



Hungarian Helsinki Committee

NO CONSULTATION, HASTY CHANGES, "REFORMS" THAT FAIL TO ADDRESS COUNCIL RECOMMENDATIONS: ASSESSMENT OF CERTAIN REFORMS PROPOSED IN HUNGARY'S NATIONAL PLAN UNDER THE EU'S RECOVERY AND RESILIENCE FACILITY (RFF)

**Information Note by the Hungarian Helsinki Committee (HHC)
18 May 2021**

Hungary was allocated almost 5 900 Billion HUF (EUR 16.8 Billion) under the EU's [Recovery and Resilience Facility \(RFF\)](#): 2 500 Billion HUF (EUR 7.2 Billion) in non-refundable grants and 3 400 Billion HUF (EUR 9.6 Billion) in loans. For comparison, [Hungary's central budget for 2021](#) is planned with an income of 21 974 Billion HUF (EUR 62.5 Billion). Member States were to submit their detailed plans for the use of the Facility until 30 April 2021, following meaningful public consultations. [The Hungarian plan](#) was published on 16 April 2021, thus leaving two weeks for the assessment of the 430-page long document pertaining to 5 900 Billion HUF. On 23 April, Prime Minister Viktor Orbán visited European Commission President Ursula von der Leyen to discuss, among others, Hungary's RFF plan, but no details emerged after the meeting. Two days later, the Minister heading the Prime Minister's Office briefly stated in an [interview](#) that Hungary was not going to submit a plan for the entire RFF budget. Instead, the Government's proposal would only cover the non-refundable part of the Facility. The "consultation" on the plan was closed five days later, on 30 April. On 12 May, the Government [announced](#) that it had submitted its plan to the Commission. On 17 May, Parliament was set to begin debating the related amendment of Hungary's budget for 2021; two minutes prior to the beginning of the session, the new, 391-page long document was [published](#).

Notwithstanding the absurdity that the "consultation" was carried out about a plan the Government itself announced would never be submitted to the European Commission, the Hungarian Helsinki Committee sent detailed comments on the component it has competence in.

Preliminary remarks on the lack of consultations on the original plan

The original plan prided itself of wide-ranging consultations with stakeholders. According to it (p. 393), 467 individual entities were directly invited to participate in the consultation and present their comments and recommendations, including trade unions, professional chambers, churches, and social interest representation organisations (*társadalmi érdekvédelmi szervezetek*), e.g. organisations representing women, national minorities, persons with disabilities, youth organisations. However, the list of these 467 entities is not published anywhere. According to the document, out of the 467 entities a mere 59 submitted "meaningful comments" related to at least one of the components, eight of these were municipalities (p. 395). According to the table summarising these comments, not a single one of those were related to Component J.

Whereas Component J of the original plan focuses – among other topics – on corruption and judicial independence, **anti-corruption organisations** (Transparency International Hungary, K-Monitor) **and organisations engaging in work regarding judicial independence** (HHC, Amnesty International Hungary, Eötvös Károly Intézet) **have not been among those invited to provide input** (despite the fact that for instance the HHC and Amnesty directly and repeatedly approached the Ministry of Justice asking for a chance to consult on issues of judicial independence).

In light of this it is particularly striking that to date no response has been received to the letter signed by 60 organisations on 9 February 2021, requesting the secretary of state in charge of EU funds to conduct meaningful consultations on Hungary's RRF plan.

But what makes the lack of consultation on Hungary's RRF plan even more striking is that five days prior to the deadline to submit it to the European Commission, the Minister heading the Prime Minister's Office announced that the published document under consultation would not be submitted: instead, the Government had decided to use only the non-refundable element of the RRF, which is less than half of the total amount the published document includes.

Preliminary remarks on the lack of consultation on the submitted plan

Following the above described debacle, the Government published the plan it had previously submitted on 17 May 2021, two minutes prior to the beginning of the debate in Parliament on the related amendments to Hungary's 2021 budget. The new plan claims that wide consultations were held but refrains from providing any specifics and does not mention that consultations were held on a fundamentally different plan in any case.

Detailed comments

The originally published plan's Component J included "reforms" that allegedly addressed the rule of law related Country-Specific Recommendations (CSRs) of the European Semester Reports. This Component was renumbered as Component I in the submitted plan, and Reform 2 (research, workshops, and conferences on judicial independence) was removed.

Regarding those three "reforms" (Reforms 1, 2, and 5) in Component J of the originally published that the HHC has competence to form a relevant opinion about (consolidating the IT infrastructure of the prosecution service in order to enhance the fight against corruption, research aimed at reinforcing judicial independence, and data based decision- and law making processes), it is important to point out that they do not adequately address the Country-specific Recommendations (CSRs) of the European Semester Reports, especially in light of the explanations provided in the Reports for those particular CSR's.

1. IT infrastructure for the prosecution (Reform 1 of the originally published and the submitted plan)

According to [CSR 4 of 2019](#), the anti-corruption framework should be reinforced, including by *improving prosecutorial efforts and access to public information*. The underlying reason is that "while measures to fight low-level corruption appear to have been applied with some success, *there are still no signs of determined action to prosecute corruption involving high-level officials or their immediate circle when serious allegations arise*. Accountability for decisions to close investigations is a matter of concern, as *there are no effective remedies to contest such decisions*. The prevention of corruption is further hindered by *public institutions applying restrictions, including dissuasive fees for access to information*."

The introduction of a new IT system for the prosecution that makes internal communications and case management more efficient can have several positive impacts, but **will not in any way improve access to public information, nor will it address the issue of the lack of political will to look into high-level corruption**. Not even the individuals concerned by the criminal investigations are allowed access to internal case management documents of the prosecution, so **most of the information managed through the new IT system will be completely inaccessible for the public, so the proposed investment has absolutely no relevance for at least one part of the recommended result** (improved access to public information). More efficient internal communications and case management also will not in themselves improve the prosecution's willingness to address certain types of corruption.

2. Research, workshops, and conferences on judicial independence (Reform 2 of the originally published plan, not included in the submitted plan)

According to [CSR 4 of 2019](#), *judicial independence should be strengthened* in the framework of anti-corruption efforts. The underlying reason is that “*checks and balances, which are crucial to ensuring judicial independence, are seen to be under further pressure within the ordinary courts system*” and “*the National Judicial Council faces increasing challenges in counter-balancing the powers of the President of the National Office for the Judiciary*”.

While conducting research and organising professional workshops and conferences to discuss the results thereof can obviously contribute to understanding better the challenges threatening judicial independence, **such activities are highly unlikely to address those acute structural problems, problematic legislative measures and individual decisions that have created the situation described accurately in the 2019 European Semester Report.** Last year, the election of the Chief Justice against the overwhelming objection of the National Judicial Council provided a striking example of disregard for the voice of the judiciary. Several domestic and international organisations have warned – along with other problems – about how the overly broad authorisations of the National Office for the Judiciary’s President and the weak powers of the National Judicial Council create an imbalance and undermine judicial independence, but **no legislative steps have been taken amidst the numerous legal amendments concerning the Hungarian judicial system in the past years. In such a political context, the proposed project is clearly no more than a series of meaningless Potemkin activities to tick the box of judicial independence.**

3. Supporting data based decision- and law making (Reform 5 of the originally published plan, Reform 6 of the submitted plan):

According to [CSR 4 of 2019](#), Hungary should “improve the quality and transparency of the decision-making process through effective social dialogue and engagement with other stakeholders and through regular, appropriate impact assessments.” In terms of [CSR 4 of 2020](#), Hungary shall “*ensure effective involvement of social partners and stakeholders in the policy-making process. Improve competition in public procurement.*” According to the reasoning of this recommendation, “*social partners’ involvement in policy initiatives and implementation has been insufficient in recent years, which has weakened the quality and predictability of policy-making and increased the chances of policy mistakes. Consultations and impact assessments have been recurrently bypassed by applying special legislative procedures, such as individual member’s bills and urgent procedures. The involvement of stakeholders has been weakened further during the current system of ruling by government decree.*”

The “reform” presented in the plan (**training for 200 public officials on data visualisation techniques to visualise adopted legislation**) clearly cannot contribute to the implementation of the CSRs. Although **the “reform” should address the lack of consultation** with and involvement of stakeholders in policy-making, the only part where the proposed activities include consultation is at the end of the training cycle, when the results would be shown to focus groups made up of social partners.

Suggestions

A number of the actual issues are difficult to address through the types of activities and projects that are typically included in plans like the RRF. Many would require political will and/or relatively simple and straightforward legislative amendments (such as the problem raised in the 2019 European Semester Report that „the prevention of corruption is [...] hindered by public institutions applying restrictions, including dissuasive fees for access to information”) instead of lengthy and expensive projects. However, there are some projects that could actually contribute to the aims set out in the CSR’s.

- The National Judicial Council (NJC) still has no individual infrastructure. Its website is still paid from the pocket of its members. **One possible meaningful way of spending the RRF funds is to secure the financial and human resources required for the smooth and effective operation of the NJC and other local bodies of judicial self-governance** so that the

material conditions of their operation would not be in the hands on the institutions and persons they are supposed to supervise.

- Another project with potential impact regarding the public's access to information and the improvement of judicial independence and public trust in the functioning of the justice system is the **creation of the infrastructure for streaming court hearings**. Due to data protection concerns, this possibility should only be provided **in cases when one party is the state or another public authority** (e.g. administrative cases or civil lawsuits involving state bodies) and **only upon the request of the non-state party**. Of course, it would still remain a possibility for the judge to ban the streaming in case any special circumstance warrants it. Streaming hearings regarding freedom of information requests could have an important impact in informing the public and incentivise public authorities to provide access to information of public interest in the widest possible circle of cases.
- In order to ensure the independent and impartial administration of justice, a **transparent, automatic case allocation system**, based on predetermined rules shall be introduced. The system shall be operated through a **closed IT system that ensures the automatic allocation of all cases without human interference**. The IT system shall also ensure that in each case, parties are able to **trace the basis of the particular allocation**, including in cases where there was a derogation from the predetermined case allocation rules.