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HALF-HEARTED PROMISES, DISAPPOINTING DELIVERY

An Assessment of the Hungarian Government's New Measures to Protect the EU Budget and Related Recommendations

7 OCTOBER 2022

Executive summary

As a result of the negotiations between the European Commission and the Hungarian Government following the triggering of the Conditionality Mechanism, 17 specific and one general commitment have been included in the Commission's proposal for a Council Implementation Decision ('Commission Proposal'). Without any public consultation or published impact assessments, the Hungarian Government rushed through Parliament five bills by 4 October to deliver on its commitments. A sixth bill is pending with the Parliament, the final vote is expected during the week of 10 October 2022. **This analysis reviews 8 key elements of the adopted laws and the proposed bill in light of the commitments made by the Government and included in the Commission's Proposal:**

1. Public consultation in law-making
2. Independent judiciary respecting the primacy of EU law
3. Conflicts of interest in public interest asset management foundations
4. A new Integrity Authority and a new Anti-Corruption Task Force
5. New rules on asset declarations
6. Transparency of public spending and access to information
7. Extraordinary legal remedy to bring corruption cases to justice by private prosecution
8. Changes to public procurement

The absolute lack of transparency, public consultations and published impact assessments in the process that preceded the adoption of what was supposed to be the largest anti-corruption legislative package in Hungary in over a decade foreshadowed the contents of the changes. **While in some of the above areas it is possible to identify steps in the direction suggested by the European Union, the Government, when formulating remedial measures, was careful not to introduce changes that would shake the institutional and procedural fundamentals of the captured, illiberal state.** This is best exemplified by the new Integrity Authority, the establishment of which equates to a self-incriminating confession on the Government's behalf that other, currently existing state agencies tasked with the protection of European Union funds constantly fail to carry out their duties.

Although this new authority will be empowered to suspend ongoing public procurement processes, its powers in general are limited to request information, carry out analyses, make recommendations and invite other agencies to take action in their respective field of competence, while it will be strictly banned from taking over cases from existing authorities. Should these fail to do so, as it has been the case for over a decade now, the Integrity Authority would be able to bring lawsuits against them. The ongoing legislative process leaves Hungary’s captured authorities under the direction of political appointees. Even the limited role of the Authority to flag corruption could be watered down if political loyalists will be selected as its leaders.

In another legislative amendment, adopted rapidly and without any prior consultations, the Government expanded the circle of those entitled to take cases of perceived corruption or mismanagement before a criminal court if the prosecution service fails to indict. If the Constitutional Court approves these changes, besides private individuals, civil society organisations will also be empowered to step up as litigants, but not the Integrity Authority. However, due to numerous shortcomings, this new extraordinary remedy process will hardly prove effective in the fight against corruption.

Moreover, despite the Government’s general commitment to respect and strengthen judicial independence, no legal changes are introduced to ensure that cases brought before justice will be dealt with by judges appointed in a lawful manner. That the current legal framework cannot guarantee the right to a tribunal established by law is evident from the fact that the President of the Kúria, Hungary’s highest court, appointed five judges to the Kúria unlawfully in 2021. Four of these judges are hearing administrative law cases, the type of cases that can involve public procurements or other proceedings that affect the spending of EU funds.

Overall, the already half-hearted promises of the Government were delivered in a disappointing manner, resulting in changes that remain insufficient to protect the Union budget. In order to advance durable and substantive changes, our analysis includes recommendations at the end of each section that could still be implemented prior to a final vote on the Commission’s proposal.

An Annex at the end of the document summarises the main deficiencies of the proposed remedial measures.

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The negotiations between the Hungarian Government and the European Commission following the triggering of the Conditionality Mechanism ended on 18 September 2022 with the European Commission submitting a proposal for a Council Implementing Decision ('Commission Proposal').¹ The Commission Proposal includes a set of 17 specific and one general commitment of the Hungarian Government made during the negotiations, most of which require legal changes.

During and following the negotiations, the Hungarian Government submitted six bills to Parliament to deliver on the commitments made. Two of these bills had been already submitted in July 2022 while four followed the Commission's decision of 18 September 2022:

1. [Bill T/705](#) on the amendments of Act CXXX of 2010 on Law-making and on Act CXXXI of 2010 on Public Participation in Preparing Laws *in the interest of reaching an agreement with the European Commission* (emphasis added), submitted on 19 July 2022, adopted on 4 October 2022;
2. [Bill T/706](#) on the amendment of Act XC of 2017 on the Code of Criminal Procedure *in the interest of reaching an agreement with the European Commission* (emphasis added), submitted on 19 July 2022, adopted on 4 October 2022;
3. [Bill T/1202](#) on the amendment of certain acts *in the interest of reaching an agreement with the European Commission* (emphasis added), submitted on 19 September 2022, adopted on 4 October 2022;
4. [Bill T/1260](#) on controlling the use of funds of the budget of the European Union, submitted on 23 September 2022, adopted on 4 October 2022;
5. [Bill T/1261](#) on the amendment of certain acts related to the controlling of the use of funds of the budget of the European Union, submitted on 23 September 2022, adopted on 4 October 2022;
6. [Bill T/1311](#) on the amendment of certain acts in connection to the asset declarations, related to the controlling of the use of funds of the budget of the European Union, submitted on 27 September 2022, not yet adopted.

The absolute lack of transparency in what was supposed to be the largest anti-corruption legislative package in Hungary in a decade foreshadows the contents of the bills. Although legal obligations to consult the public already exist and the Government made commitments to the European Commission to respect them, and even devoted an entire new bill to this, the Government has failed to conduct any public consultation on the bills or publish impact assessments as required by the laws. On the contrary: in keeping with its decade-long tradition to submit last-minute amendments to bills that had been introduced in Parliament without any prior public consultation, the Government introduced a total of 90 amendments through a parliamentary supercommittee just three days before the plenary vote took place on the adopted five bills.

The analysis below focuses on 8 key elements of the adopted laws and the still pending bill and explains why they fall short of the commitments the Government has made and will not be sufficient to protect the Union budget.

¹ European Commission, [Proposal for a Council Implementing Decision on measures for the protection of the Union budget against breaches of the principles of the rule of law in Hungary](#), 18 September 2022, COM(2022) 485 final

1. Public consultation in law-making

Existing laws on law-making and on public participation in preparing laws already prescribe a duty for the Government to hold public consultations ahead of submitting bills.² A wide array of exceptions are already allowed under these acts, providing the Government with ample grounds to derogate from the requirement to hold public consultations. Detailed rules on public consultations provide that the minister in charge of the bill must publish the draft text, including the proposed reasoning, along with a summary of the impact assessment, at the same time when the draft is circulated among other government agencies. At the end of the consultation period, the minister in charge of the bill should also publish a typified summary of rejected suggestions received during the public consultation process, with reasons for rejecting them.³

The Government has never fully complied with these requirements; even in the rare cases it did carry out a public consultation prior to submitting a bill to Parliament, no summary was published on the rejected suggestions and the reasons for rejection.⁴ Whenever public consultations did not take place, the Government failed to provide any explanation and did not refer to any of the grounds for exception provided by law. According to its 2020 annual report, the National Authority for Data Protection and Freedom of Information requested information from the Government for the reasons of this consistent breach of law but has not received a response.⁵

The new T/705 bill, submitted without any public consultation, **introduces a weak sanctioning mechanism in case consultation is omitted**. The Government Control Office (GCO) is tasked to prepare annual reports on consultations and is now able to impose fines on ministries in certain cases. However, these **measures are superficial**. First, issuing fines has no deterrence because from the state's point of view, it is merely a question of accounting: fines would end up in the same budget from which ministries are allocated funds every year. Second, the GCO is fully subordinated to the Government, thus it has no functional independence, a factor that questions whether the GCO can appropriately fulfil this new role. Third, it is worth noting that the GCO played a key role in the 2014 crackdown on the consortium of civil society organisations (CSOs) that distributed the EEA/Norway civil society grants in Hungary, another clear indication that it lacks the necessary autonomy while it is ready to spearhead government actions that stand on shaky legal grounds and illustrate clear political bias.⁶

To indeed ensure that meaningful public consultations take place, we recommend to:

1. Amend the Rules of Procedure of the Parliament so that bills submitted by the Government that fall under the compulsory public consultation mechanism must include the impact assessment, a summary of the consultation process as well as the typified summary of rejected suggestions received in the framework of the consultation process, with the

² Article 19 of Act CXXX of 2010.

³ Articles 7-11 of Act CXXXI of 2010.

⁴ See statistical data and a brief history of how the Government circumvented and ignored consultation obligations in the [joint submission of Amnesty International Hungary, the Eötvös Károly Institute and the Hungarian Helsinki Committee to Hungary's 3rd UPR](#), 25 March 2021, pp. 13-15; and the [statement of the Hungarian Helsinki Committee made during the OSCE SHDM II 2021 on democratic law-making: ensuring participation](#), 26 April 2021.

⁵ National Authority for Data Protection and Freedom of Information, [2020 Annual Report](#), p. 151.

⁶ See EU Observer, [Hungary raids Norway-backed NGOs](#), 10 September 2014, or news items on the official website of the GCO related to this issue, e.g.: <https://kehi.kormany.hu/http-mno-hu-celpont-musor-norveg-minta-1232085>.

reasoning for the rejection. Should the bill fail to include these elements, it should not be put on the agenda (“*tárgysorozatba vétel*”).

2. Bills submitted by the Government that do not fall under the compulsory public consultation mechanism under Article 5 (3) and (4) of Act CXXXI of 2010 must include a detailed reasoning why in the Government’s view no public consultation was needed (or allowed) regarding that particular piece of legislation. Should the bill fail to include such a detailed reasoning, the bill shall not be put on the agenda (“*tárgysorozatba vétel*”).
3. Amend Act CXXX of 2010 on Law-making so that it makes it clear that the omission of a public consultation or the failure to provide detailed reasons for not conducting a public consultation constitutes sufficient reason for the Constitutional Court to annul the adopted legislation on procedural grounds.

Even if these recommendations are complied with, and the respective laws are amended accordingly, there is a risk that the governing majority will simply return to the practice of circumventing public consultations by having important and politically sensitive bills (often prepared within the ministries) submitted by individual members of Parliament or parliamentary committees where governing parties have a majority.⁷ This was particularly characteristic of the 2010-2014 parliamentary cycle, but there are also more recent examples, such as abolishing the independent equality body and merging it into the Ombudsperson’s office.⁸

Therefore, in addition to the above listed legislative recommendations, we suggest that the European Commission closely monitors the practice of public consultations in the framework of the annual Rule of Law Report process and formulates specific recommendations in that framework if the Government returns to the practice of using individual MPs or parliamentary committees to submit bills that are in fact initiated and prepared by the Government.

2. An independent judiciary is needed to combat corruption effectively

In Bill T/1260 and Bill T/706, the Government committed to introduce two new key measures: to set up an Integrity Authority and to allow for the judicial review of prosecutors' decisions to dismiss a crime report or terminate the criminal proceedings in corruption-related cases. **The possibility of judicial review should be deemed as a crucial element of the effectiveness of the proposed measures.** For this reason, the Hungarian government expressly undertook that *“all courts in Hungary hearing civil, administrative and criminal cases including those relevant for the protection of the financial interests of the Union shall comply with the requirements of independence, impartiality and being established by law in accordance with Article 19(1) of the Treaty on European Union and the relevant EU acquis.”*

The seriousness of the Government’s pledges on independent courts is dubious considering that **not a single concrete implementation step, deadline or detailed task was linked to this undertaking.** Consequently, none of the legislative amendments proposed by the Government until 6 October 2022 tackle the grave issues raised with respect to the independence of the judiciary.

⁷ See, for example, Parliamentary Assembly of the Council of Europe, Monitoring Committee, [Request for the opening of a monitoring procedure in respect of Hungary](#) Doc. 13229, p. 9, § 23.

⁸ Hungarian NGO coalition “Civilizáció” [statement on Abolishing the Equal Treatment Authority and transferring its tasks to the Ombudsperson may further weaken human rights protection in Hungary](#), 26 November 2020.

For over a decade, judicial independence in Hungary has been under constant pressure. The recurring attacks against independent courts and individual judges demonstrate an explicit unwillingness on the part of the Government to respect the independence of courts, which cannot be resolved or restored by a mere statement. **Concrete legislative actions must be taken to implement this commitment.**

If no legislative steps are taken to restore the independence of courts and judges in Hungary, **all the new procedures the Hungarian government offered to introduce will end up in a court system where court management powers are concentrated in the hands of political appointees who have almost total freedom to allocate any case to any judge within the judiciary, converting the system of court administration into an inroad of corruption.** Unfettered discretionary powers allow administrative leaders to manipulate the status of individual judges: they may remove any sitting judge from cases involving public authorities, may prevent any judge from being appointed to a higher position and may promote judges in ways that circumvent ordinary application proceedings. Disciplinary proceedings can be brought against any national judge for making a preliminary reference to the Court of Justice of the European Union (CJEU) about judicial independence, and any unfavourable court decision in politically sensitive cases can be taken further from the ordinary court system to an already packed Constitutional Court for review.

The commitment to guarantee that Hungarian courts are independent, impartial, and established by law will remain manifestly frivolous until the systemic deficiencies, described below, are tackled by modification of the laws. **Any and all legislative amendments affecting the judiciary must be carried out through a wide public consultation process that involves all relevant stakeholders, especially judicial self-governing bodies and civil society organisations,** and should also take into account the yet unimplemented recommendations and concerns articulated by relevant recognised institutions, e.g., in various opinions of the Venice Commission or in the European Semester and annual Rule of Law Reports of the European Commission.

A list of inevitable modifications⁹ has already been proposed by the Hungarian Helsinki Committee, which can be supplemented further in light of the most recent developments.

4. **The legislation must provide for adequate domestic legal remedy against unlawful judicial appointments at the Kúria** (the apex court of Hungary) for parties to a lawsuit in whose cases unlawfully appointed Kúria judges adjudicate; and **ensure the accountability of the Kúria President by judicial self-governing bodies for breaching the law in his capacity as administrative court leader.** The results of a most recent FOI request prove¹⁰ that several justices at the Kúria were appointed in breach of the procedural rules of appointment by the Kúria President. Irregularly appointed Kúria justices include Mr Barnabás Hajas, a former state secretary of the Minister of Justice appointed to the judicial bench at the highest court of Hungary without any prior experience as a judge.
5. **The possibility of Constitutional Court members to secure an appointment to the Kúria at their request should be abolished.** As a result of a recently introduced and politically

⁹ Hungarian Helsinki Committee, [Recovery and Resilience for Judicial Independence in Hungary](#), 18 July 2022.

¹⁰ Hungarian Helsinki Committee, [Tribunal Established by Sleight of Hand - Unlawful Judicial Appointments at the Kúria](#), 4 September 2022.

motivated change, the members of the Constitutional Court (CC) will be automatically appointed to the Kúria at their own request, even without prior judicial experience in the ordinary court system, once their mandate as CC judges ends (including when they resign). This enables packing Hungary's top court with members appointed by the ruling majority. Recent news¹¹ forecast the transfer of yet another CC justice to the Kúria who was elected without needing the support of opposition parties and has no prior experience as a judge.

6. **The system of judicial secondments must be amended to exclude the arbitrary transfer of judges.** Recent research¹² shows that the current legislative system allows the Kúria President and the President of the National Office for the Judiciary (NOJ) - both political appointees elected without the meaningful participation of judicial self-governing bodies - to manipulate judicial careers, select and transfer judges in an arbitrary manner and circumvent the ordinary route for appointing judges.
7. **Establish guarantees with respect to case allocations, including at the Constitutional Court.** The law grants full discretion to court presidents to establish the case allocation scheme, while the provisions regulating the general rules on case allocation are too vague to sufficiently delimit the decisions of court presidents. The legal framework on case allocation provides for a wide range of exceptional rules without establishing guarantees against their inappropriate application. Procedural rules attached to the process of the modification of the case allocation system do not provide enough safeguards against manipulative modifications. Moreover, in the case of the Kúria, the law expressly authorises the Kúria President to use the case allocation scheme as a tool to transfer judges within the Kúria. Parties to a lawsuit are not informed if an exception to the allocation scheme is made in their case, and there are no truly effective remedies against such decisions. The Constitutional Court does not have a case-allocation scheme at all. Since the entry into force of the Fundamental Law in 2012, the Constitutional Court of Hungary gained the competence to review final and binding judgments delivered by ordinary courts with respect to their compliance with the Fundamental Law. This means that the safeguards attached to the right to a lawful judge should be applied at least in the case of those constitutional complaints that are initiated to review decisions of ordinary courts. Nevertheless, the Constitutional Court does not have a case allocation scheme and cases are assigned to judges as case rapporteurs under non-transparent rules.
8. **The judgement of the Court of Justice of the European Union (CJEU) delivered on 23 November 2021 in Case C-564/19¹³ must be executed.** Without a proper modification of the law, the Hungarian legislation will allow the Kúria to declare that a request for a preliminary ruling which has been submitted to the CJEU under Article 267 TFEU by a lower court is unlawful. Furthermore, on this ground, disciplinary proceedings can be brought against a national judge for making a reference for a preliminary ruling to the CJEU in relation to judicial independence, or, potentially, other politically sensitive issues.

¹¹ hvg.hu, [Alkotmánybíró lehet a korábban Orbánt is megbírságoló Patyi András](#), 15 September 2022.

¹² Hungarian Helsinki Committee, [Background Paper on Systemic Deficiencies of the Legal Framework and Practice of the Secondment of Judges in Hungary](#), 6 September 2022.

¹³ [Judgment](#) of the Court (Grand Chamber) in Case C-564/19, 23 November 2021, ECLI:EU:C:2021:949

3. Public interest asset management foundations

While it is an important step that according to Bill T/1202, public interest asset management foundations (also called 'public interest trusts') and the legal entities established or maintained by them from now clearly fall under the obligation to carry out public procurements, the Bill **fails to address the main issue at stake: that public assets in unprecedented quantities¹⁴ were transferred to these special entities of private law and were hence basically privatised, while the government appointed to the foundations' boards members or dependents of the governing majority and individuals with close ties to the governing party**, including ministers, secretaries of state, and members of Parliament.¹⁵ Furthermore, the law provides that the funding of these entities should be secured by the state budget.

In an attempt to privatise immense public wealth and public universities, the governing majority created a legislative framework that **removed formal state control over the foundations**:

- This and any future government lost all control over the management of the foundations, since all founding (management) rights of the government were transferred to the newly appointed boards, including the right to select their own successors and the right to amend the foundation's articles of incorporation.
- The public wealth transferred for free to the foundations can hardly be taken back by this or any future government, even in case the foundations cease to carry out public functions (which can occur because they are exempted from the obligation to use their assets to carry out activities that are directly related to their public purpose). Among the institutions governed by these foundations are many that received EU funding in the last decade. Thus, the resources established with the support of EU money that had been granted to public institutions became the private property of the foundations.
- Although the founding wealth as well as the future financing of the foundations are public money, due to the 9th Amendment to the Fundamental Law, these instruments lose their public nature once they are transferred to the foundations. The leeway for a public scrutiny is doubtful as the legislation states that these entities are governed by private law and that the state must respect their autonomy. It is therefore questionable whether the State Audit Office will have the power to examine their use of public funds and state subsidies.
- As all proprietary rights have also been transferred to the boards, the government as founder has lost the possibility to influence the use of any of the foundation's funds.

The state has endowed the altogether 33 foundations with public assets of extreme value – only the value of the transferred shares of state companies amounts to around EUR 3 billion according to Transparency International Hungary's estimates¹⁶ – and it is bound by law to continue to generously finance them.

At the same time, the boards, to which the state ceded all founder's rights, are composed of life-long members whose dependence on the governing party is unquestionable, with many being current

¹⁴ For a geographic representation of public assets transferred to the public interest asset management foundations, see this [map](#) compiled by K-Monitor.

¹⁵ For an overview of the main problems in relation to public interest asset management foundations, see [Creating a Parallel State Structure I.: Public Trust Funds Performing a Public Function. Information Note by the Hungarian Helsinki Committee](#), 21 May 2021.

¹⁶ [Közalapítványi birodalom: akár még 30 év múlva is Kásler dönthet az egészségügyről - podcast - Helsinki Figyelő](#), 26 April 2021.

members of the Government and the governing majority in the Parliament.¹⁷ The law was challenged before the Constitutional Court last summer, however, the Court remained inactive and has not scheduled the case for deliberation yet.¹⁸ Conflicts of interest should be also raised with respect to board members of foundations who are in leading positions at private corporations partially owned by the foundation¹⁹ or that can benefit from public interest trusts (e.g., education programs tailored to the needs of a company, while its CEO is a board member of a technical university close to their production plant).

Due to the above, **the new conflict of interest rules introduced by Bill T/1202 are clearly insufficient and inadequate.** The envisaged rules set out that, among other actors, members of the boards and the supervisory bodies of the foundations shall not take part in the decision-making of the foundation in case of a conflict of interest with regard to that particular decision. Those affected by a conflict of interest, or the risk or appearance thereof shall report this before the concerned decision would be adopted. Conflict of interest is defined as follows: if someone is unable or is able only to a limited extent to exercise their functions in an impartial, objective and unbiased manner for reasons of economic interest or any other direct or indirect personal interest or circumstance (including family, emotional life, political or national ties), they shall refrain from any activity which could adversely affect the interests of the foundation or those transferring assets to the foundation directly or indirectly.

The wording of the newly introduced rule is indeed based on Article 61 of the EU's Financial Regulation,²⁰ but **it is entirely unable to resolve the conflict of interest** for the following reasons:

- Ministers, MPs and other actors close to the Government will remain on the boards of the foundations.²¹
- Board members' terms are indefinite; therefore, any future Government will have no formal control over them, and they will also be able to select their successors.
- Concerns regarding conflict of interest and exclusion from decision-making must be examined on a case-by-case basis. This paves the way for a case-by-case application of law and discretionary decisions. Cases of conflict of interest are difficult to assess, as these entities may receive funding from the Hungarian state, the EU, the business world or even from foreign states at the same time.
- If the conflict of interest rules are violated, it is the board as a body, or another office holder appointed by the Government who has the right to challenge in court the decision in which the conflicted member voted. Consequently, there is no independent body that can enforce conflict of interest rules in court.
- Under Hungarian law, third parties are not entitled to challenge the decisions of the board. Should third parties have standing before the court, they will not be able to enforce conflict of interest rules either, since public interest trusts do not comply with the transparency

¹⁷ For a list of the foundations and their board members (current on 27 September 2022), see Hungarian Helsinki Committee, [List of Public Trust Funds Performing a Public Function](#), 27 September 2022.

¹⁸ K-Monitor's [amicus curiae submission](#) to the Constitutional Court, Case No. II/02280/2021.

¹⁹ For example, such a conflict of interest could arise with respect to Zsolt Hernádi who is both the chairman of the national oil company MOL, and leads the board of the foundation that received 10 percent of the shares of the company, or Gábor Orbán, CEO of Richter Gedeon Nyrt, who is leading the board of the foundation behind the Semmelweis University that holds Richter shares.

²⁰ European Commission, Directorate-General for Budget, [Financial regulation applicable to the general budget of the Union: July 2018](#), Publications Office, 2019.

²¹ In practical terms: even under the envisaged new provisions, it remains possible for example that Ms Judit Varga, as Minister of Justice, would issue a ministerial decree that favours the University of Miskolc, which is managed by the foundation she presides over.

requirements set by freedom of information law. Decisions of the public interest trusts are not accessible to the public. Public interest trusts' refusal to publish data on their work proactively has been challenged before the National Authority for Data Protection and Freedom of Information in vain.²²

A further disquieting fact is that board members receive generous remuneration from the respective foundations on the board of which they sit, allowing a lucrative enrichment to ministers and secretaries of state, which would fall under conflict of interest regulations, had the original law that governs public trusts not removed such requirements. For example, Nándor Csepreghy, deputy of the minister in charge of state investments, gets a monthly HUF 2 million (about EUR 4,700) as board president of one of the foundations.²³ According to their asset declarations, Minister of Justice Judit Varga and Minister of Foreign Affairs and Trade Péter Szijjártó also receive a monthly remuneration exceeding HUF 1 million (EUR 2,400) as board presidents of foundations.²⁴

To ensure the protection of the EU budget, as a minimum, the following safeguards should be introduced in relation to public interest asset management foundations:

9. Given the ambiguity of public interest trusts, the public laws governing trusts and the powers of the State Audit Office over trusts should be made explicit.
10. Conflict of interest rules should unequivocally set out that members of the Government, leading state officials, MPs, leading officials of political parties, etc. cannot be members of the boards and supervisory bodies of the foundations. An appropriate cooling-off period for the former holders of these offices should also be prescribed by law;
11. Management (founder's) rights should be returned to the government; boards should not be able to select their own successors. The state should be able to reclaim the public assets that had been transferred to the foundations;
12. The foundations should be obliged to use their assets to carry out activities that are directly related to their public interest purpose;
13. The transparency of and public scrutiny over the management of assets transferred to the foundations should be ensured.

4. The Integrity Authority and the Anti-corruption Task Force

Bill T/1260, adopted on 4 October, sets up two new bodies, 1) the Integrity Authority, which is a state agency and 2) the Anti-corruption Task Force, which serves to involve non-state players in the fight against corruption.

The **Integrity Authority** as an independent agency with complex powers will be responsible for protecting EU funds. It would act if state agencies assigned to protecting EU funds fail to take action; therefore, the role of the Authority would be supplementary to that of other, already existing agencies.

²² See K-Monitor's [assessment](#) published on 24 November 2021.

²³ [Nettó kétmillió forintot keres Áder alapítványánál Lázár helyettese | 24.hu](#)

²⁴ [Telex: Többmillió forintot kaphat Varga Judit és Szijjártó a modellváltó egyetemek kuratóriumi tagságáért](#)

Most of the Authority's powers are soft. It has the power to request information, carry out analyses and make recommendations. **Its most powerful tools are to:**

- suspend ongoing public procurement procedures for up to 2 months; however, completed procurement procedures and project implementation cannot be covered by a suspension decision;
- bring cases before a court to declare that a state body competent to protect EU funds has failed to act and to comply with the Authority's earlier request to act.

Nonetheless, **the Authority has no powers to safeguard the EU's financial interests which it could exercise on its own, without the cooperation of other agencies.** It should be stressed that the tasks of the Authority will only rely on those of existing public institutions such as the prosecution service, the Competition Authority, and the Public Procurement Authority. This is also an implied acknowledgement that the current oversight mechanisms are not functioning properly. **Therefore, setting up a new agency cannot solve the systemic deficiencies stemming from captured oversight and law-enforcement institutions.**

The Authority's powers regarding asset declarations are so far not defined in detail by the Bill. This could become a stronger competence if it was sufficiently regulated and if the Authority's capacities and resources were in line with its enhanced duties. Moreover, the Bill fails to define the circle of public officials whose asset declarations will be scrutinised by the Integrity Authority, and the Commission Proposal, although it does indicate some categories of high risk public decision makers, whose asset declarations ought to be overseen, does not clarify the scope of this power of the Integrity Authority, either. That said, it is open to questions if the Authority will only have the competence to oversee asset declarations of members of the government and other appointed high-level public officials, while the practically non-existent oversight of asset declarations of members of the Parliament and other decision makers deciding on EU funds remains unchanged .

The Authority's competencies are not suitable for tackling the misuse of all public funds in Hungary since it can only exercise its powers in relation to EU funds. However, **it is to be welcomed that a later exclusion of a project from EU funding does not affect the competence of the authority over the project.** This means that the government cannot avoid scrutiny of a project by simply shifting it from EU funding to domestic sources.

Even with its relatively soft tools, the Integrity Authority may make a difference in the way corruption has been tackled in Hungary since 2010 by simply identifying incidents where the existing authorities fail to take appropriate action and compel them to adequately fulfil their mandate. Whether this happens, or whether the new Integrity Authority will perform its anti-corruption duties just as poorly and unreliably as existing agencies do, depends to a large extent on the selection and the appointment of the Integrity Authority's leadership. According to the bill, a Selection Committee will be convened by the Director General of the Directorate General for Audit of European Funds ('EUTAF'). The selection committee will prepare a shortlist of applicants for the Integrity Authority's leadership positions (the president and two deputy presidents). Leadership members will be appointed by the President of the Republic on a formal proposal of the State Audit Office's president. Only shortlisted applicants may be appointed. However, the bill fails to define any criterion for compiling the shortlist, such as a ranking and scoring scheme. In the absence of a foreseeable scoring and ranking scheme of

either all applicants or the shortlisted applicants, there is no obligation for the President of the Republic to appoint the most suitable applicant to the position. The lack of safeguards in the selection and appointment process undermines the reliability of the method foreseen by the bill and fails to exclude the possibility that political considerations outweigh professional factors in the selection process.

To meaningfully address the corruption issues the Integrity Authority is meant to solve, the following ought to be done:

14. The Integrity Authority's competences vis-à-vis other, currently existing state authorities should be reaffirmed to strengthen its capacity to take action, and to exercise efficient control over the anti-corruption performance of these institutions.
15. In order to empower it to take action on its own in case of a prosecutorial omission, the Authority should be granted standing before criminal court if the prosecution fails to indict.
16. Procedural safeguards should be linked to the rules on selecting and appointing the Integrity Authority's leadership so that the further occurrence of institutional capture or packing of institutions can be prevented.
17. The Authority's powers should also extend to the protection of national funds as the use of EU funds and Hungarian resources are strongly related; EU funds could be used to finance projects that are lacking national funding due to inefficient or fraudulent spending in the national support schemes.
18. In addition to empowering them to bring private prosecution, CSOs should be granted standing as public interest litigants before civil and administrative courts if state bodies, including the Authority fail to act to tackle misuses of funds or step in for the recovery of these.

Furthermore, an **Anti-Corruption Task Force** is to be set up, half of whose members would be representatives of CSOs selected by the Integrity Authority's leadership on the basis of a public call and in line with a binding opinion to be issued by the selection committee. Again, the procedural rules relating to the selection of CSO members of the Task Force as well as the way how the selection committee elaborates and expresses its binding opinion are unclear, leaving too broad a margin of appreciation for the Authority's leadership. The competence of the Task Force, which convenes at least twice a year, is limited to forming opinions on the anti-corruption framework. The Task Force will issue an annual report which is to be published on the Government's website. However, the report's recommendations do not have legally binding force vis-à-vis either the Authority or the Government. In case the Government does not comply with the Task Force's recommendations, it should justify why it has taken this decision.

Overall, the Task Force's role is very weak, and it will not be able to perform strong oversight functions, nor will it be empowered to initiate the procedure of either the Integrity Authority or any other state organ. Equally disquieting is the fact that according to the bill, the Task Force will adopt its own rules of convening and procedures on the proposal of the Authority's leadership, leaving it uncertain whether there will be any consultations with Task Force members before the draft rules are proposed.

It should be underlined that CSOs would have no role in the anti-corruption framework beyond their *pro bono* participation in the Task Force. Safe for the case of bringing private prosecution, to which the newly adopted provisions in the Code on Criminal Procedure empowers CSOs as any other legal entities (see section 7. below for details), CSOs lack standing as public interest litigants and are only eligible to report malfunctions to state agencies, therefore if a CSOs' report about a breach of anti-corruption rules is dismissed by the authorities, the CSO will not be able to challenge this decision in court.

To make it a meaningful anti-corruption body, the rules relating to the Task Force ought to be revisited and the following should be considered:

19. Procedural guarantees should be included in relation to both the selection of civil society representatives in the Task Force as well as the role of the selection committee, to prevent the exclusion of reputable anti-corruption CSOs and human rights defenders as well as the packing of the Task Force with GONGOs;
20. The rules of convening and procedures of the Task Force should be drafted and adopted in an inclusive process that prevents the Authority's leadership to dictate a 'take it or leave it' approach on the Task Force by submitting a *pret à porter* draft of the rules;
21. To strengthen the competences of the Task Force, it should be empowered to
 - a. convene on its own, if a particular minority of its members, defined in the rules of convening and procedures, initiate such a meeting;
 - b. initiate a process by the Integrity Authority in case of concrete, individual incidents of perceived wrongdoing;
 - c. invite the Integrity Authority to revisit its decision to refuse to act or to discontinue a certain process.

5. Asset declarations

Among the proposed remedial measures that foresee the strengthening of the anti-corruption framework, commitments were made to improving Hungary's asset declaration system.

Hungary has been criticised for years by GRECO, the European Commission and national civil society organisations for the serious shortcomings of its asset declaration system. These included **limitations in the material scope of the declaration** (e.g., no requirement to declare positions in non-governmental organisations), the **low level of transparency** (no public access to family members' asset declarations, handwritten declarations and non-searchable formats), the **lack of efficient controls** (a parliamentary committee without proper tools to investigate asset declarations in case of reports regarding erroneous declarations) and the **lack of sanctions** (in case the office holders correct the declaration upon notice). Instead of improving the system, in July 2022 the Government amended the law²⁵ that regulated the system of asset declarations for MPs and further limited its material scope so that only MPs' income (within ranges) has to be published while their family members do not have to submit a declaration at all. The duty to submit an annual declaration was abolished, requiring updates only when changes in MPs' incomes and positions occur. The new scheme shifted the focus

²⁵ K-Monitor, [Fidesz to Hollow Out the Hungarian Law on MP's Asset Declarations](#), 4 July 2022.

to politicians' compliance instead of institutional mechanisms requiring declarations to be published on a regular basis. The Government justified the changes by referencing standards used in the European Parliament.

The amendments proposed in Bill T/1311 would withdraw most changes implemented in the above-mentioned reform that further weakened the asset declaration system and would to a great extent re-establish the former one, however, without addressing its shortcomings. A clear setback would be the proposal that real estate property that office holders claim to be used by them, or their family members exclusively would not have to be declared. This exemption was not part of Hungary's previous asset declaration system and the proposed exception can hardly be justified based on privacy considerations. Rules have never compelled office holders to identify their assets by indicating the exact location of a property. The proposed rule paves the way for the discretion of politicians which weakens their accountability. It will depend on the final wording of the bills proposed as part of the remedial measures, what role the Authority will have regarding the control of asset declaration, as the details of the enforcement mechanism remain unclear, just as the detailed functions of the digital platform that is supposed to give the public insight into asset declarations in a more accessible format by 31 March 2023.

All this well reflects that **the Government remains reluctant to implement significant changes to its asset declaration system** that could indeed contribute to safeguarding EU and Hungarian taxpayers' money.

According to our assessment, an impactful reform should consider the recommendations formulated earlier by civil society organisations²⁶ and should include the following elements:

22. Asset declarations of family members should become public or at least be subject to scrutiny without the need to point out suspected errors;
23. No assets shall be exempted from the obligation to declare.
24. The identification information on assets (exact addresses, licence plates) should be submitted in non-public parts of the declarations;
25. The financial sources of purchasing assets have to be indicated along with other details of such assets;
26. The current positions in non-governmental organisations or any other legal entities have to be declared;
27. Asset declarations should be subject to regular (e.g., annual) scrutiny by the Integrity Authority or the Tax Administration, which checks submitted information against relevant registries and databases, and should be measured against the declarant's official tax declarations to identify, examine and, if necessary, sanction any enrichment that does not correspond to taxed revenues;
28. Criminal and financial sanctions for submitting false information or failing to report information should be put in place;
29. The National Tax Administration should be entitled to conduct investigations of illicit enrichment without any limitations;

²⁶ See Transparency International Hungary, [Civil society's twelve points on asset declarations](#), 11 December 2014.

30. Legislation should also include the asset declarations of decision-makers at local municipalities, state-owned enterprises and a number of governmental agencies (e.g., for tourism, digital assets, etc.) that make decisions affecting the EU's financial interests.

6. Transparency of public spending and access to information

The European Commission as well as Hungarian CSOs have repeatedly expressed concerns about the deterioration of access to public information in Hungary. In addition to the legislative shortcomings such as the wide range of grounds for rejecting freedom of information requests, the increasing number of sectoral rules that empty out the freedom of information law²⁷ or the lack of sanctions against data holders that fail to comply with rules on proactive data publication, the practice of responding to data requests has also changed to the worse. Withholding information of public interest until they are forced by court decisions to release the requested data has become the default procedure for data holders when receiving requests on politically sensitive topics. Data holders frequently fail to comply with a final court judgement to reveal information sought in a freedom of information litigation, and police are often unwilling to act if a litigant reports a failure to comply with such judgments, although non-compliance with such judicial decisions is a criminal offence under Hungarian law.

As part of Bill T/1261, changes to the freedom of information (FOI) framework is introduced. A long overdue step is the abolishment of the rules that allowed data holders to respond to FOI requests in a renewable 45-day period under the emergency regime established during the pandemic and maintained ever since in different pieces of legislation instead of the statutory 15-day response deadline. Furthermore, the grounds for requesting fees for processing data requests will be limited by, *inter alia* removing the possibility for data holders to require the payment of their labour-related costs in advance of servicing an FOI request. Albeit the new regime of charges relating to the fulfilment of data requests will be respecting the Tromsø Convention,²⁸ however this change will probably have minimal impact on data disclosure and on the accessibility of public interest information in general, because, in practice, data holders do not frequently charge labour related costs on the requester of public interest information. **Another commitment foresees the establishment of a central transparency portal that would make data on public spending easily accessible for free while forcing public institutions to submit their data on public spending to the central portal proactively. Details of this measure are yet to be designed and as they will be incorporated in a separate bill by the end of October it is not possible to assess them at present time. It is worth recalling that the Government already committed itself to set up a transparency portal in 2016 and even received EU funds to do so, however, the website is still not operational.**²⁹

Even if the proposed amendments are fully adopted, the freedom of information landscape will not improve significantly, and the general transparency performance of data holders, i.e., municipal bodies, central government agencies or publicly owned enterprises will remain lamentably poor. Undeniably, the proposed changes relate to the most irritating elements of the freedom of

²⁷ Act CXII of 2011 on the Right of Informational Self-Determination and on Freedom of Information.

²⁸ The Council of Europe Convention on Access to Public Interest Documents (CETS No. 205), also referred to as the Tromsø Convention.

²⁹ K-Monitor, [Eltűnt az EU-nak ígért átláthatósági portál, keressük](#), 13 January 2020.

information framework but do not change the underlying causes of the widespread culture of secrecy and denial.

In order to at least incrementally reform the transparency practices of authorities and other organs to which FOI-regulations apply, the following ought to be considered:

31. Often ad-hoc regulatory interventions in an attempt to curtail accessibility of public interest information adopted since 2013, such as the ban on overarching data requests, the expansion of the scope of the terms 'business secrecy' and 'tax secret', the protection of copyrighted government documents, etc. should be revised and revoked;
32. The expansion of grounds for refusal to reveal information related to major public investments, such as the construction of the Paks II nuclear power plant and the Belgrade - Budapest railway should be removed;
33. The practice of data holders to qualify information as internal data crucial for a decision-making process should be revised and the possibility to exclude accessibility of information relating to future decision-making should be removed;
34. Effective sanctions should be introduced to deter data holders from failing to disclose information prescribed in the proactive publication scheme attached to the FOI Act;
35. The practices and procedures of the Data Protection and Freedom of Information Authority should be revised in order to enable it to develop and implement new tools that better incentivise data holders to publish information and to respond to freedom of information requests;
36. Mandatory representation by an attorney before the court in FOI lawsuits should be abolished as it disproportionately restricts requesters' access to justice.

7. Extraordinary legal remedy to bring cases before justice by private prosecution

Bill T/706 was originally submitted to the Parliament in July 2022. It was seriously criticised by Hungarian CSOs for failing to address even the most important legal shortcomings of laws that govern the functions and the structure of the prosecution service.³⁰ Since then, the Government's parliamentary majority had entirely rewritten the bill, without any public consultation, and Parliament already voted on this newly drafted text of the bill on Monday, 3 October, reinforcing premonitions that this whole process badly lacks inclusiveness.

The initial problem to be addressed by this Bill was the lack of judicial remedy in cases where the prosecution service fails to indict. This will change with the adopted Bill, as from its entry into force onward, **both private individuals and legal entities will be enabled to take certain serious crimes related to corruption, embezzlement, misappropriation of funds, fraud, budgetary fraud, etc., before justice, should the prosecution service omit to do so.** The Bill introduces a two-step process to this end. First, if the investigative authority or the prosecution service terminates the process in a case of serious corruption, or does not commence it, it should publish the respective decision in an anonymised or pseudonymised format, and any private individual or legal entity, safe for state organs, municipalities, and other organs that exercise public authority, may submit a

³⁰ Amnesty International Hungary, Hungarian Helsinki Committee, K-Monitor, Transparency International Hungary, [Brief assessment and recommendations in relation to the bills submitted by the Hungarian Government "in the interest of reaching an agreement with the European Commission"](#), 27 July 2022.

complaint against such a decision. The authority concerned has to follow a 'comply or submit' approach, i.e., it either starts the investigation or continues the previously terminated process in response to the complaint or has to submit the complaint and the documents of the process to its hierarchical superior institution, which may order the commencement or the continuation of the process. Should, however, both the authority concerned and its hierarchical superior fail to commence or recommence the process, the case shall be referred to the investigative judge. If the investigative judge finds that the complaint is well-founded, it orders the commencement, or the continuation of the process concerned.

In case the investigating authority or the prosecution service terminates the process, it has previously recommenced on the court's order, it shall directly inform the complainant of its decision, who may bring a private prosecution. The investigative judges of Budapest will have nationwide jurisdiction to decide on complaints. The investigative judge examining the complaint differs from the court deciding on the admissibility of the indictment and on the merits of the case.

Although the rewritten text of this bill addressed some of the concerns raised by CSOs, several issues of concern remain in place.

- The Bill does not enable state organs or other entities that exercise public authority to submit a complaint or act as private prosecutor, which thus prevents, among others, the future Integrity Authority, local governments, and European Union organs, such as the OLAF or the EPPO from taking action in serious corruption cases.
- Complainants have only 30 days ('one month') from the publication of the anonymised or pseudonymised decision to lodge a complaint, which is far too short in case of complex processes. The Bill does not explain why this short and strict deadline is in the interest of uncovering cases of corruption.
- Complainants can only access the anonymised or pseudonymised decision concerned and the anonymised list of the documents related to the terminated process, which makes it practically impossible to draft a well-founded and evidence-based complaint.
- The investigative judge has only a maximum of 3 months to decide on the complaint and to review the potentially lengthy documents of the underlying process, which may prove too short to oversee complex cases. Again, the Bill fails to explain why this restrictive regulation is in the interest of combating corruption, whereas authorities normally have years to examine and investigate these forms of wrongdoing.
- In the case of private prosecution, the complainant has only a maximum of 60 days to press charges, which is too short to draft and file an indictment in a complex case of corruption. Although this time the Bill foresees the same time limit that applies to indictments brought by the prosecution service, it fails to consider the grave differences in terms of resources between private prosecutors and the prosecution service.
- The private prosecutor may not appeal against either the decision declaring the indictment inadmissible, or the decision on the merits of the case, which seriously curtails the complainant's rights with no reason.
- The admissibility criteria of the indictment by a private prosecutor, besides being far stricter than in the case of an indictment by the prosecution service, enable the court to dismiss indictments by private prosecutors without examining the merits of the case on the basis that the indictment is unfounded, whereas in a normal procedure, the court decides even on an unfounded indictment at a public hearing.
- A private prosecutor may not request an exemption from having to cover procedural costs, which means that s/he has to cover the costs relating to retaining a legal counsel, which means that substantial expenses must be borne by the private prosecutor.
- If the person indicted by the private prosecutor is exonerated, in addition to the cost of its own defence counsel, the private prosecutor has to cover the costs of the defendant arising

in the court process, which may in practice deter private prosecutors, even if the obligation to reimburse the costs of retaining a defence counsel by the indicted person is limited.

Although the rewritten text of the Bill improved somewhat the quality of the regulation, by, for instance, enabling domestic legal entities, e.g., human rights defenders and anti-corruption watchdogs to act as private prosecutors and by humbly prolonging some procedural deadlines that were originally even stricter, the Bill still falls short of addressing other seriously dysfunctional provisions of the regulations that govern the functions and the operations of the prosecution service. Thus, the adoption of the Bill does not generally improve the anti-corruption performance of the prosecution service. On the contrary, it offers a separate procedure for private prosecution without significantly changing the legislative and working environment, which has by now resulted in repeated failures of the prosecution service to bring cases of high-level corruption and mismanagement before the courts. For example, the GRECO recommendation to remove the possibility to maintain the Prosecutor General (PG) in office after the expiry of his/her mandate remains unaddressed. Concerns persist regarding the discretionary powers granted to the PG and to superior prosecutors and the strictly hierarchical architecture of the prosecution service enabling the PG and other senior prosecutors to instruct subordinate prosecutors and to reallocate cases assigned to them.³¹

To make the remedy process more functional, instead of its fast-paced and unilateral adoption, the Bill ought to be amended as follows:

37. Deadlines for the submission of complaints (one month), judicial review of complaints (maximum three months) and bringing private prosecution (2 months) should be significantly extended. The possibility for complaints and private prosecutions should be extended to the time limits until the prosecution service is authorised to commence or recommence the procedure concerned, i.e., until the statute of procedural limitation expires.
38. The official website where the anonymised or pseudonymised decision is published should indicate basic information regarding the outcome of the case: whether a complaint was filed, how the prosecution service reacted and how the Budapest Regional Court decided.
39. The new Integrity Authority should be authorised to submit complaints and act as private prosecutor, or, as a minimum requirement, to step up as a third-party intervenor in the case to promote the cause of the complainant or the private prosecutor.
40. Information to which the complainant has access should be broadened. At least the names of the legal entities concerned must be disclosed in the anonymised decision.
41. The substantive admissibility criteria of indictments brought by private prosecutors should be removed.
42. Private prosecutors should be empowered to appeal against the decision of the court.
43. The procedural costs to be borne by the private prosecutor in case of exoneration should be limited to decrease the potential of deterrence, and private prosecutors should be authorised to request an exemption from having to cover procedural costs.
44. The general rules on private prosecutors' right to legal aid services should apply.

The Government initiated the *ex ante* review of the adopted Bill by the Constitutional Court, as anticipated in the annexes attached to the Commission Proposal. Though it is based on existing

³¹ See [2022 Rule of Law Report Country Chapter on the rule of law situation in Hungary](#) (SWD(2022) 517 final), p.9., and recommendations XIV and XV by GRECO included in the [Fourth Evaluation Report](#) (GRECO EVAL IV REP (2014) 10E)

regulations, the Government hardly ever triggers the *ex ante* review procedure, therefore it is safe to conclude that it is not part of the normal legislative process. **The Constitutional Court has a maximum of thirty days to complete the review procedure.** Since they lack legal standing in this procedure, civil society groups can only submit *amicus curiae* briefs to call the attention of the Constitutional Court to outstanding constitutional issues.

8. Public procurements

Around a third of the Government's remedial measures are connected to public procurement. According to the Commission's assessments, Hungary's public procurement system suffers from systemic deficiencies, such as an unusually high percentage of contracts awarded following public procurement procedures in which just one single bidder participated; contracts awarded to companies with close ties to the Government, with a growing share in a sector's procurements; as well as serious deficiencies in the attribution of framework agreements. However, it is often difficult to prove these observations with figures, since reporting and statistical methods applied by the Hungarian Public Procurement Authority are not in line with the requirements of the Public Market Scoreboard and they are not designed to allow a factual assessment of the rates of single-bid procurements and to identify the causes and options for intervention. Furthermore, the public procurement databases of the government hardly enable the structured download of procurement for analysis. Therefore, it is not surprising that a great share of commitments in this field is of preliminary nature: they aim to allow for subsequent analysis and identify areas for intervention.

The first element of these commitments is to develop a Single-Bid Reporting Tool by 30 September 2022, which is based on the data subtracted from the Electronic Procurement System. As this tool is not public, CSOs are unable to assess the implementation of the commitment.

The Government, in line with its commitments, has also adopted a resolution on the development of a procurement performance measurement framework by 30 September. However, it is unclear how the Government aims to involve independent CSOs and independent public procurement experts in the assessment of the efficiency and cost-effectiveness of public procurements in Hungary, as no call for application has been announced for this task, despite the relevant government decision stipulating that the external experts contributing to the performance measurement framework must be selected through an open call for application by 10 October.

In line with creating the preliminary conditions for transparency and identification of areas of intervention, the Government has also applied changes to the data publication dashboard of the e-procurement portal (EPS). The portal now allows for more complex filtering, including on unique identifiers of bidders and provides information on subcontractors and the number of bids. This information can be easily exported, however, a software (API) connecting to the entire database, including the text of notices, is still not provided, and it remains unclear why the reform only commits to quarterly updates. At the same time, several data types are still unavailable for bulk download, such as the related EU grant reference number, the name and identifier of unsuccessful bidders, the justification for the use of exceptional procedures, deadlines and information on direct purchasing orders based on framework agreements.

A key commitment of the Government is to reduce the share of single-bidder public procurements financed from EU funds to below 15 percent by 31 December 2022. It is unclear how

the Government aims to reach this ambitious target as there are no actual interventions and measures planned for October–December that aim to enhance competition and impact the ratio of single-bid procedures. (N.B. as of 3 October, the base figures are also unknown.) Obligatory market consultations for above-the-threshold procedures introduced in Spring 2022 can hardly be considered measures that are capable of fundamentally transforming the procurement market. Somewhat more realistic are the commitments that promise to gradually decrease the share of public procurement tender procedures financed from the national budget with single bids below 15 percent by 31 December 2024. The deadlines for a number of specific interventions that would support the intention to reduce single-bidder procedures are also scheduled for the following years, such as training and capacity building for SMEs and the development of action plans by public authorities.

Interestingly enough, the Commission did not raise the issue of conflict of interest in public procurement procedures apart from mentioning the lack of due conflict of interest check processes. Nevertheless, one of the amendments introduced last minute by the parliamentary supercommittee to Bill T/1260 completely rewrote the entire section of conflict-of-interest rules of the Public Procurement Act. While the re-regulation of the area is indeed important, the result is at least mixed. The adopted bill may also need further clarification in several sections – probably not unrelated to the hectic law drafting driven by the negotiations with the Commission. The new provisions aim to prevent conflicts of interest on the side of the contracting authority (and those acting on its behalf) in line with the relevant OECD guidelines; however, some definitions need to be further clarified or amended.³²

It should also be noted that the new conflict of interest rules provide a **broader exemption for persons involved in conflict-of-interest situations than before** – and the Bill does not provide at all for checks and measures to identify false declarations (contrary to the explanatory memorandum of the amendment).

In order to establish a clear and sound conflict of interest system for public procurements, a sound procedure for checking conflict of interest situations should be introduced while attention should also be paid to institutional or structural biases (e.g. conflict of interest rules are not presumed if a close relative of a senior official of the Contracting Authority participates in a tender, in case the senior official does not participate in the preparation or the evaluation of the tenders).

While all proposed measures in this area are welcomed, several further measures are needed to improve the Hungarian public procurement framework:

45. Measures should be introduced to eliminate framework agreements where they are not necessary and simply serve the purpose of securing contracts for a closed circle of providers over a long period. The issue of framework agreements is one of the problems raised by the Commission but not addressed by the Hungarian Government.
46. The extensive use of concession agreements instead of public procurements should also be revised and procedures that grant entire markets to a few companies for decades should be avoided.

³² E.g., according to the current wording of the proposal, a conflict of interest shall be presumed to exist if the person who participates in the procedure on the contracting authority's side is a *'member'* or senior official of an economic operator who participates in the procurement procedure as tenderers, subcontractors etc. Since according to the current Hungarian corporate law only limited liability companies and limited liability partnerships have 'members', a person who is, for example, the sole shareholder of one of the bidding companies cannot be excluded from decision-making under these specific rules. It would be much more progressive to presume conflict of interest situations in all cases where **beneficial ownership of an economic operator** (according to the Anti-Money Laundering Act) jeopardises fair competition. (As the Bill does not refer to the Civil Code, the interpretation of 'relatives' may also be uncertain.)

47. Steps should be taken to strengthen the independence of the Public Procurement Council by establishing equal representation of government appointees and non-governmental procurement experts among its members.
48. The fees for seeking legal remedy should be lowered. While the new Integrity Authority may initiate the *ex officio* procedure of the Public Procurement Arbitration Board in case of EU-funded procurements, in case of procurements funded from the national budget, high fees may discourage other parties (including organisations acting in the public interest) from seeking legal remedies.
49. A real-time API / bulk download of the entire Public Procurement database should be made available that grants access to the entire content of the database, including machine processable texts of notices, contracts and documents.
50. A robust procedure for checking conflict of interest situations should be introduced while attention should be paid to institutional or structural biases (e.g., a conflict of interest is not presumed if a close relative of a senior official of the contracting authority participates in a tender, in case the senior official does not participate in the preparation or the evaluation of the tender).
51. Procurement types (procedures) that are prone to abusive and corrupt practices are still common under the national procurement regime, such as procedures without prior contract notice or specific exemption regimes below the EU threshold. These procedures in general are not applicable in the case of procurements financed from EU funds. Still, as the deficiencies of the procurement regime are systemic, any corrective measure should target the entire procurement framework — including those procurements which are funded from the national budget.

ANNEX - Main deficiencies of the proposed remedial measures

Topic	Main deficiencies
1. Public consultation in law-making	Superficial sanctioning possibility introduced without clear dissuasive power in case non-compliance with consultation obligations instead of effective measures to prevent bill from becoming laws if rules of public consultations are breached.
2. Independent judiciary respecting the primacy of EU law	Despite a general commitment made by the Government, no legislative changes have been introduced to address long-known systemic problems undermining judicial independence.
3. Conflicts of interest in public interest asset management foundations	Conflict of interest rules only on a case-by-case basis paving the way for discretion.
	Conflict of interest is self-declaratory. No effective mechanism to challenge conflict of interest before court.
4. A new Integrity Authority and a new Anti-Corruption Task Force	Authority has no powers to exercise on its own without requiring the cooperation of captured state agencies. No standing before criminal court.
	CSOs do not have standing as public interest litigants if state bodies - including the Authority - fail to act to tackle misuses of funds or step in for the recovery of these.
5. New rules on asset declarations	Real estate property exclusively used by office holders or their family members exempted from declaration.
	The reform does not cover a number of officeholders deciding about EU funds, such as majors or leaders of government agencies.
	No provisions are proposed to establish regular controls and efficient sanctions
6. Transparency of public spending and access to information	Leeway for (recurring) qualifying information as internal data crucial for a decision-making process is not addressed.
	Commitments on setting up a transparency portal are vague.
7. Extraordinary legal remedy to bring corruption cases to justice by private prosecution	Given the complexity of corruption cases, deadlines are too short for both the private prosecutor and the court. No reason to divert from the general CPO rules.
	No right to appeal against decisions of inadmissibility or on the merits of the case.
	Chilling effect of legal costs.
8. Public procurement	The lack of sound conflict of interest rules and control processes remain a significant problem regarding public procurements.
	Commitments to reduce single bidding not supported by sound actions / measures.
	Proposed measures do not include provisions on strengthening the independence of the Public Procurement Council (beyond the membership of the head of the Integrity Authority).