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## Brief Assessment in Relation to the Resolutions Adopted by the Hungarian Government on 5 September 2022 to Reach an Agreement with the European Commission in the Framework of the Conditionality Mechanism

12 September 2022

*Government Resolution No. 1424/2022 (IX. 5.) on the tasks related to the establishment of an independent authority for the prevention, detection and correction of irregularities involving the management of EU funds<sup>1</sup>*

The Government has undertaken to create two new public institutions:

- (1) an independent authority which is called to take action when the competent authorities have failed to act to protect EU funds ('Anti-Corruption Authority').
- (2) a so-called new *Anti-Corruption Working Group* with a parity of participation between governmental and non-governmental stakeholders.

*Government Resolution No. 1425/2022.(IX. 5.) on the development of a performance measurement framework to assess the efficiency and cost-effectiveness of public procurement procedure<sup>2</sup>*

The Government calls on the Minister for Regional Development to ensure

- (1) the elaboration of a performance measurement framework (PMF) to assess the efficiency and cost-effectiveness of public procurement procedures and to examine the possible causes and effects of single-bid procurement, including cases where the single-bid rate exceeds the 15 % threshold.
- (2) the recruitment of independent non-governmental organizations and procurement specialists to contribute to the establishment and operation of the PMF.
- (3) that independent non-governmental organizations and specialists are involved in such a way that their views and recommendations are sought, taken into account and reflected in the design of the elements of the PMF, when determining the methodologies used in PMF and in the formulation of the conclusions to be drawn from the data.
- (4) publication of the PMF's results on an e-procurement platform by 28 February each year.

Schedule:

- **by 30 September 2022:** draft bills on the new *Anti-Corruption Authority* and *Anti-Corruption Working Group* (ACWG) submitted to the Parliament (including their budgeting). Responsible: the Minister of Interior, the Minister overseeing the Prime Minister's Cabinet, the Minister overseeing the Prime Minister's Office, the Minister of Finance and the Minister for Regional Development in consultation with the European Commission, the OECD and 'other national and international organizations'
- **by 10 October 2022:** recruitment and involvement of independent specialist to the PMF

<sup>1</sup> Published in Hungarian Gazette No. 144 of 2022, p. 6037

<http://www.kozlonyok.hu/nkonline/MKPDF/hiteles/MK22143.pdf>

<sup>2</sup> Published in Hungarian Gazette No. 144 of 2022, pp. 6038-6039

<http://www.kozlonyok.hu/nkonline/MKPDF/hiteles/MK22143.pdf>

- **by 21 November 2022:** new *Anti-Corruption Authority* is expected to start its operation
- **by 30 November 2022:** kick off of PMF
- **by 1 December 2022:** setting up the ACWG

Assessment:

- A resolution is only a statement of intent by the government, not a law. As it is not legally binding, the government can repeal or change it any time, as it did with the Government's previous resolution, adopted earlier this summer and aiming to set up an anti-corruption taskforce by mid September.<sup>3</sup> Pursuant to that previous resolution, repealed by the current one, NGOs would not have had the right to vote and express their views in the anti-corruption taskforce.
- There has been no public consultation on either of the resolutions, which indicates that the Government has no intent to take into account the opinions of different stakeholders while designing a new anti-corruption framework.
- If the Government sticks to the planned legislative schedule, before the new *Anti-Corruption Authority* and the ACWG are set up there will be no time for public participation either.
- The European Commission's position, and the course of the negotiations between the European Commission and the Hungarian Government equally lack transparency.<sup>4</sup>
- The plan for a new *Anti-Corruption Authority*, the ACWG and PMF indicates that competent state bodies (prosecution service, Public Procurement Authority, Competition Authority, State Audit Office, etc.) are not functioning properly.
- Currently existing state authorities with anti-corruption duties, whether independent of the Government or not, have been constantly failing to uncover and sanction corruption and wrongdoing, which raises serious concerns if the new *Anti-Corruption Authority* would in reality improve the Government's poor anti-corruption performance.
- Rules on PMF will be issued by a member of the Government and not by the Parliament. This means that no transparency requirements will apply, nor will prior public consultations take place.
- Due dates in the resolutions are pivotal because the European Commission has to decide until the end of September whether to accept the Hungarian measures or continue the procedure. We do not believe that even the legislation now planned will be adopted by that date.<sup>5</sup>

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<sup>3</sup> Government Resolution No. 1337/2022. (VII. 15.) repealed by Government Resolution No. 1424/2022 (IX. 5.)

<sup>4</sup> See K-Monitor's summary on its freedom of information requests:

[https://k.blog.hu/2022/08/26/the\\_european\\_commission\\_refused\\_to\\_release\\_the\\_notice](https://k.blog.hu/2022/08/26/the_european_commission_refused_to_release_the_notice)

<sup>5</sup> See Article 6 of the Regulation 2020/2092