How about a New Arbitration Act in Hungary?

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Sándor Habóczky, Alexandra Bognár (Schoenherr)

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The Hungarian arbitration Act (Act LXXI of 1994 on arbitration, "the Act") has barely "turned 22" and the pressure to replace it with new legislation has popped up. Considering the current, rapid reform of effective laws in Hungary – meaning that relatively new legislation which has been in force for only five to ten years has been set aside to introduce new legislation –the push to introduce new law on arbitration law is no surprise. In addition, the idea to introduce a new act on civil procedure also brought the idea of a possible new arbitration act to the surface …the real question is, however, whether a new act is in fact required.

Having reviewed the practice of arbitration in Hungary, it turned out that the current law could do with some amending and updating. In the following paragraphs, we challenge the Act, focusing on its weaknesses and deficiencies.

The Act is an almost verbatim adaption of the UNCITRAL Model Law of 1985. Apart from a couple of Hungarian legal specifications (for instance that an arbitration procedure is confidential), its regulatory system or the structure itself completely corresponds to the Model Law, and hence with international standards. The Model Law was amended in 2006 which was however, not followed by the amendment of the Act, though it introduced a couple of favourable modifications. As per the amended Model Law, by way of example: the doubtful enforceability problem regarding interim measures was solved by the incorporation of a section emphasising that an interim measure issued by an arbitral tribunal shall be

recognised as binding and enforced upon application to the competent court.

Another defect in the Act is that the conditions to arbitrability are unreasonably restrictive. According to the Act, a case can only be brought before an arbitral tribunal if at least one of the parties is professionally engaged in business activities, and the legal dispute arises out of or in connection with this particular activity. Consequently, arbitration is solely applicable to commercial disputes, while it could easily be an efficient supplement to traditional, state-court litigation.

The Act also calls for some additional – rather minor – clarifications, for instance to explicitly declare the primacy of international legal sources, to clarify that the state court may suspend its procedure in case of arbitration, to unequivocally stipulate the rules of conflict of law, or to highlight circumstances that would qualify a procedure as an international one.

Regarding the concept of the new law, it is not even clear whether arbitration can be regulated in a separate 'stand-alone' law (as is currently the case), or can be integrated into the new act on civil procedure. Those supporting the latter instance believe that by such integration, the 'alternativeness' of the procedure can be emphasised. On the other hand, the rules of the civil procedure act are not applicable to arbitral tribunals, nor to arbitration itself, and therefore it makes completely no sense to have its rules integrated with the rules of regular procedures.

To summarise, all the issues highlighted – even taken as a whole – in our opinion do not necessary call for completely new legislation; some might say that certain amendments to the current act would suitably fulfill the aim. The concept of the new act however, is still in the early conceptual phase, yet, we hope to be provided with further information soon.