

COORDINATING EDITORS

**Cristina Elena Popa Tache, Renata Treneska Deskoska,
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**Marijana Mladenov, Isabelle Oprea, Daniela Duță,
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**Adapting to Change Business Law
Insights from Today's International
Legal Landscape**



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*Adapting to Change Business Law Insights
from Today's International Legal
Landscape*

Contributions to the 13th International Conference
*Challenges of Business Law in the
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Preface

Coordinating Editors

Associate professor Cristina Elena Popa Tache

Co-Chair for ESIL IG International Business & Human Rights

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This volume contains the scientific papers presented at the Thirteenth International Conference „Challenges of Business Law in the Third Millennium” that was held on 17 November 2023 in online format on Zoom. The conference is organized each year by the *Society of Juridical and Administrative Sciences* in partnership with the *Romanian Academy of Scientists*.

More information about the conference can be found on the official website: www.businesslawconference.ro.

The scientific studies included in this volume are grouped into five chapters:

- *Emerging Corporate, Contractual Compliance and Ethical Issues in a Global Context.* The papers in this chapter refer to: consequences for the breach of company directors duties: the USA perspective; the limited liability company from the perspective of the latest legislative changes in Romania; economic justifiability of work on sunday, dilemmas and suggestions; consequences of confirming the restructuring agreement in the rescue procedure; implementation of the deposit-return system, an absolute first for Romania; precautionary measures to protect the debtor`s estate from insolvency proceedings; modern business with ancient tools: warranty against eviction in Roman law and its inheritance in the French, German and Italian civil codes; the rental contract in the HoReCa field, theoretical and practical aspects, respectively alternative dispute resolution methods (ADR) in the field.
- *Navigating Cross-Border Legalities.* This chapter includes papers on: trafficking in human beings: particulars of criminal legal characteristics; the right to defence: an indispensable right for the rule of law; restorative justice between the need to bring to justice those guilty of committing international crimes and conventional crimes and the implementation of the national reconciliation process; certain legal aspects of family businesses in Hungary; coercive administrative measures applied in

financial legal relations according to Bulgarian legislation; the „criminal” nature of the measure of suspension of the operating authorization of a legal person as a tax warehouse; tax evasion - between legality and crime; cumulation of disciplinary liability with other forms of legal liability.

- *Legal Perspectives on Technological Disruption in the International Sphere.* The papers in this chapter refer to: changing circumstances and the crisis of international law: the *rebus sic stantibus* and its use in legal, political and contemporary history; the role of artificial intelligence in the digital banking system; possibilities for the use of artificial intelligence in the activities of the judiciary; MiCA: direct applicability coupled with challenges for the national legislation; peculiarities and controversies regarding the credit (financing) agreement; perspectives regarding the reconfiguration of rest time in current romanian law – the right to disconnect.
- *International and European law Dynamics in a Changing Business Environment.* This chapter includes papers on: international law: the lost metaphor? - reflections on the current wars; the operator in the environmental liability - the European Union and Portuguese regime; the protection of Ukrainian migrants in Portugal: from the international and European regime to Portuguese law; Romania’s accession process to the Organisation for Economic Cooperation and Development, prospects, advantages and compatibility; invalidity of treaties, as a legal sanction specific to public international law; constitutional aspect through the prism of international principles;
- *Practical and Administrative Considerations. Legal Implications.* The papers in this chapter refer to: decentralization in public administration: redefining power for more effective governance; exercising the right of preemption in the field of national cultural heritage; the controversies of Israel judiciary reform; legal responsibility in the operating room in the particular case of retained surgical foreign bodies; effectiveness of the social protection system – with reference to the minimum inclusion income; quality and interest to address the Romanian National Council for the Settlement of Complaints in the field of public procurement in judicial practice; the double-edged sword of the lapse of the arbitral award as a ground for setting aside the arbitral award.

This volume is aimed at practitioners, researchers, students and PhD candidates in juridical sciences, who are interested in recent developments and prospects for development in the field of business law at international and national level.

We thank all contributors and partners, and are confident that this volume will meet the needs for growing documentation and information of readers in the context of globalization and the rise of dynamic elements in contemporary business law.

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Certain Legal Aspects of Family Businesses in Hungary¹

PhD. János DÚL²

Abstract

The aim of the paper is to examine some of the issues related to family businesses in Hungary. Family businesses are a popular topic in both international and domestic economic literature, but the legal aspects have been less studied, and there has been no legislation or legal definition in Hungary. The study was primarily based on the relevant literature, together with the relevant legal sources. My main insight is that the various factors identified in the economics literature, which have been used in research, also serve as a valuable basis for the law, but it is important to place these factors in the appropriate civil law context. This is what this paper attempt to do, by providing a comprehensive concept that could also serve as a starting point for legislation.

Keywords: family business, family firm, family enterprise, civil law, business law.

JEL Classification: K15, K22, K36

1. Introduction

“The weight and importance of family businesses is undisputed, and they are seen as the backbone of the economy in many countries around the world.”³ The importance of family businesses should be mentioned in connection with the fact that several European Union bodies have dealt with them on several occasions, always emphasising their important role in national economies.⁴

The economic approach to family businesses focuses on two major issues: one is the definition of family businesses themselves, along which characteristics they can be distinguished from other legal entities (most notably “traditional” business corporations), and the other analysis focuses on the succession issues associated with family businesses. In addition, the role of family businesses in the economy, their specific internal mechanisms⁵ and the use of a case

¹ „TKP2021-NKTA-51 has been implemented with the support provided by the Ministry of Culture and Innovation of Hungary from the National Research, Development and Innovation Fund, financed under the TKP2021-NKTA funding scheme.”

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³ Csákné Filep, Judit – Kása, Richárd – Radácsi, László: *Családivállalat-kormányzás. A nemzetközi szakirodalom kategorizálása a három kör modell tükrében.* „Vezetéstudomány” (2018) 9. 46-56. 46.

⁴ European Parliament resolution of 8 September 2015 on family businesses in Europe (2014/2210(INI)) (2017/C 316/05); Opinion of the European Economic and Social Committee on ‘Family businesses in Europe as a source of renewed growth and better jobs’ (own-initiative opinion) (2016/C 013/03).

⁵ See among others: Tobak, Júlia – Nábrádi, András – Nagy, Adrián Szilárd: *Sikeres nemzetközi és*

study are also considered as a good practice.⁶

In many respects, the legal analysis of family businesses is an intersection of these.⁷ In this paper, I will review the possible conceptual features of family businesses in addition to a general overview. Research has shown that there are around 90 definitions of family businesses in the European Union, one consequence of which is that they cannot be precisely defined: some research suggests that two thirds of the world's businesses are family businesses.⁸ My aim is not to create a completely new concept, but to formulate possible conceptual features that are relevant from a legal point of view.

The concept must be designed for a specific purpose: if no further legal consequence is attached to calling a legal entity or other formation as a family business, there is no point in attempting to define it in any way. (However, the absence of a legal concept would not render economic analyses meaningless.) The legal consequence could be, among others, some special form of support or tax relief, or labour law relief to promote employment. Together with this, it is also possible to identify the interest of their support from a family policy or economic policy perspective. If the cohesion and cooperation of the family is to be promoted by various means, family-run businesses deserve attention in the same way as other measures.

In order to define the conceptual elements, a brief analysis of the (mostly Hungarian) literature and existing academic approaches to family business is necessary. The reason why I am looking at the Hungarian approach first is that every country's economic and legal environment is different. It is necessary to be aware of the Hungarian aspects first, although foreign approaches should also be used as a model. In my future research, I intend to target an even broader range of states with essentially similar conditions and histories.

hazai családi vállalkozások. „International Journal of Engineering and Management Sciences (IJEMS)” (2018) 3. 280-287.; Gubányi, Mónika – Csákné Filep, Judit – Kiss, Ágnes – Csizmadia, Péter: *National Report on Family Businesses in Hungary. Final version.* The document is available online at <http://insist-project.eu/index.php/resources/materials/cases-reports-study/54-national-report-on-family-businesses-hungary/file>, last accessed 28. 02. 2023.

⁶ Németh, Krisztina – Ilyés, Csaba – Németh, Szilárd: *Intergenerational Succession (Generational Change) = Strategic Renewal? The Emergence of Familiness in the Business Life of Dudits Hotels.* „Strategic Management” (2017) 1. 30-43.; Makó, Csaba – Csizmadia, Péter – Heidrich, Balázs – Csákné Filep, Judit: *Comparative report on family businesses succession.* „BGE Budapest LAB Working Paper Series” (2017) 2.; Mosolygó-Kiss, Ágnes – Csákné Filep, Judit – Heidrich, Balázs: *Do first swallows make a summer? – On the readiness and maturity of successors of family businesses in Hungary.* „BGE Budapest LAB Working Paper Series” (2018) 6.

⁷ Some articles also deal with the legal environment in a „first-swallows” way, see for example: Arató, Balázs – Csákné Filep, Judit – Radácsi, László: *Családi vállalkozások jogi környezete.* „JURA” (2020) 4. 5-28.

⁸ Csákné Filep, Judit – Kása, Richárd – Radácsi, László: *Családívállalat-kormányzás. A nemzetközi szakirodalom kategorizálása a három kör modell tükrében.* „Vezetéstudomány” (2018) 9. 46-56. 46.

2. Basic features and challenges of family businesses

The strength of family businesses is the informal, trust-based network of relationships that stems from the family: two or more family members relate to each other in a different way than non-family members; it is desirable that the love and appreciation between family members becomes an element of trust that can be used in business life. They may also have a reputation which is the result of the intertwining of the family name, the company name and the brand name, i.e. because it is important for the family that one of the family's connecting names has a 'ring', they also seek to position themselves in the economy in such a way that their company can prosper, goodwill can be built up and consumers will seek out their products to a significant extent because of the brand name's ring. In doing so, of course, they are also working for their own livelihood. A further strength is the organisational culture based on social responsibility, which is characterised by the crucial importance of personal relationships, and some elements of which point towards corporate social responsibility (CSR).⁹

Regarding the disadvantages, in addition to the "everyday" problems (e.g. work-life balance, hierarchy within the business), there is another serious issue, which is also a subject of considerable research in economics, but its legal representation can be approached from several angles, namely succession (generational change).¹⁰ It is no coincidence that economic historians, based on Thomas Mann's novel (*Buddenbrooks*), have referred to the frequent phenomenon of family businesses failing to survive the succession of the third generation as the Buddenbrook syndrome.¹¹

One of the challenges of family businesses is that there is no single term used for them in either the foreign or Hungarian literature. The terms 'family business', 'family firm', 'family enterprise' are used equally, with each of its Hungarian equivalents also being translated in both the everyday life and in the literature. In law, it is extremely important to use one term for a certain legal phenomenon, and the question must be raised whether these terms mean the same phenomenon. The other question to be answered is, if so, which term would be the most appropriate. More importantly, if they do not mean the same, what the difference is between them. I have not yet found any literature on this point, and this is important if only because, at least from the point of view of Hungarian law,

⁹ Konczosné Szombathelyi, Márta – Kézai, Petra: *Családi vállalkozások – generációk és dilemmák*. „Prosperitas” (2018) 3. 48-76. 53; Csákné Filep, Judit: *Családi vállalkozás, avagy a profitkergetés nélküli nyereségtermelés receptje*. „Valóság” (2012) 7. 36-44. 37.

¹⁰ Filep, Judit – Szirmai, Péter: *A generációváltás kihívása a magyar kkv-szektorban*. „Vezetéstudomány” (2006) 6. 16-24. See also: Magrelli, Vittoria et al.: *Generations in Family Business: A Multifield Review and Future Research Agenda*. „Family Business Review” (2022) 1. 15-44.

¹¹ Lorandini, Cinzia: *Looking beyond the Buddenbrooks syndrome: the Salvadori Firm of Trento, 1660s-1880s*. „Business History” (2015) 7. 1005-1019. 1005. <http://dx.doi.org/10.1080/00076791.2014.993616>.

the terms ‘business/company’, ‘firm’ and ‘enterprise/undertaking’ do not mean the same, even if there is an overlap between them. I will use the most widespread ‘family business’ in this paper as a synonym.

Family businesses do not have a precise definition: in the everyday life, they can be understood as a family’s ability to exercise control over a legal entity, usually a business company; they typically span several generations and can have a significant impact on local society.¹² Of these legal entities, the development of companies and firms dates back to the last five hundred years, although there are some predecessors in ancient laws.¹³ Nevertheless, the literature also lists family businesses that have been in existence for more than 500 years, it is not necessary that they always operate under the same legal form.

Zwack Unicum (alcoholic beverage) is the oldest family-owned company in Hungary and has been managed by members of the 6th generation since 2008.¹⁴ Other well-known Hungarian family businesses include among others Béres (Béres drops),¹⁵ Cserpes (dairy products)¹⁶ and Oázis (garden center group).¹⁷

One of the biggest risks in the life of family businesses is the issue of continuity, and concerns about this are not unjustified: the difficulty of ‘passing on’ a family business is illustrated by the fact that in the early 2010s in the United States, approximately one third of family businesses are passed on to the second generation of the family, and only 13% are passed on to the third generation,¹⁸ meaning that at least two thirds of family businesses do not survive the generational transition. There are several reasons for this, including factors unrelated to the family business, such as a significant change in the market environment in which the business operates, and a general trend towards business closure. Examples include¹⁹ the inability or unwillingness of these businesses to adapt to

¹² Polster, Csilla – Konczosné Szomathelyi, Márta: *Családi vállalkozások hatása a helyi társadalomra*. „Civil Szemle” (2021) 2. 21-34.

¹³ See in detail: Sándor, István: *A társasági jog előzményei az ókori jogokban*. „Jogtudományi Közlöny” (2000) 9. 335-352.; Sándor, István: *A társasági jog története Nyugat-Európában*. KJK-KERSZÖV Jogi és Üzleti Kiadó Kft., Budapest, 2005.; Fegyveresi, Zsolt: *Társasági jog fejlődése Magyarországon*. In: Dúl, János – Lehoczki, Zóra Zsófia – Papp, Tekla – Veress, Emőd (ed.): *Társasági jogi lexikon*. Dialóg Campus Kiadó, Budapest, 2019. 256-258.

¹⁴ <https://zwackunicum.hu/hu/cegunk/zwack-tortenet/>. Last accessed 10. 11. 2023; see also: Konczosné Szomathelyi, Márta – Kézai, Petra: *Családi vállalkozások – generációk és dilemmák*. „Prosperitas” (2018) 3. 48-76. 52.

¹⁵ <https://beres-international.com/>. Last accessed 10. 11. 2023.

¹⁶ <https://cserpessajtmuhely.hu/a-sajtmuhelyrol.php>. Last accessed 10. 11. 2023.

¹⁷ <https://oazis.hu/about-us>. Last accessed 10. 11. 2023. Vágány, Judit – Fenyvesi, Éva – Kárpátiné Daróczi, Judit: *Sikerese családai vállalkozás, és ami mögötte van*. „Gradus” (2016) 1. 506-511. 507. See also: Arató, Balázs: *Családi vállalkozások; családi alkotmány és generációváltás*. Patrocinium Kiadó, Budapest, 2023. 37-44.

¹⁸ Csákné Filep, Judit: *Családi vállalkozások – fókuszban az utódlás*. Doctoral thesis. Budapest, 2012. 65-66. The document is available online at http://phd.lib.uni-corvinus.hu/660/1/Csakne_Filep_Judit_dhu.pdf, last accessed 11. 10. 2023.

¹⁹ Vágány, Judit – Fenyvesi, Éva – Kárpátiné Daróczi, Judit: *Sikerese családai vállalkozás, és ami mögötte van*. „Gradus” (2016) 1. 506-511. 509.

changing market and technological conditions; differences in generational perceptions of management and long-term goals;²⁰ and the reluctance or inability of the next generation to take over the business. Not all of these factors necessarily affect generational change, but in many cases they can have an impact.

In this context, the interest in family business and succession to family businesses is justified. This interest is reflected, inter alia, in the number of doctoral theses written on the subject²¹ and in the Q1-Q3 international journals focusing on family business (e.g. Family Business Review, Journal of Family Business Management). There is considerable academic research both at national level (Budapest LAB Business Development Office) and internationally [International Family Enterprise Research Association (IFERA)].²² IFERA is a non-profit association that brings together an international network of academics, researchers and other key players in the family business field who are committed to advancing family business research. The Budapest LAB, a partnership of the Budapest University of Economics and Business, helps to spread entrepreneurial culture by sharing knowledge and strengthening small and medium-sized enterprises in Hungary.²³ These think-tanks focus to a large extent on the role of family businesses in the economy, with less emphasis on the legal side of the research. However, in order to ensure that their role in society is adequately represented, it is necessary to be able to interpret the known perspectives in a legal sense, where relevant.

Other important international research is being carried out at the University of St. Gallen, where they are building the 'Family Business Index', updated every two years since 2015, in partnership with Ernst & Young, and their measurements suggest that family businesses in 2021 had revenues of US\$7.28 trillion and 24.1 million employees. These firms also excelled in succession, with three quarters of the 500 firms measured having been in business for 50 years or more,

²⁰ In the context of family business objectives, see: Vajdovich, Nóra – Heidrich, Balázs: *Quo vadis? – A családi vállalkozások összetett célrendszerének elemzése*. „Vezetéstudomány” (2021) 11. 13-27.

²¹ Among others Csákné Filep, Judit: *Családi vállalkozások – fókuszban az utódlás*. Doctoral thesis. Budapest, 2012. 65-66. The document is available online at http://phd.lib.uni-corvinus.hu/660/1/Csakne_Filep_Judit_dhu.pdf last accessed 11. 10. 2023; Bogdány, Eszter: *Átadni tudni kell! Vezetői szerep átadás a hazai kis- és középvállalkozásokban*. Doctoral thesis. Veszprém, 2014. The document is available online at <https://core.ac.uk/download/pdf/132284262.pdf> last accessed 11. 10. 2023; Németh, Krisztina: *Családi vállalkozások teljesítményének endogén tényezői*. Doctoral thesis. Győr, 2017. The document is available online at https://rgdi.sze.hu/images/RGDI/honlapelmei/fokozatszerzesi_anyagok/Doktori_%C3%A9rtekez%C3%A9s_N%C3%A9meth_Krisztina_nyilv%C3%A1nos_vita-RGDI.pdf last accessed 11. 10. 2023; Tobak, Júlia: *A sikertényezők és az utódlás vizsgálata családi tulajdonú vállalkozások esetében*. Doctoral thesis. Debrecen, 2018. The document is available online at <https://dea.lib.unideb.hu/server/api/core/bitstreams/fb1374cc-a5e6-4eaf-82ad-867ba74b1efd/content> last accessed 11. 10. 2023.

²² Konczosné Szombathelyi, Márta – Kézai, Petra: *Családi vállalkozások – generációk és dilemmák*. „Prosperitas” (2018) 3. 48-76. 49.

²³ <https://budapestlab.hu/index.php/rolunk/> last accessed 11. 10. 2023.

and one third for more than 100 years.²⁴ (It should be added that to be included on this list, the firm in question must be a second-generation firm.) More recent data for Hungary is available from the study, which found that 64-86% of the firms surveyed were family businesses; the smaller the firm, the higher the proportion of family businesses.²⁵ It is only in the last three decades that the legal literature and economic analysis of family businesses has come to the fore, when the composition of the membership of companies has begun to be examined.²⁶

3. The elements of a definition of family businesses in Hungary

Looking at the different definitions, the legal definition should be centred around three elements: ownership (i.e. the extent of the shareholding), participation in the management of the business and intergenerational transfer, or at least the intention to transfer.²⁷

The definition of family business has not been defined in legislation.²⁸ A possible legislative framework could be provided by Act XXXIV of 2004 on small and medium-sized enterprises and on support for their development, given that family businesses are commonly identified with SMEs.²⁹ They may indeed be similar in size in most respects, but they are characterised by specific economic and social values and operational features, as outlined above, which make them worthy of special attention.

The European Commission's expert group has defined a concept of a family business,³⁰ regardless of its size, in the following cases:

²⁴ <https://familybusinessindex.com/> last accessed 11. 10. 2023.

²⁵ Drótos, György – Wieszt, Attila – Meretei, Barbara – Vajda, Éva: *Családi vállalkozások Magyarországon. Kutatási jelentés a 2017-18-as magyar családi vállalkozási felmérésről. BCE Családi Vállalatok Központ Kutatási jelentése*. 9. The document is available online at https://magyarvallalatok2030.hu/2019conf/wp-content/uploads/2019/04/kutata%CC%81s_2018_CFB__PRESS.pdf last accessed 11. 10. 2023.

²⁶ Del Giudice, Manlio: *Understanding Family-Owned Business Groups. Towards a Pluralistic Approach*. Palgrave Macmillan, Cham, 2017. 19.

²⁷ Csákné Filep, Judit – Kása, Richárd – Radácsi, László: *Családívállalat-kormányzás. A nemzetközi szakirodalom kategorizálása a három kör modell tükrében*. „Vezetéstudomány” (2018) 9. 46-56. 46-47. See also: Wieszt, Attila – Drótos, György: *Családi vállalkozások Magyarországon*. In: Kolosi, Tamás – Tóth, István György (ed.): *Társadalmi Ríport 2018*. Társadalomkutatási Intézet Zrt., Budapest, 2018. 233-247.

²⁸ This has been done in an expert report at EU level. Balázs Arató highlights the benefits and risks of creating a single definition. Arató, Balázs: *Családi vállalkozások nemzetközi kitekintésben*. „Glossa Iuridica” (2020b) 3-4. 263-285. 266-268.

²⁹ Arató, Balázs – Csákné Filep, Judit – Radácsi, László: *Családi vállalkozások jogi környezete*. „JURA” (2020) 4. 5-28. 7.

³⁰ Final report of the Expert Group. Overview of family-business-relevant issues: Research, networks, policy measures and existing studies. 10. The document is available online at <https://ec.europa.eu/docsroom/documents/10388/attachments/1/translations/en/renditions/native>, last accessed 11. 10. 2023.

(1) The majority of decision-making rights is in the possession of the natural person(s) who established the firm, or in the possession of the natural person(s) who has/have acquired the share capital of the firm, or in the possession of their spouses, parents, child or children's direct heirs.

(2) The majority of decision-making rights are indirect or direct.

(3) At least one representative of the family or kin is formally involved in the governance of the firm.

(4) Listed companies meet the definition of family enterprise if the person who established or acquired the firm (share capital) or their families or descendants possess 25 per cent of the decision-making rights mandated by their share capital.

In the expert group's view, this concept also covers enterprises that have not yet undergone the first generation change, as well as sole members and the self-employed (of course, if there is a transferable legal entity).³¹

The statute of the National Association of Family Enterprises (*Családi Vállalkozások Országos Egyesülete* – abbreviated: CSVOE, CSAVE, the latter is used here)³² also serve as a starting point: enterprises may be members of the association if “[i]n which one or more natural persons closely related to each other, directly or indirectly, have a majority influence in the economic operator, participate in its management, and in addition have tasks in the organisation and performance of the work of the enterprise, and in the performance of these tasks at least one other person. The aims of the enterprise include the transfer or the intention to transfer the assets, the accumulated experience and the acquired wealth between generations.”³³ The definition in the statute reflects the elements required by the literature, but also includes elements that can be legally evaluated. It clearly states the required level of member participation,³⁴ indicates the possible family relationship,³⁵ designates the possible family business circle with the economic operators.³⁶ Guidelines defining the objectives of the enterprise are less legally assessable elements.

Given their legal nature, family businesses can, in my view, be conceived not only as legal entities, but also as contractual formations that can be used to

³¹ Ibid.

³² <https://csave.hu/>, last accessed 10. 11. 2023.

³³ Cited by Kása, Richárd – Radácsi, László – Csákné Filep, Judit: *Családi vállalkozások definíciós operacionalizálása és hazai arányuk becslése a kkv-szektoron belül*. „Statisztikai Szemle” (2019) 2. 146-174. 149.

³⁴ See Act V of 2013 on Civil Code (HCC) Section 8:2. <https://njt.hu/jogszabaly/en/2013-5-00-00>, last accessed 11. 10. 2023.

³⁵ HCC Section 8:1(1) point 1.

³⁶ Act CXXX of 2016 on the Code of Civil Procedure (CCP) (as in force on 1 April 2020) Section 7(1) point 6. <https://njt.hu/jogszabaly/en/2016-130-00-00>, last accessed 11. 10. 2023.

fulfil such a function, such as contract for civil law partnership³⁷ and even fiduciary asset management contract.³⁸ The contract for civil law partnership³⁹ will constitute the legal basis for the cooperation between the parties to the contract,⁴⁰ a contractual framework that can be modified at will at the discretion of the parties, and no further official or judicial act is needed to 'finalise' this modification, as the contract will not create a new legal entity separate from its members. Within the framework of the cooperation, they are free to carry out activities which do not require a public authorisation and which are not prohibited by law. One of the justifications for the creation of a fiduciary asset management contract is precisely to keep and preserve family assets together.⁴¹ Some of the parties to the contract (the trustee, the settlor and the beneficiary) may be members of the same family, so that 'strangers' have no influence on the disposition of the property. However, the success of such an arrangement requires that the trustee, knowing the specificities of the asset management, acts in an appropriate manner and has the necessary expertise.

But here I will focus on family businesses with legal personality. In this respect, they are not different from other legal persons; they are distinguished by the subject-matter of the members and, if there is a successful generational change, they can be considered as family businesses in this respect.

The use of the term is also widespread in Hungarian judicial practice, although it usually has no further legal consequence, this fact is mentioned at the beginning of the statement of facts. At the same time, it is not clear why the courts use this term, and it is not clear from the grounds of the judgments what makes a family business a family business.

The criteria for inclusion in the Family Business Index for this topic are: the business itself is at least second generation or has at least one family member among its senior managers. For a first generation business, there are at least two family members in this role. In addition to management, there must also be a significant shareholding of the members, i.e. a direct holding of at least 50 per cent in the case of a private company, or a minimum of 32 per cent in the case of a publicly traded company.⁴²

³⁷ HCC Section 6:498.

³⁸ HCC Section 6:310.

³⁹ Certain terms are used as in the translation of Hungarian Civil Code. <https://njt.hu/jogszabaly/en/2013-5-00-00>.

⁴⁰ Fabó, Tibor: *A polgári jogi társasági szerződés*. In: Benke, József – Nochta, Tibor (ed.): *Magyar polgári jog. Kötelmi jog II*. Dialóg Campus Kiadó, Budapest – Pécs, 2018. 355-368.

⁴¹ Magyar-Csatlós, Judit – Magyar, Csaba – Sándor, István: *Vagyontervezési labirintus. Útmutató a bizalmi vagyonkezelés, a vagyonkezelő alapítványok és a magántőkealapok világához*. HVG-ORAC Lap- és Könyvkiadó Kft., Budapest, 2021. 50. In the context of fiduciary asset management contract, see also: B. Szabó, Gábor – Illés, István – Kolozs, Borbála – Menyhei, Ákos – Sándor, István: *A bizalmi vagyonkezelés*. 2nd edition. HVG-ORAC Lap - és Könyvkiadó Kft., Budapest, 2018.

⁴² <https://familybusinessindex.com/>, last accessed 10. 11. 2023.

In a Hungarian economic research conducted in 2017-2018, the definition of a family business was based on three factors: whether the respondent considers itself a family business, whether there is dominant family control in the firm, and whether the family ownership share is at least 50%. If the respondent firm met at least the first two conditions or at least the third condition, it was considered a family firm. While these are important threshold conditions, other increasingly stringent additional conditions were also included, such as the requirement to have at least two family members working in the firm. As a further tightening of this condition, it was also examined whether at least two generations of the family were involved in the operational activities. Finally, the last of these additional criteria related to the aspiration to maintain family shareholdings in the long term, i.e. the criterion was set to consider succession within the family.⁴³

In this context, the legal situation of family businesses is specific in the sense that there is no legal definition, but the term is often used in judicial practice and in everyday life. At the same time, there is no specific legal consequence, an additional consequence, in the existing case law, of the classification of a legal entity as a family business. There may be practical reasons for the definition, but the concept must not be too casuistic or too narrow, it must leave enough room for personal assessment, and it must not be exclusionary. Family businesses themselves are extremely diverse.

Defining the term 'family', the list of (close) relatives as defined in paragraph Section 8:1 para. (1) points 1-2. of the Civil Code⁴⁴ is appropriate as a starting point, as it is also included in the subject scope of the CSAVE. It is, however, justified to extend it by the concept of kinship in Book Four (Family Law),⁴⁵ as I consider a composition of members where e.g. cousins also hold shares in the same company to be perfectly acceptable. Similarly, the more general concept of a partnership or a legal person whose members include spouses is also acceptable.⁴⁶ However, this may lead to a too broad definition of the circle

⁴³ Drótos, György – Wieszt, Attila – Meretei, Barbara – Vajda, Éva: *Családi vállalkozások Magyarországon. Kutatási jelentés a 2017-18-as magyar családi vállalkozási felmérésről. BCE Családi Vállalatok Központ Kutatási jelentése.* 3-4. The document is available online at https://magyarvallalatok2030.hu/2019conf/wp-content/uploads/2019/04/kutata%CC%81s_2018_CFB_PRESS.pdf last accessed 11. 10. 2023.

⁴⁴ HCC Section 8:1 [Interpretative provisions]. (1) For the purposes of this Act, 1. close relative means the spouse, the lineal relative, the adopted child, the stepchild and the foster child, the adoptive parent, the step-parent and the foster parent and the sibling; 2. relative means the close relative, the cohabitant, the spouse of a lineal relative, the lineal relative and the sibling of the spouse, and the spouse of the sibling.

⁴⁵ HCC Section 4:96 [Kin relationship]. (1) Lineal kin relationship exists between those of whom one originates from the other. (2) Blood relatives with no lineal bond are collateral relatives if they have at least one common lineal ascendant.

⁴⁶ According to the decision published in BDT No. 3839 of 2018, the applicant company is „largely a family business”, in which one of the spouses has become a member in addition to the parents and children, and therefore this classification is, in my view, entirely correct. The document is available online at <https://uj.jogtar.hu/#doc/db/25/id/A18H3839.BDT/> last accessed 10.11.2023.

of persons in itself (blood relatives who are indeed 'more distant' are less and less familiar with each other, and the sense of belonging to a common ancestor is less and less). It is therefore advisable to adopt the concept of great-grandparentage from inheritance law⁴⁷ for a legal definition, and to use the definition of relative in conjunction with it. In my point of view, based on everyday experience, that in this circle of relatives, family members still know each other or can get to know each other more easily and keep/maintain better contact with each other. This does not mean, however, that distant relatives cannot associate with each other and that it cannot be a family business.

The scope of family members can be defined in this way, but in order to establish the family nature, it is advisable to add further conceptual elements based on the literature: for example, a family business is considered to be a business in which at least half of the voting rights attached to the members' shares are held by members of the same family. An optional element could be added to the concept of management: if the manager is a member of the family, he or she is better able to embrace the family values and the idea of 'passing on' family assets, which are among the conceptual elements of the family business. It is therefore an optional element that the management should also be chosen from among the family members, since this type of provision, duly included in the articles of association, must be respected by the managing director, who may be subject to sanctions if it is not respected. Optionality can also be seen in the fact that a supervisory board can be set up as an internal control body, in which, for example, only family members are members, so that control over any 'external' manager is even better ensured, and they can send an appropriate signal to the other family members in the event of a threat whose occurrence would be incompatible with the objectives of the family business in terms of results. This, how-

See also: Barta, Judit: *A közkereseti és betéti társasági részesedés a házastársi közös vagyonban.* „Gazdaság és Jog” (2023) 3-4. 9-21; Kispál, Beáta: *Egy családi vállalkozás sikere és bukása egy hirtelen haláleset és egy változó kamatozású devizahitel (devizaalapú) hatása következtében.* „Gazdaság és Jog” (2023) 4. 45-51.

⁴⁷ HCC Section 7:65 [Succession of great-grandparents and their descendants]. (1) In the absence of grandparents and descendants of the grandparents, the great-grandparents of the estate leaver shall all be intestate heirs in equal shares. (2) When replacing a great-grandparent disqualified from succession, his descendants shall inherit in the same way as the descendants of a disqualified grandparent when replacing the latter. (3) In the absence of descendants of the disqualified great-grandparent or if they may not inherit, the other great-grandparent of that pair of great-grandparents or, if he is also disqualified, his descendant shall inherit. (4) If any pair of great-grandparents is disqualified and they have no descendants to be replaced by or the descendants may not inherit, the other pairs of great-grandparents shall inherit the whole estate in equal shares. (5) If a great-grandparent inheriting under paragraph (4) is disqualified, the rules laid down in paragraphs (2) and (3) shall apply. See also: Vékás, Lajos: *Öröklési jog.* Eötvös József Könyvkiadó, Budapest, 2014. 97-98; Orosz, Árpád – Weiss, Emilia: *Öröklési jog – Anyagi jog.* HVG-ORAC Lap- és Könyvkiadó Kft., Budapest, 2014. 128-130; Barzó, Tímea – Juhász, Agnes – Pusztahelyi, Réka – Sági, Edit: *Öröklési jog. Ideiglenes jegyzet.* Novotni Alapítvány, Miskolc, 2016. 122-124.

ever, requires family members to have the necessary expertise to identify problems. However, these objectives must be clearly defined and cannot be formulated in a general, non-transparent way, as this would prevent the manager from assessing whether the conduct in question is in line with the objectives and would also require the court to conduct a serious evidentiary hearing in the event of a dispute.

Within undertakings,⁴⁸ firms are the legal forms in which such associations have the right to exist; in these, to a certain extent, and taking full account of the specific characteristics of the firm, personal participation and influence may also be possible in addition to the accumulation of assets. The concept of firm must, of course, be used with caution: firms include, for example, companies, groupings and cooperatives, which, in my view, can also function as family businesses without any further restriction. Act V of 2006 on company registration, court proceedings and winding-up, for example, includes individual firms, water management companies and notary offices, the characteristics of which, in my view, make them less suitable for becoming family businesses. In any case, the family should be considered as the defining characteristic of family businesses, with the enterprise itself serving the subsistence of the family (the extended family, depending on the degree of kinship/relationship of the family members). An alternative condition is the personal contribution of family members to the enterprise and the possibility for family members who are not members of the enterprise to be employees.

As I have mentioned, the wording of CSAVE may indeed be a suitable starting point, but there are elements in the relevant list of the economic operator⁴⁹ that cannot be assessed as a family business per se, such as the State, the local government, and a budgetary organ or another legal person required by law to apply the rules pertaining to the economic activities of budgetary organs. In the context of the relevant concept, it is therefore worthwhile to list the entities that may become family businesses. Legal entities are also defined in a taxative way, even if not in a single law; such a definition may also be listed in an itemised way.

⁴⁸ HCC Section 8:1(1) 4. undertaking means a person acting within its profession, independent occupation or business activity.

⁴⁹ CCP Section 7 [Interpretative provisions]. (1) For the purposes of this Act: 6. economic operator means a company, European company, grouping, European economic interest grouping, European grouping for territorial cooperation, cooperative, housing cooperative, European cooperative society, water management company, forest management company, Hungarian branch of an enterprise having its seat abroad, state-owned enterprise, other state-owned economic organ, enterprise of certain legal persons, jointly owned enterprise, court bailiff firm, notary office, law office, patent firm, voluntary mutual insurance fund, private pension fund, individual firm, private entrepreneur and, in the context of its civil relationships related to its economic activities, the State, the local government, a budgetary organ or another legal person required by law to apply the rules pertaining to the economic activities of budgetary organs, an association, a statutory professional body or a foundation.

The concept proposed by the Commission's expert group is an example to be followed in all respects, as it leaves sufficient scope for defining family businesses and represents a specific synthesis of the literature. This flexibility would not be applicable to a Hungarian legal definition, but it is worth considering as a model.

4. Legal aspects of succession issues in family businesses. The family constitution and the succession plan

A major issue in the economic literature is the survival of family businesses,⁵⁰ and more specifically, their intergenerational transition, given the indicators that show that the vast majority of family businesses do not survive the second, or even the first, generation. In order to avoid this, various techniques are proposed to improve the chances of starting the process of generational change and to be able to adequately protect themselves against unexpected events that could affect the family business. The study of this issue has been less widespread in the legal literature.⁵¹

“The family constitution, according to the approach accepted in the literature, is a document that unifies the family's shared values and vision, the common goals to be achieved and the principles to be followed, a basis for identity, a unifying bond.”⁵² An important feature is that it should reflect family values, it sets out the principles that guide the family's life and guide the family's decisions to ensure that the family's goal in the business is sustainable without compromising the family's understanding (in terms of family relationships or property) and it can provide solutions and guidance for dealing with specific problems. Its content is open-ended and sets out the principles that the family considers essential.⁵³

A family constitution cannot consist of just one document; its content can

⁵⁰ For example: Csákné Filep, Judit – Karmazin, György: *A családi vállalkozások pénzügyi jellemzői és az utódlással kapcsolatos pénzügyi kérdések*. „Prosperitas” (2017) 3. 5-31. Among family businesses, Peter Leach's multi-published work, also published in Hungarian, is a significant benchmark: Leach, Peter: *Családi vállalkozások*. HVG Könyvek, Budapest, 2018. On succession in particular see: Leach, Peter: *Családi vállalkozások*. HVG Könyvek, Budapest, 2018. 133-288.

⁵¹ See: Arató, Balázs: *A családi vállalkozások utódlásának és vagyonmegóvásának jogi aspektusai*. „Glossa Iuridica” (2020a) 1-2. 141-177. For an international perspective, see for example: Marjanski, Vladimir – Dudás, Attila: *Intergenerational Transfer of Family-run Enterprises by Means of Civil Law in Serbia*. „Central European Journal of Comparative Law” (2021) 2. 119-137.

⁵² Arató, Balázs: *A családi vállalkozások utódlásának és vagyonmegóvásának jogi aspektusai*. „Glossa Iuridica” (2020a) 1-2. 141-177. 145. On the identity of family businesses, see: Wieszt, Attila: „Fontos, hogy mi családi cég vagyunk?” – *Családi vállalkozási identitás és teljesítmény*. „Vezetéstudomány” (2020) 2. 60-73.

⁵³ KPMG: „Családi vállalkozások” – *a magántulajdonú társaságok sikeréért*. 6. The document is available online at <https://docplayer.hu/2092898-Csaladi-vallalkozasok-a-magantulajdonu-tarsasagok-sikereert-kpmg-hu.html> last accessed 10. 11. 2023; Vágány, Judit – Fenyvesi, Éva – Kárpátné Daróczy, Judit: *Sikeres családi vállalkozás, és ami mögötte van*. „Gradus” (2016) 1. 506-511. 510.

be very diverse. Both in form and content, it can consist of, among other things, the articles of association of the company (in the case of a family business with legal personality), a contract for the transfer of shares (both for pecuniary and non-pecuniary purposes), or a syndicate contract.⁵⁴ The content and form of each of these documents is different, but they can all contribute to the formulation of a succession plan and the basis for running the family business.⁵⁵

The family constitution and the succession plan may form a single unit, but they may also be separate, but I believe that a properly prepared succession plan forms part of the family constitution, since the plan will be geared to the future operation of the business and the family constitution itself will encompass the whole of the operation of the family business. It should be added that the succession plan must also properly reflect respect for the past and include the traditions of the family business to be preserved, on which the present of the family business is based and on which the future can be built.⁵⁶

5. Conclusions

The aim of this paper was not to explore all the legal aspects of family businesses, but to outline possible research directions. Some of these are already beginning to appear in the legal literature, but more can be found in economic literature. Several aspects are analysed, some of which are also legally relevant, such as the concept of family business.

A single definition of family business cannot be drawn from the literature because, although a definition may include a significant number of family businesses, there is a risk of excluding an equal number of family businesses. In the event that a legal definition is established, additional legal consequences should be attached to it. However, such a definition should preferably be based on as broad a consensus as possible in the literature, as current research uses a different definition from one author to another, which may become subjective as a result

⁵⁴ Papp, Tekla: *A szindikátusi szerződés*. In Papp, Tekla (ed.): *Atipikus szerződések*. Opten Informatikai Kft., Budapest, 2015. 224-235; Papp, Tekla: *Atipikus szerződések*. HVG-ORAC Lap- és Könyvkiadó Kft., Budapest, 2019. 113-124; Veress, Emőd: *Szindikátusi szerződés*. In Dúl, János – Lehoczki, Zóra Zsófia – Papp, Tekla – Veress, Emőd (ed.): *Társasági jogi lexikon*. Dialóg Campus Kiadó, Budapest, 2019. 231-234; Fazakas Zoltán József: *A családi gazdasági társaságok és a szindikátusi szerződések lehetséges kapcsolódásai*. „Debreceni Jogi Műhely” (2023) 1-2. 99-124; Arató, Balázs: *Családi vállalkozások; családi alkotmány és generációváltás*. Patrocinium Kiadó, Budapest, 2023. 123-179.

⁵⁵ See also: Braut Filipović, Mihaela: *Corporate Governance of Family Businesses in Croatia – Legal Framework and Open Challenges*. „Central European Journal of Comparative Law” (2021) 1. 9-27.

⁵⁶ Leach, Peter: *Családi vállalkozások*. HVG Könyvek, Budapest, 2018. 101-131. See also in detail: Arató, Balázs: *Családi vállalkozások; családi alkotmány és generációváltás*. Patrocinium Kiadó, Budapest, 2023. 79-121.

of the beliefs of the researchers and research opportunities.⁵⁷ In my view, provided factors for a comprehensive concept could serve as a starting point for legislation.

Succession in family businesses is also an important issue, which can occur both between living persons and in the event of death, and triggers different legal mechanisms. The picture is also nuanced by the type of family business under scrutiny, the situation is different for partnerships per se where one of the members has died, and further analysis is needed for other legal entities and even contracts.

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⁵⁷ Kása, Richárd – Radácsi László – Csákné Filep Judit: *Családi vállalkozások definíciós operacionalizálása és hazai arányuk becslése a kkv-szektoron belül*. „Statisztikai Szemle” (2019) 2. 146-174. 150.

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