



Recommendations for tackling corruption and protecting the EU budget

12 September 2022

The ongoing negotiations between the Government of Hungary and the European Commission regarding the conditions for Hungary's access to the EU's Recovery and Resilience Facility as well as the Conditionality Regulation, triggered by the European Commission in April 2022, provide an exceptional momentum to be seized to recover certain rule of law safeguards and build institutional resilience against further backsliding in Hungary. The Hungarian Government would need to make real commitments to tackle corruption in Hungary and to protect the European Union budget in the framework of these processes. However, the commitments made and legislative proposals put forward by the Government so far are clearly insufficient to reach any of these goals. Below, we outline a minimum set of proposals in three areas that would be capable of bringing meaningful change.

Recommendations to build a resilient anti-corruption framework

Although a new anti-corruption authority as outlined in the latest set of anti-corruption commitments by the Government designed to take action if competent authorities fail to prevent or sanction corruption is an important step forward, it would not stop corruption.¹ Considering the fact that corruption has become part of the political system in Hungary, the strengthening of existing anti-corruption solutions ought to follow a systemic approach. To this end, we recommend the following steps:

1. Depoliticise the anti-corruption framework by amending the respective regulations to prevent the appointment of political loyalists to key positions of public authorities charged with combating corruption and by ensuring that these currently captured authorities demonstrate a high level of integrity when examining sensitive cases.
2. Enable third party interventions and public interest ('*qui tam*') litigation if state institutions competent for tackling corruption, such as, *inter alia*, the Public Procurement Authority, the State Audit Office, the Prosecution Service, etc., fail to act on their own.
3. Revisit the design and examine the practice of the Public Procurement Authority and the Public Procurement Arbitration Board in order to identify signs of potentially systemic partiality in the decision-making, ensure precise delimitation of responsibilities and introduce institutional guarantees of equal opportunities and fairness in the judicature of these institutions.
4. In line with the recommendations of the GRECO and the Venice Commission, and with respect to the conclusions of the Hungary chapter of the European Commission's 2021 Rule of Law Report, ensure that the administrative and procedural powers accorded to the Prosecutor General and to other members of the senior hierarchy and the leadership of the Prosecution Service are balanced by legal safeguards to prevent the possibility of wrongful actions and omissions in relation to both case management and internal administration as well as human resources management vis-à-vis prosecutors.
5. Revisit the legal framework that governs freedom of information and remove regulatory barriers introduced since 2010 in order to ensure that public authorities and entities that manage public funds enable the accessibility of public interest information in their possession, and promote the culture of transparency within and outside of the governmental sphere.

¹ For details, see the joint assessment of K-Monitor, TI Hungary and the Hungarian Helsinki Committee of the related Government Regulations: <https://helsinki.hu/en/wp-content/uploads/sites/2/2022/09/Assessment-of-Government-Regulations.pdf>

6. Replace the recently introduced hypocritical rules on asset and interest declarations by a functional system that allows for the monitoring of the enrichment of public functionaries and those who manage public funds in line with the policy recommendations proposed by anti-corruption watchdog organisations in order to ensure transparency of the value and the source of enrichment and deterrent sanctions in case of malpractice.
7. Reinforce the system in place to protect whistleblowers by encouraging the Hungarian Government
 - a. to implement without delay the Whistleblower Directive (2019/1937/EU),
 - b. to reverse the burden of proof in cases where whistleblowers seek legal remedy,
 - c. to introduce new standards in order to effectively protect and support whistleblowers.
8. Real solution for tackling corruption would be to join, without delay, the European Public Prosecutor's Office.

Recommendations to restore the independence of the judiciary

There is no effective anti-corruption framework without an independent judiciary. However, despite the decade-long efforts of the Government to undermine the independence of Hungarian judges, the ensuing structural deficiencies of the justice system, and the worsening reality on the ground,² news about the ongoing negotiations between the Government and the European Commission suggest that no commitment has been made regarding the independence of the judiciary. If systemic issues remain unaddressed as outlined below,³ ensuring an effective anti-corruption framework is not possible, since relevant cases can easily be left to be adjudicated by occupied benches.

1. Depoliticize and decentralise court administration powers.
 - a. Ensure that court management powers are not held by political appointees.
 - b. Strengthen the position of the National Judicial Council among others by extending its powers to take the necessary actions if the president of National Office for the Judiciary or the Chief Justice of the Kúria fail to carry out their statutory duties or follow an unlawful practice.
2. Remove unfettered discretionary powers with respect to judicial careers.
 - a. Establish effective supervision over administrative powers as regards the career of judges.
 - b. Abolish all appointments to judicial positions that circumvent ordinary application procedures.
3. Fix deficiencies in the case allocation system and ensure the right to a tribunal established by law.
4. Restore effective constitutional review of laws and the Constitutional Court's independence.
 - a. Change the rules for nominating and electing Constitutional Court judges.
 - b. Repeal the right to submit constitutional complaints by state agencies.

Recommendations to ensure meaningful public consultation

The amendments submitted to the Parliament by the Government in July 2022 to the rules of public consultation do not offer real solutions.⁴ In order to indeed ensure that meaningful public consultation on draft laws prepared by the Government takes place, already existing rules should be complied with, and it should be prescribed that laws cannot become and/or remain part of the legal system if the rules on consultation are breached.

1. Prescribe that Bills submitted by the Government can be put on the Parliament's agenda only if they include an adequate and duly reasoned documentation of the consultation process, or a detailed reasoning on why in the Government's view consultation was not needed (or allowed) under the law.
2. Prescribe on a legislative level that the omission of public consultation or the failure to provide detailed reasoning for not conducting public consultation constitutes sufficient reason for the annulment of the adopted legislation on procedural grounds by the Constitutional Court.

² See the Hungarian Helsinki Committee's related brief of 12 September 2022: <https://helsinki.hu/en/wp-content/uploads/sites/2/2022/09/anti-corruption-framework-needs-independent-judiciary.pdf>

³ For a detailed set of recommendations in relation to judicial independence, see: https://helsinki.hu/en/wp-content/uploads/sites/2/2022/07/HHC_HU_RoL_recommendations_judiciary_July2022.pdf.

⁴ For a detailed assessment of the Government's proposal, and for a set of meaningful recommendations in relation to public consultation, see: https://helsinki.hu/en/wp-content/uploads/sites/2/2022/07/HU_RRF_Bills_assessment_rec.pdf.