

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

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**MAGYAR FARMING COMPANY LTD,** )  
7 Abbey Court, Fraser Road, )  
Priory Business Park, Bedford, MK44 3WH )  
United Kingdom )  
)  
**KINTYRE KFT,** )  
6 / III Kaman utca, 9027 Gyor, Hungary )  
)  
**AND INÍCIA ZRT** )  
05/26 hrsz, at 9141 Ikreny, Hungary )  
)  
**Petitioners,** )  
)  
**v.** ) **Civil Action No.** \_\_\_\_\_  
)  
**HUNGARY** )  
)  
**Respondent.** )

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**PETITION OF MAGYAR FARMING COMPANY LTD,  
KINTYRE KFT, AND INÍCIA ZRT TO CONFIRM A FOREIGN ARBITRAL AWARD**

1. Petitioners Magyar Farming Company Ltd., Kintyre Kft, and Inícia Zrt (“Petitioners”), by and through their undersigned counsel, hereby bring this action to enforce an arbitral award (the “Final Award”) of €7,148,824 million, plus certain costs and interest, issued on November 13, 2019 in the International Centre for the Settlement of Investment Disputes (“ICSID” or the “Centre”), Case No. ARB/17/27, *Magyar Farming Company Ltd., Kintyre Kft, and Inícia Zrt. V. Hungary* (the “Arbitration”), conducted in Paris, France, pursuant to the rules of the International Centre for Settlement of Investment Disputes against respondent Hungary (“Hungary” or the “Respondent,” together with Petitioners, collectively referred to hereinafter as the “Parties”). A certified copy of the Final Award is attached as Exhibit 1 to the Declaration of Louis A. Russo dated March 4, 2020 which is filed herewith (“Russo Decl.”).

2. The Final Award was rendered in favor of Petitioners following arbitration proceedings conducted in accordance with the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the “ICSID Convention”). A copy of the ICSID Convention is attached as Exhibit 2 to the Russo Declaration.

3. The Final Award imposed pecuniary obligations on Hungary to pay Petitioners compensation for its expropriation of Petitioners’ investment and to reimburse Petitioners for various costs and legal fees.

4. To date, Hungary has not paid any portion of the Final Award.

5. Pursuant to Article 54 of the ICSID Convention and 22 U.S.C. § 1650a, arbitral awards issued under the ICSID Convention are not subject to collateral attack and must be enforced in the same manner and given the same full faith and credit as if the award were a final judgment of a court in the United States.

6. Accordingly, Petitioners Magyar Farming Company Ltd., Kintyre Kft, and Inícia Zrt respectfully request that this Court: (i) enter an order enforcing the Final Award in the same manner as a final judgment issued by a court in the United States, (ii) enter judgment in favor of Petitioners in the amount of €7,148,824 million, together with interest from August 1, 2015 until payment, and (iii) enter judgment in favor of Petitioners for reimbursement of various costs and fees set forth in the Final Award together with interest at the rate of 6-month Euro Interbank Offered Rate +2% compounded semi-annually from the date of the Final Award until payment.

#### **THE PARTIES**

7. Petitioner Magyar Farming Company Ltd (“Magyar”), is a private company incorporated and existing under the laws of the United Kingdom with a principal place of

business at 7 Abbey Court, Fraser Road, Priory Business Park, Bedford, MK44 3WH, United Kingdom.

8. Petitioner Kintyre Kft (“Kintyre”), is a private limited liability company incorporated and existing under the laws of Hungary, with its a principal place of business at 6 / III Kaman utca, 9027 Győr, Hungary. Kintyre Kft’s full name in Hungarian is KINTYRE Mezogazdasagi, Kereskedelmi es Szolgáltato Korlatolt Felelossegi Tarsasag. Its official English language name is KINTYRE Agricultural, Trade and Services Limited Liability Company.

9. Petitioner Inicia Zrt (“Inicia”), is a private limited company incorporated and existing under the laws of Hungary with its a principal place of business at 05/26 hrsz, at 9141 Ikreny, Hungary. Inicia Zrt’s full name in Hungarian is INICIA Mezogazdasagi Termelo, Szolgáltato es Kereskedelmi Zartkoruen Mukodo Reszvenytarsasag, which translates roughly as INICIA Agricultural, Producer, Services and Trade Limited.

10. Respondent Hungary (“Hungary” or the “Respondent”), is a foreign state within the meaning of the Foreign Sovereign Immunities Act (“FSIA”), 28 U.S.C. §§ 1330, 1332, 1391(f), 1602–11.

### **JURISDICTION AND VENUE**

11. As detailed below, the Final Award arises out of Hungary’s breach of its obligations under the agreement between the United Kingdom of Great Britain and Northern Ireland and the Hungarian People’s Republic for the Promotion and Reciprocal Protection of Investments (the “UK-Hungary BIT” or the “BIT”). The BIT was signed on March 6, 1987 and ratified on August 28, 1987. A copy of the UK-Hungary BIT is attached as Exhibit 3 to the Russo Declaration.

12. The Final Award is also governed by ICSID Convention which provides that “[e]ach Contracting State shall recognize an award rendered pursuant to this Convention as binding and enforce the pecuniary obligations imposed by that award within its territories *as if it were a final judgment of a court in that State.*” ICSID Convention, art. 54(1) (emphasis added).

13. All of the States involved in this action are party to the ICSID Convention:

- a. The United States is a contracting state to the ICSID Convention and has adopted implementing legislation to give full faith and credit to arbitral awards rendered under the ICSID Convention. See 22 U.S.C. § 1650a(a).
- b. Hungary also is a party to the ICSID Convention. See ICSID, List of Contracting States and Other Signatories of the Convention (indicating that Hungary signed the ICSID Convention on October 1, 1986 and that the ICSID Convention entered into force for Hungary on March 6, 1987), *available at* <https://icsid.worldbank.org/en/Pages/about/Database-of-Member-States.aspx> (last checked March 4, 2020).
- c. Moreover, the United Kingdom of Great Britain and Northern Ireland (the contracting States to the governing BIT) are also parties to the ICSID Convention. The former signed the ICSID Convention on May 26, 1965 and ratified it on December 19, 1966, with an effective date of January 18, 1967. The latter signed it on October 1, 1986 and ratified it on February 4, 1987, with an effective date of March 6, 1987. See ICSID, List of Contracting States and Other Signatories of the Convention, *available at* <https://icsid.worldbank.org/en/Pages/about/Database-of-Member-States.aspx> (last checked March 4, 2020).

14. This Court also has subject matter jurisdiction pursuant to 22 U.S.C. § 1650a(b), which provides that “[t]he district courts of the United States . . . shall have exclusive jurisdiction over actions and proceedings” to enforce awards entered under the ICSID Convention. Moreover, the United States federal district courts are vested with original jurisdiction over any nonjury civil action against a foreign state with respect to which the foreign state is not entitled to immunity under the FSIA or under any applicable international agreement. 28 U.S.C. § 1330(a).

15. Pursuant to Section 1605 of the FSIA, Hungary is not entitled to immunity from this Court’s jurisdiction in an action to enforce an award issued pursuant to the ICSID Convention because Hungary has waived any such immunity by agreeing to the ICSID Convention. *See Blue Ridge Investments, L.L.C. v. Republic of Argentina*, 735 F.3d 72, 84 (2d Cir. 2013) (holding that a foreign country waives sovereign immunity under the FSIA “by becoming a party to the ICSID Convention”). Hungary is further not entitled to immunity because it waived such immunity by affirmatively consenting to the arbitration of the parties’ underlying dispute. *See* 28 U.S.C. § 1605(a)(1), (6); *see also* ICSID Convention, art. 26; Final Award at ¶ 220.

16. This Court has personal jurisdiction over Hungary pursuant to the FSIA. Under Section 1330(b) of the FSIA, United States district courts have personal jurisdiction over a foreign state as to every claim for relief over which they have original jurisdiction under Section 1330(a) of the FSIA where service has been made under Section 1608 of the FSIA. 28 U.S.C. §§ 1330(a), (b); 28 U.S.C. § 1608.

17. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(f)(4).

18. The Federal Arbitration Act (the “FAA”), 9 U.S.C. §§ 1-307, does not apply to “enforcement of awards rendered pursuant to the [ICSID] convention.” 22 U.S.C. § 1650a(a). As such, the FAA’s jurisdictional requirements do not apply to this Action.

### **THE DISPUTE, THE ARBITRATION, AND THE FINAL AWARD**

#### **The Dispute**

19. The dispute arises out of Petitioners’ investment in Hungary and Hungary’s subsequent measures regulating possession and disposal of agricultural land owned by Hungary, which, resulted in the expropriation of Petitioners’ leasehold rights to 760 hectares of land owned by Hungary and which is located in Hungary’s northwestern region of Ikrény (the “Land”) and in a diminution of the value of Petitioners’ farming business in Hungary.

20. In sum, Hungary amended relevant land laws and otherwise rigged the lease bidding process so Petitioners could not exercise their lease rights to the Land and were otherwise evicted from the Land in disregard of their pre-lease rights and the interim possessory protection that Inícia had obtained from the local authorities.

21. The leasehold rights at issue were protected by the UK-Hungary BIT and the ICSID Convention. The Petitioners are incorporated under the laws of the United Kingdom and Hungary, both of which are contracting party to both the UK-Hungary BIT and the ICSID Convention. Final Award at ¶ 2.

#### **The Arbitration**

22. On July 14, 2017, ICSID received a request for arbitration dated July 4, 2017 from the Petitioners against Hungary, together with exhibits C-1 through C-25 and legal authorities CL-1 and CL-2 (the “Request for Arbitration”). Final Award at ¶ 29.

23. By emails of September 5, 2017, the Parties agreed to constitute the Tribunal in accordance with Article 37(2)(a) of the ICSID Convention as follows: the Tribunal would consist of three arbitrators, one to be appointed by each Party and the third, the presiding arbitrator, to be appointed by agreement of the Parties. *Id.* at ¶ 31.

24. By letter of September 12, 2017, the Petitioners appointed Dr. Stanimir A. Alexandrov (“Alexandrov”), a national of Bulgaria, as arbitrator in this case, who accepted his appointment on September 13, 2017. *Id.* at ¶ 32.

25. By letter of October 9, 2017, the Respondent appointed Dr. Inka Hanefeld (“Hanefeld”), a national of Germany, as arbitrator in this case, who accepted her appointment on October 10, 2017. *Id.* at ¶ 33.

26. By emails of December 21, 2017, the Parties informed the Centre that they had conferred over the names proposed in the ballot and that they had agreed to appoint Professor Gabrielle Kaufmann-Kohler (“Kaufmann-Kohler”), a national of Switzerland, as presiding arbitrator. *Id.* at ¶ 37.

27. Alexandrov, Hanefeld, and Kaufmann-Kohler are collectively referred to herein as the “Tribunal.”

28. The Tribunal was fully constituted on January 4, 2018 in accordance with the ICSID Convention and the ICSID Arbitration Rules. *Id.* at ¶ 38.

29. On June 24, 2019, the Parties confirmed that the Tribunal was properly constituted and that they had no objection as to the appointment of any member of the Tribunal. *Id.* at ¶ 16.

30. All parties were represented by counsel and submitted extensive briefing in support of their positions in the Arbitration:

- a. On April 27, 2018, Petitioners filed their Memorial on the Merits, together with the witness statement of Mr. Andrew Alexander Hunter, the expert report of Mr. James Gilbey FCA, the expert opinion of Professor Gábor Halmai, exhibits C-26 through C-131, and legal authorities CL-3 through CL-29. *Id.* at ¶ 54.
- b. On September 7, 2018, Hungary submitted its filed its Counter-Memorial on the Merits and Memorial on Jurisdiction, together with the witness statement of Dr. Márton Örs Bitay, the expert opinion of Professor Attila Menyhárd, the expert report of Messrs. Kiran Sequeira and Stuart Dekker of Versant Partners, LLC, exhibits R-1 through R-28, and legal authorities RL-1 through RL-74. *Id.* at ¶ 62.
- c. On December 20, 2018, Petitioners submitted their filed their Reply on the Merits and Counter-Memorial on Jurisdiction, along with the second expert opinion of Professor Gábor Halmai, the expert opinion of Professor Dr. Miklós Király, the supplemental independent expert report of Mr. James Gilbey, the second witness statement of Mr. Andrew Alexander Hunter, exhibits C-132 through C-236, and legal authorities CL-30 through CL-68.
- d. On March 26, 2019, Respondent filed its Rejoinder on the Merits and Quantum and Reply on Jurisdiction, along with the second expert opinion of Professor Attila Menyhárd, the second expert report of Messrs. Kiran Sequeira and Stuart Dekker of Versant Partners, LLC, exhibits R-29 through R-39, and legal authorities RL-75 through RL-111. *Id.* at ¶ 86.

e. On April 29, 2019, Petitioners filed their Rejoinder on Jurisdiction, together with exhibits C-237 through C-255, and legal authorities CL-69 through CL-75. *Id.* at ¶ 89.

31. Pursuant to Article 62 of the ICSID Convention, the place of the proceedings was set to be Washington, D.C. However, as confirmed in ICSID's email of May 8, 2019, the Parties agreed to conduct the Hearing at the World Bank offices in Paris, France. *Id.* at ¶¶ 20, 56-58.

32. From May 27 to May 30, 2019, a hearing was held before the Tribunal at the World Bank offices in Paris, France. *Id.* at ¶ 96.

33. At the hearing, counsel for each party made opening statements and 7 witnesses were heard. Hungary cross-examined Petitioners' witnesses, presented expert testimony, including a detailed presentation on damages which included the submission of demonstrative exhibits, and vigorously argued its positions. See, e.g., *id.* at ¶¶ 97-98. Closing statements were made and each party confirmed that they were satisfied with how the proceedings had been conducted. The Tribunal considered the Parties' submissions, legal arguments and witness statements. Final Award, *passim*.

34. On June 21, 2019, Hungary submitted a request to amend the request for relief set out in its Rejoinder on the Merits and Quantum and Reply on Jurisdiction. *Id.* at ¶ 100. By email of June 24, 2019, the Petitioners objected to Respondent's application to amend its request for relief. *Id.* By email of June 27, 2019, the Respondent provided its observations on the Petitioners' email of June 24, 2019, as per the Tribunal's instructions. *Id.*

35. On July 15, 2019, the Parties submitted the agreed text for certain previously filed exhibits. *Id.* at ¶ 105.

36. On July 19, 2019, the Parties filed their statements of costs. *Id.* at ¶ 105.

37. The Arbitration proceeding was closed on November 8, 2019. *Id.* at ¶ 107.

*The Final Award*

38. On November 13, 2019, the Tribunal rendered a final arbitral award (the “Award”) finding that Hungary breached Article 6.1 of the BIT by expropriating the Petitioners’ investment without compensation. *Id.* at ¶ 441(ii).

39. The Final Award ordered Respondent to pay Petitioners two distinct sets of damages. *Id.* at ¶ 441(iii) – (iv).

40. *First*, the Tribunal ordered Hungary to pay Petitioners €7,148,824 million, together with interest at the rate of 6-month Euro Interbank Offered Rate +2% compounded semi-annually percent per annum from August 1, 2015. *Id.* at ¶ 441(iii).

41. *Second*, the Tribunal ordered Hungary to reimburse Petitioners for the following costs and fees:

- a. USD 282,224.40 for the ICSID and Tribunal costs,
- b. USD 25,000 for the ICSID lodging fee,
- c. GBP 296,456 for the Petitioners’ legal costs,
- d. EUR 19,473 for the Petitioners’ legal costs, and
- e. HUF 26,495,585.5 for Petitioners’ legal costs.

*Id.* at ¶ 441(iv).

42. The Tribunal ordered that all of the costs and fees described in the preceding paragraph shall bear interest at the rate of 6-month Euro Interbank Offered Rate +2% compounded semi-annually from the date of Final Award until payment. *Id.* at ¶ 441(iv).

**THIS COURT SHOULD CONFIRM THE FINAL AWARD.**

43. The United States and Hungary are contracting states to the ICSID Convention. Article 54 of the ICSID Convention provides that “[e]ach Contracting State shall recognize an award pursuant to this Convention as binding and enforce the pecuniary obligations imposed by that award within its territories as if it were a final judgment of a court in that State.” ICSID Convention, art. 54(1) (emphasis added).

44. The United States is a contracting state to the Convention, *see* ICSID, List of Contracting States and Other Signatories of the Convention (*available at* <https://icsid.worldbank.org/en/Pages/about/Database-of-Member-States.aspx> (*last checked* March 4, 2020), and Congress has passed implementing legislation to give effect to the Convention’s requirement that contracting states recognize and enforce ICSID awards.

45. Specifically, 22 U.S.C. § 1650a provides in relevant part:

(a) An award of an arbitral tribunal rendered pursuant to chapter IV of the convention shall create a right arising under a treaty of the United States. *The pecuniary obligations imposed by such an award shall be enforced and shall be given the same full faith and credit as if the award were a final judgment of a court of general jurisdiction of one of the several States.* The Federal Arbitration Act (9 U.S.C. § 1 et seq.) shall not apply to enforcement of awards rendered pursuant to the convention.

Emphasis added.

46. The United States, as a contracting state to the ICSID Convention, is therefore obligated to recognize and enforce the pecuniary obligations imposed by the Final Award as if it were a final judgment of a court of the United States.

47. Arbitral awards issued against a foreign state pursuant to the ICSID Convention may be enforced by bringing a plenary action in federal court in compliance with the requirements for commencing a civil action under the Federal Rules of Civil Procedure, and with

the personal jurisdiction, service, and venue requirements of the FSIA. *See Micula v. Gov't of Romania*, 104 F. Supp. 3d 42, 49–50 (D.D.C. 2015); *see also Mobil Cerro Negro, Ltd. v. Bolivarian Republic of Venezuela*, 863 F.3d 96, 100, 117–18, 119–20 (2d Cir. 2017).

48. Awards issued pursuant to the ICSID Convention are not subject to collateral attack in enforcement proceedings under 22 U.S.C. § 1650a. “Member states’ courts are . . . not permitted to examine an ICSID award’s merits, its compliance with international law, or the ICSID tribunal’s jurisdiction to render the award; under the Convention’s terms, they may do no more than examine the judgment’s authenticity and enforce the obligations imposed by the award.” *Mobil Cerro*, 863 F.3d at 102. The ICSID Convention therefore “reflects an expectation that the courts of a member nation *will treat the award as final*.” *Id.* (emphasis added); *see also id.* at 118 (noting that an “ICSID award-debtor . . . [is] not . . . permitted to make substantive challenges to the award”); ICSID Convention, arts. 53(1), 54(1).

49. Consistent with this mandate, 22 U.S.C. § 1650a(a) provides that the FAA “shall not apply to enforcement of awards rendered pursuant to the convention,” thereby “mak[ing] [the FAA’s defenses] unavailable to ICSID award-debtors in federal court enforcement proceedings.” *Mobil Cerro*, 863 F.3d at 120–21.

50. District courts thus enforce ICSID awards without allowing substantive challenges to enforcement of the awards. *See, e.g., Duke Energy Int’l Peru Investments No. 1, Ltd. v. Republic of Peru*, 904 F. Supp. 2d 131, 132–34 (D.D.C. 2012); *Tidewater Inv. SRL v. Bolivarian Republic of Venezuela*, CV 17-1457 (TJK), 2018 WL 6605633, at \*6 (D.D.C. Dec. 17, 2018).

\* \* \*

**CAUSE OF ACTION AND PRAYER FOR RELIEF**

51. Petitioners restate and incorporate paragraphs 1 through 50 of the Petition as set forth fully herein.

52. Arbitral awards issued pursuant to the ICSID Convention are subject to mandatory enforcement in the courts of the United States, which must give those awards the same full faith and credit as a final judgment issued by a state court. 22 U.S.C. § 1650a(a).

53. The Final Award was rendered in accordance with the ICSID Convention against Hungary and in favor of the Petitioners.

54. For the foregoing reasons, Petitioners are entitled to an order (a) enforcing the Final Award pursuant to Article 54 of the ICSID Convention, 22 U.S.C. § 1650a, in the same manner as a final judgment issued by a court of one of the several states, and (b) entering judgment thereon in favor of Petitioners and against Hungary in the amounts stated in the Final Award.

55. Petitioners request that the Court enter judgment in the precise foreign currencies specified in the Final Award. Final Award at ¶ 441. The Court has authority to enter relevant portions of the judgment in foreign currencies without conversion to American dollars. *See Leidos, Inc. v. Hellenic Republic*, 881 F.3d 213, 220 (D.C. Cir. 2018); *Cont'l Transfert Technique Ltd. v. Federal Gov't of Nigeria*, 932 F. Supp. 2d 153, 158 (D.D.C. 2013), *aff'd*, 603 F. App'x 1 (D.C. Cir. 2015); *Liberty Media Corp. v. Vivendi Universal, S.A.*, No. 03 Civ. 2175 (SAS), 2013 WL 105776, at \*2-3 (S.D.N.Y. Jan. 9, 2013).

\* \* \*

WHEREFORE, Petitioners Magyar Farming Company Ltd., Kintyre Kft, and Inícia Zrt respectfully request that this Court issue an order:

- (a) Enforcing the Final Award in the same manner as a final judgment issued by a court of one of the several states;
- (b) Entering judgment against Hungary and in favor of Magyar Farming Company Ltd., Kintyre Kft, and Inícia Zrt in the amount of €7,148,824 million, together with interest at the rate of 6-month Euro Interbank Offered Rate +2% compounded semi-annually percent per annum from August 1, 2015 until payment;
- (c) Entering judgment against Hungary and in favor of Magyar Farming Company Ltd., Kintyre Kft, and Inícia Zrt in the amount of EUR €19,473, together with interest at the rate of 6-month Euro Interbank Offered Rate +2% compounded semi-annually from November 13, 2019 until payment;
- (d) Entering judgment against Hungary and in favor of Petitioners Magyar Farming Company Ltd., Kintyre Kft, and Inícia Zrt in the amount of USD \$307,224.40, together with interest at the rate of 6-month Euro Interbank Offered Rate +2% compounded semi-annually from November 13, 2019 until payment;
- (e) Entering judgment against Hungary and in favor of Magyar Farming Company Ltd., Kintyre Kft, and Inícia Zrt in the amount of GBP £296,456, together with interest at the rate of 6-month Euro Interbank Offered Rate +2% compounded semi-annually from November 13, 2019 until payment;

- (f) Entering judgment against Hungary and in favor of Magyar Farming Company Ltd., Kintyre Kft, and Inícia Zrt in the amount of HUF 26,495,585.5, together with interest at the rate of 6-month Euro Interbank Offered Rate +2% compounded semi-annually from November 13, 2019 until payment; and
- (g) Any and all other further relief that the Court deems just and proper.

Dated March 4, 2020

Respectfully submitted,

By: /s/ Louis A. Russo

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