the national security interests'. The investor may appeal to the administrative court against this decision, but only based on procedural grounds.

If the draft will be accepted, transactions closed after 1 October will already be affected, so non-EU investors need to keep a close eye on this.

Non-EU investors,
watch this bill
closely

It's time to revise the trade secret protection strategy!

New trade secret regulations came to Hungary

Hungary adopted the long-awaited regulation. The Trade Secret Act is here, making the trade secrets protection more efficient. It is time to revise the trade secret protection strategy.



Why the new trade secret regulation is important?

A trade secret is a valuable piece of information treated as confidential and gives a competitive advantage to any business possessing it.

Being that currently European businesses have been highly exposed to the misappropriation of trade secrets, new rules were inevitable in the EU to help standardize the divergent national laws of Member States, and in this way bring an end to unlawful disclosure, acquisition and use of trade secrets.

The adoption of Trade Secrets Directive on 8 June 2016 served this purpose and it was implemented into Hungarian law by way of adopting the separate "Trade Secret Act" which came into effect this past August.

This brings to a halt the old Hungarian concept in which provisions on trade secrets could be found in several acts, making it hard to understand the rules: the Civil Code itself defined trade secrets and know-how, as part of the personal rights, and there were rules in the Competition Act, the Labour Code, and in the Criminal Code as well.

What is it about?

The Trade Secret Act defines the trade secret – in line with the Directive – as any information that is secret (not generally known among or readily accessible to persons within the relevant circles of trade), has a commercial value (because it is secret) and subject to reasonable protection measures. It remains as guess as to how the Hungarian court will interpret the reasonable protection measures. When reviewing the protection measures, the practice of the Hungarian court has primarily focused so far on non-disclosure agreements. However, there are numerous practical measures that companies are well-advised to consider, such as restricted access to know-how, password protection, and monitoring employee electronic communication.

The true milestone in the Hungarian trade secret regulation is that it switched its concept from personality rights more to IP rights. Similarly to IP regulation, from now on trade secrets became marketable which can be sold as a whole or in part or, they can be licensed. All this may motivate businesses to include trade secrets in their overall IP strategy.

More efficient trade secret regulation

What protection measures are needed?

Trade secrets may be sold or licensed

The new Hungarian trade secret regulation also broadly extended the protection of trade secrets as it provides a wide range of sanctions. Apart from compensation, the trade secret holder – among others – may demand from the infringer to stop unlawful use and further disclosure of misappropriated trade secrets, to remove from the market goods that have been manufactured on the basis of a trade secret that has been illegally acquired, to provide information on the persons involved in the infringement and the supply chain, as well as to publish the decision about the infringement in a national daily paper or on the internet. Besides all these corrective actions, the trade secret holder may ask for an interim injunction to enforce its claim in a timely manner.

Extended enforcement mechanism

Key take-away for businesses

It's time for businesses operating in Hungary to revise their trade secret protection. It is crucial to identify the information to be protected under trade secrets, the inherent risks (typically employees and business partners) and the adequate protective measures.

Load your gun against trade secret breach

All this requires strategic planning, but if managed properly, businesses may enjoy improved protection under the Trade Secret Act.

About VJT & Partners

The Firm

VJT & Partners is a Hungarian commercial law firm advising international and domestic corporate clients and entrepreneurs. The firm was founded by János Tamás Varga, who has created a highly successful team based on values including inspiring leadership, striving for perfection, commitment, courage and harmony.

VJT & Partners is recognised as one of Hungary's leading commercial law firms and also as an excellent collaborative partner, working hand-in-hand with its clients. Clients value the firm's absolute commitment, leading to effective and enduring relationships. The firm combines the highest degree of professionalism, the efficient delivery of legal services with dynamism, flexibility, responsiveness and personal attention.

Lawyers in the firm have developed an in-depth understanding of both the legal and the commercial realities of business. The firm prides itself in giving direct, honest and practical advice, tailored to its clients' needs. The shared values of VJT & Partners are at the very core of the creativity and 'fresh thinking' approach of the firm.

As a member of the EU, but not the single currency, Hungary has a unique language and business culture and a complex legal system bringing particular challenges. All lawyers at VJT & Partners have extensive experience of working with international and domestic companies alike, to help navigate these challenges and to achieve their objectives in Hungary, and to ensure appropriate regulatory approvals.

The leading legal directories rank VJT & Partners highly across a range of practice areas.

VJT & Partners is a full-service law firm that satisfies the needs of clients across a broad range of industries and professions. The firm's legal services include aviation, commercial contracts, competition, corporate M&A, data protection, dispute resolution, finance, immigration, employment, intellectual property, outsourcing, private equity, real estate, regulatory, restructuring and insolvency, and technology.

Practice Areas

The firm is especially active and highly ranked in the following areas:

Corporate mergers and acquisitions

VJT & Partners believes that advising on M&A transactions is to provide more than just legal advice. Understanding the logic and dynamics of the industry sector in which the client and other participants operate is a prerequisite for success.

We advise clients on international and Hungarian M&A transactions including acquisitions, disposals, mergers and demergers, from deal inception through due diligence and negotiations to post completion. The expertise of our multi-disciplinary team in the areas of corporate, commercial, competition, real estate, employment and regulatory enables us to provide excellent service.

Employment

The highly-rated employment lawyers at VJT & Partners have a wealth of experience in all aspects of contentious and non-contentious employment matters. Fully appreciated for understanding their clients' business goals, lawyers design structures and procedures that are watertight and defensible in many court proceedings.

We regularly advise employers on general employment matters including drafting employment agreements, internal policies, termination agreements, termination notices and complex mass dismissal structures as well as employee incentive schemes. We have particular expertise in managing work permit and business immigration applications as well as advising on the different employment and labour related issues which arise with commercial transactions such as outsourcing.

Our team has successfully represented employers and executive employees in all types of court proceedings in Hungary. In particular, we represent clients in disputes concerning issues which include unlawful termination, overtime payment and bonus claims.

Technology

Understanding our clients' underlying technical and technological ideas and objectives, while providing clear, concise and practical advice lies at the heart of our work. The phenomenon of convergence and the rapid proliferation of innovative services inspire our Information, Communications & Technology (ICT) team to continue to build unique expertise in a wide range of technology matters.

Our lawyers have particularly strong track record in commercial IT arrangements such as software licensing, call centre and hosting services as well as hardware procurement, online and e-commerce matters such as setting up web-shops. We also regularly advise on sector-specific regulatory issues concerning communications services such as licensing, interconnection and carrier-pre selection.

How We Work

Lawyers at VJT & Partners are encouraged to develop, to enjoy their work and to become real 'Masters of Collaboration'. Clients comment on the firm's cooperation, communication and its absolute commitment to what they are trying to achieve.

In turn, we find that this leads to effective and enduring relationships. We combine the highest degree of professionalism and the efficient delivery of legal services with dynamism, flexibility, responsiveness and personal attention.

Our Values

The values that lie at the heart of our business ethos are the building blocks of our business. Nurturing the following values brings the 'hearts and minds' of VJT & Partners' lawyers together as one successful team. We would be happy to talk you through them, what they mean to us, to our business and our clients:

- Inspiring leadership
- Striving for perfection
- Commitment
- Courage
- Harmony

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