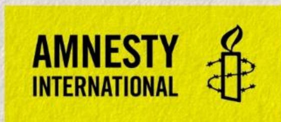

HUNGARIAN
HELSINKI
COMMITTEE

TRANSPARENCY
INTERNATIONAL
Hungary

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Assessment of Hungary’s compliance with conditions to access European Union funds

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Introduction

In December 2022, European Union institutions suspended and tied to conditions Hungary's access to EU funds under various procedures due to severe breaches of the rule of law and human rights. The present paper, prepared by Hungarian civil society organisations ahead of the upcoming re-assessment by the European Commission and the Council of the European Union in the framework of the conditionality mechanism in December 2024, looks at the steps the Hungarian government has taken to date to address the deficiencies identified by the Commission and the representatives of Member States in the Council as an obstacle to the country's access to EU funds. As the analysis shows in detail, to date, the Hungarian government had not taken adequate steps in order to fully address the rule of law and human rights concerns raised, and it had not complied with significant conditions established by EU institutions to access EU funds. There are areas where no progress has been made at all, many of the required measures are severely delayed, and flaws in the regulation and the practice undermine the capacity of legal amendments and new measures to effect real change. The Hungarian government's approach suggests that it looks at the conditions set by the EU and Member States as a "ticking-the-box" exercise at best, without a real commitment to restoring the rule of law and respect for human rights in Hungary.

The deficiencies and the required remedial measures were established by EU institutions as follows:

- In the framework of the conditionality mechanism launched in relation to Hungary in April 2022 under the Conditionality Regulation[1] with a view to protecting the EU budget, Hungary has committed to adopt 17 anti-corruption measures to address the breaches of the principles of the rule of law as identified by the Commission. However, in December 2022, the Council found that the remedial measures adopted by Hungary up to that point had significant weaknesses, and did not sufficiently address the identified breaches of the rule of law and the risks these entail for the Union budget. Therefore, the Council decided to suspend 55% of the budgetary commitments under three operational programmes in Cohesion Policy, amounting to approximately €6.3 billion. The Council also prohibited, in relation to EU funds, entering into financial commitments with public interest asset management foundations.[2]
- When approving Hungary's Recovery and Resilience Plan (RRP), the Council defined 27 "super milestones" that Hungary has to fully and correctly fulfil before it can receive any payment under the EU's Recovery and Resilience Facility (RRF).[3] Four super milestones were aimed at restoring the independence of the judiciary in Hungary. Beyond the super milestones, numerous further "ordinary" milestones with a rule of law connection were set out.[4] A significant part of the milestones coincide with the 17 measures required under the conditionality mechanism.

[1] Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget

[2] Council Implementing Decision (EU) 2022/2506 of 15 December 2022 on measures for the protection of the Union budget against breaches of the principles of the rule of law in Hungary. See also: https://www.consilium.europa.eu/en/press/press-releases/2022/12/12/rule-of-law-conditionality-mechanism/.

[3] Council Implementing Decision on the approval of the assessment of the recovery and resilience plan for Hungary, https://data.consilium.europa.eu/doc/document/ST-15447-2022-INIT/en/pdf. See also: https://ec.europa.eu/commission/presscorner/detail/en/IP_22_7273.

[4] For a full list of the respective milestones, see: Annex to the Council Implementing Decision on the approval of the assessment of the recovery and resilience plan for Hungary, I. COMPONENT 9: GOVERNANCE AND PUBLIC ADMINISTRATION. Available at: https://data.consilium.europa.eu/doc/document/ST-15447-2022-ADD-1/en/pdf.

- Finally, the Commission found in its implementing decisions in relation to 10 operational programmes that Hungary fails to comply with the horizontal enabling condition "Effective application and implementation of the Charter of Fundamental Rights" under the Common Provisions Regulation[5] (1) due to deficiencies around judicial independence, and so Hungary cannot access the respective EU funds until these are addressed. The measures required by the Commission in this regard were the same as the ones required under the four super milestones related to the judiciary under the RRP. In some of these implementing decisions, it is also set out as an obstacle to accessing funds under the respective operational programmes that (2) the operation of public interest asset management foundations, many of them maintaining universities, results in the violation of academic freedom as guaranteed by the Charter; that (3) various elements of the Hungarian asylum system and the non-implementation of related judgments of the Court of Justice of the European Union (CJEU) violate the Charter; and that (4) the Hungarian anti-LGBTQI+ law that prohibits or limits access to content that propagates or portrays so-called "divergence from self-identity corresponding to sex at birth, sex change or homosexuality" for individuals under 18 violates the Charter.

In this assessment, Amnesty International Hungary, the Hungarian Civil Liberties Union, the Hungarian Helsinki Committee, K-Monitor and Transparency International Hungary assess compliance with the 17 conditionality measures, the 27 super milestones under the RRP, further 39 milestones under the RRP that were due to have been complied with by the third quarter of 2024 as per the deadline the Hungarian government has set itself, and the compliance with the horizontal enabling condition "Effective application and implementation of the Charter of Fundamental Rights" in the 4 areas identified by the Commission. Our review is based on legislative steps and other publicly available information and data, and on experiences of some of the authors in the Anti-Corruption Task Force and the monitoring committees tasked with the monitoring of the use of EU funds, as well as on experience accumulated by the authors in relation to the practical implementation of amended access to information regulations by courts and by the National Authority for Data Protection and Freedom of Information. After presenting and assessing the steps taken by the Hungarian authorities, we provide, in most areas, recommendations aimed at tackling the various rule of law and human rights deficiencies identified. Our recommendations are (except for the area of judicial independence) constrained to the steps needed to comply with the conditions set by EU institutions, and so cannot be taken as an exhaustive list of desired steps in a given area from a rule of law, anti-corruption or human rights perspective. In addition, in the last chapter of the paper, we present how the Sovereignty Protection Act, adopted in December 2023, and the investigations launched by the newly set up Sovereignty Protection Office might serve as a basis for suspending or blocking additional EU funds to Hungary.

According to our assessment, out of the 27 super milestones (which all would have been due by the end of 2022), 10 have been achieved only partly, and only 17 can be considered as fully achieved to date. However, looking at the "ordinary" milestones as well and the measures required in general, the picture is even more bleak. While it is true that certain legislative and administrative steps were taken by the Hungarian government in order to comply with the above requirements and to access EU funds, the implementation of the reforms falls short of expectations, also lacking both genuine

[5] Regulation (EU) 2021/1060 of the European Parliament and of the Council of 24 June 2021 laying down common provisions on the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund, the Just Transition Fund and the European Maritime, Fisheries and Aquaculture Fund and financial rules for those and for the Asylum, Migration and Integration Fund, the Internal Security Fund and the Instrument for Financial Support for Border Management and Visa Policy

commitment and adequate pace, and the effectiveness and sustainability of the already adopted changes remain largely to be seen, not to mention that in certain areas, such as freedom of information and the independence of the judiciary, amendments to the respective legal framework as well as proposed new government initiatives showcase a backsliding and threaten with further deterioration.

- As regards anti-corruption measures, the implementation of the commitments is far from being carried out at the right pace and with the ambition to achieve real results in the fight against corruption in Hungary. The implementation of many of the measures will at best only formally meet the milestones, and the implementation of the substantive commitments is seriously delayed. This is the area where the Government's "ticking-the-box" approach is the most striking, seriously undermining the effectiveness and long-term sustainability of the remedial measures.
- In May 2023, a judicial reform package was adopted to comply with conditions under the horizontal enabling condition (and the 4 equalling RRP milestones). In December 2023, the Commission assessed the reform positively and decided that, as regards the independence of the judiciary, the horizontal enabling condition of the Charter had been fulfilled.[6] However, since then, changes have been adopted with further ones proposed that undermine the positive results of the reform and cause regression. In a wider context, therefore, systemic deficiencies continue to jeopardise the independence of the Hungarian judiciary.
- The concerns related to academic freedom, the right to asylum and the principle of non-refoulement, and the rights of LGBTQI+ persons have not been resolved, and no steps whatsoever were taken to remedy the fundamental rights violations in these areas. Thus, out of the 4 areas of concern identified in relation to the operational programmes and the Charter of Fundamental Rights, three have not been addressed at all.

Thus, to date, numerous issues related to the anti-corruption framework, competition in public procurement, judicial independence, the predictability, quality and transparency of decision-making, academic freedom, the rights of refugees and asylum-seekers, and the rights of LGBTQI+ persons remain unresolved. Therefore, the Hungarian government has to take swift measures in all of these areas to ensure that the country and its citizens are granted access to EU funds.

[6] Commission Implementing Decision C(2023) 9014 of 13 December 2023 on the approval and signature of the Commission assessment, in accordance with Article 15(4) of Regulation (EU) 2021/1060, of the fulfilment of the horizontal enabling condition '3. Effective application and implementation of the Charter of Fundamental Rights' with regard to the deficiencies in judicial independence in Hungary

I. Assessment of compliance with milestones under the Recovery and Resilience Plan and with conditionality measures

C9.R1: Establishment of an Integrity Authority to reinforce the prevention, detection and correction of fraud, conflicts of interest and corruption as well as other illegalities and irregularities concerning the implementation of Union support

The Integrity Authority was established in November 2022 according to the legal framework defined in Act XXVII of 2022 on the Control of the Use of EU Budgetary Resources, which was adopted by the Hungarian Parliament in October 2022 (Milestone 160). This measure was, in fact, the most significant institutional innovation in the framework of the conditionality mechanism. Currently, the Integrity Authority has the necessary independence, an adequate budget, and a competent staff of around 100 people, but lacks, in multiple areas, the adequate legal mandate to carry out its statutory tasks. However, in its initial decision, the Council has identified several shortcomings related to the relevant legal framework that concern

> "(i) The lack of a clear rule stating that the Integrity Authority will retain its competence after a project is withdrawn from Union financing
>
> (ii) The weaknesses of the system for the judicial review of the decisions of contracting authorities that do not follow the recommendations of the Integrity Authority
>
> (iii) The weaknesses of the dismissal procedure for members of the Integrity Authority
>
> (iv) The absence of the transfer of competence to the Integrity Authority for the verification of asset declarations of senior political executives (..) and the lack of clarity in the legal text as regards the power of the Integrity Authority to verify public asset declarations of all high risk officials."[7]

Civil society organisations have raised similar concerns in their contribution to the Commission's Rule of Law Report in 2024.[8] In these areas, no progress has been made in the last two years, and practical experience clearly confirms the previous fears of civil society organisations that, even with the best of intentions, the Integrity Authority cannot do its job properly in the absence of the appropriate legal mandates.

In accordance with the projected deadlines for the milestones outlined in the RRP, in 2023 and 2024 the Integrity Authority conducted the Public Procurement System Integrity Risk Assessment[9]

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[7] Council Implementing Decision (EU) 2022/2506 of 15 December 2022 on measures for the protection of the Union budget against breaches of the principles of the rule of law in Hungary, https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32022D2506&qid=1731407320198. See also: Commission Decision of 13.12.2023 on the reassessment, on the Commission's initiative, of the fulfilment of the conditions under Article 4 of Regulation (EU, Euratom) 2020/2092 following Council Implementing Decision (EU) 2022/2506 of 15 December 2022 regarding Hungary https://commission.europa.eu/system/files/2023-12/C_2023_8999_1_EN_ACT.pdf.

[8] See: Amnesty International Hungary – Eötvös Károly Institute – Hungarian Civil Liberties Union – Hungarian Helsinki Committee – K-Monitor – Mertek Media Monitor – Ökotárs – Political Capital – Transparency International Hungary, *Contributions of Hungarian CSOs to the European Commission's Rule of Law Report*, January 2024, https://transparency.hu/wp-content/uploads/2024/01/HUN_CSO_contribution_EC_RoL_Report_2024-1.pdf, Chapter II/A/2

[9] https://integritashatosag.hu/wp-content/uploads/2024/04/integrity-authority-integrity-risk-assessment-report-310323.pdf, https://integritashatosag.hu/wp-content/uploads/2024/10/Integritas_Hatosag_Integritaskockazat_ertekeles_2024_0502-002_EN.pdf

(Milestone 161), published the Annual Analytical Integrity Report for 2022[10] (Milestone 162) and 2023,[11] and prepared an ad hoc report on asset declarations in December 2023 (Milestone 165). These reports and analyses included prospective reform ideas aimed at mitigating systemic corruption and enhancing integrity in the areas of public procurement, asset declarations, and the control and audit of EU funds. However, in 2023, merely 20% of the recommendations received favourable evaluations from the Government[12] (Milestone 164), while in 2024, 23%[13] of the proposals were similarly rated, excluding those concerning asset declarations, for which the Government has not disclosed a position in the past two years. According to the Integrity Authority, even in the case of the positively assessed proposals, "the process and timeliness of putting the proposed measures into practice [remained] in question in the absence of real substantive action and a timeframe".[14]

By 2024, the absence of the Government's will to provide the Integrity Authority with the powers it requires in order to carry out its duties has become clear. The level of cooperation between the Integrity Authority and other state agencies remains low, and the powers of the Integrity Authority are not mirrored in sectoral laws.[15] Therefore, the Integrity Authority has no access to several databases to e.g. verify asset declarations (in some instances, there is no such database at all – Milestone 163). In a similar vein, there is a problem that particular or general recommendations that are provided under EU funds are not followed up on by the addressees of the recommendations (usually the Managing Authorities), or even worse, there are no reactions at all.[16]

The Integrity Authority has drafted a legislative amendment and has also proposed an increase of its powers in its annual report to the Parliament;[17] however, it is unclear[18] to what extent these proposals align with the aims of the Government.

In addition to the above, the Integrity Authority's reputation is currently also hampered by the fact that the Government's largest supplier in the field of communication has successfully challenged the Authority's tender for communication at the Public Procurement Arbitration Committee. [19]

According to the its webpage, the Integrity Authority has closed 15 investigations, filed 5 crime reports, and filed several motions for review. The Integrity Authority operates an anonymous whistleblowing channel.

Due to ignorance on the part of the Government and other bodies and state agencies, the Integrity Authority is currently unable to effectively act as a facilitator in the fight against corruption.

Recommendation:

- The Integrity Authority's jurisdiction ought to be strengthened in order to decrease its reliance on the support of other state agencies. As a minimum, the Integrity Authority should

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[10] https://integritashatosag.hu/wp-content/uploads/2023/10/Annual-Analytical-Integrity-Report-2022-ENG.pdf

[11] https://integritashatosag.hu/wp-content/uploads/2024/06/2023-Eves-Elemzo-Integritasjelentes.pdf

[12] https://integritashatosag.hu/wp-content/uploads/2024/04/hungarian-government-answer-to-annual-integrity-report.pdf

[13] https://www.palyazat.gov.hu/api/download_document?name=Integrit%C3%A1s_Hat%C3%B3s%C3%A1g2023_jelentes_kormanyzati_allaspont.pdf&urn=workspace%3ASpacesStore%2Fi%2F4d52ab7a-881a-44f7-bc8a-2f94fcfb35de

[14] https://integritashatosag.hu/wp-content/uploads/2024/04/integrity-authority-position-on-governments-responses-2023.pdf

[15] https://commission.europa.eu/document/download/e90ed74c-7ae1-4bfb-8b6e-829008bd2cc6_en?filename=40_1_58071_coun_chap_hungary_en.pdf , p. 17.

[16] https://integritashatosag.hu/wp-content/uploads/2024/06/2023-Eves-Elemzo-Integritasjelentes.pdf

[17] https://integritashatosag.hu/wp-content/uploads/2024/03/integrity-authority-annual-report-2023.pdf

[18] https://edit.integritashatosag.hu/en/the-hungarian-integrity-authority-is-calling-for-the-expansion-of-powers/

[19] https://edit.integritashatosag.hu/en/unprofessionalism-bias-inequality-the-integrity-authority-has-filed-a-complaint/

be empowered to indict on its own before the court in case the prosecution service fails to take action.

Relevant milestones:

- Milestone 160 – Setting up of an Integrity Authority (Q4 2022[20]) [super milestone related to a conditionality measure (remedial action i.)]
- Milestone 161 – Report on the Integrity Risk Assessment Exercise (Q1 2023)
- Milestone 162 – Start of application of the powers and competences on the verification of asset declarations by the Integrity Authority (Q1 2023)
- Milestone 163 – The annual Integrity Report for the year 2022 is made publicly available (Q2 2023)
- Milestone 164 – The Government examines the first annual Integrity Report of the Integrity Authority and provides its responses in writing (Q3 2023)
- Milestone 165 – Review of the asset declaration system by the Integrity Authority (Q4 2023)

C9.R2: Establishment of an Anti-Corruption Task Force to monitor and review the measures taken in Hungary to prevent, detect, prosecute und sanction corruption

The Anti-Corruption Task Force (ACTF) was established by Act XXVII of 2022, and its jurisdiction is consistent with the standards outlined in Milestone 166. Out of the 21 members of the ACTF, 10 are delegated by state agencies and 10 are the representatives of civil society. Some of the ACTF's civil society members represent civil society organisations (CSOs), while others are individual members. The president of the Integrity Authority selected non-state members through an open application process. The ACTF convened for its inaugural meeting in December 2022 (Milestone 166). In January 2023, the ACTF established four professional subgroups to examine the following issues: (1) Public procurement, (2) European Union/National funding, (3) Transparency, accessibility of public data, (4) Criminal jurisprudence and procedural law. The fifth subgroup, the Monitoring and Policy Subgroup, facilitates the work of other subgroups and prepares decisions for the ACTF's plenary. The first ACTF report (covering the year 2022) was adopted on 13 March 2023,[21] and was deficient in several aspects, as March 2023 was too early to assess the anti-corruption measures introduced by the Government in late 2022. Moreover, acquiring the necessary data to conduct meaningful assessments within the report's stringent deadline proved challenging. Contrary to the specification of Milestone 167, the first report did not include the evaluation of the draft of the new National Anti-Corruption Strategy, although this deficiency was subsequently rectified by the ACTF by the adoption of a Special Report[22] in May 2023. The most profound weakness of these stems from the fact that the consensual proposals of the ACTF were typically incorporated into the report at the behest of the Government, indicating initial governmental endorsement; conversely, proposals from non-governmental actors seldom garnered governmental support. The government has assessed the ACTF report in a timely manner[23] (Milestone 168). Regrettably, the Government only accepted those proposals that had been made by consensus, i.e. those that had the support of the Government from the outset. The proposals put forward by non-government actors were not supported by the Government. This highlights that the disparity between government and non-government members is inadequately addressed in the

[20] We indicate in brackets throughout the paper when the milestones should have been completed according to the RRP.
[21] https://kemcs.hu/wp-content/uploads/2023/06/Korrupcioellenes-Munkacsoport-2022-evre-vonatkozo-jelentese.pdf
[22] https://kemcs.hu/wp-content/uploads/2023/06/Kiegeszito_jelentes_NKS.pdf
[23] https://kemcs.hu/wp-content/uploads/2023/06/kormany-valasz-kemcs-jelentesre-2023.pdf

relevant legal provisions. The absence of apparatus, compensations, and most eminently the overall lack of mutual confidence between governmental and civil society members undermines the motivation of non-governmental members. This issue is further intensified by the provision that expects non-governmental members to fulfil their responsibilities in person, without the possibility of substitution, a requirement not imposed on governmental members of the ACTF. It needs to be underlined that governmental members of the ACTF have so far never acted proactively by proposing topics to be discussed or examined by the ACTF, nor have they exhibited willingness to cooperate in a timely and helpful manner while completing assessments proposed by CSO members. In lack of sufficient funding, capacity and availability, CSO members are unable and sometimes undermotivated to submit initiatives and propose new actions in the ACTF. As a result, the ACTF, apart from its mandatory annual report exercise, remains largely dormant. Consequently, any aspiration that the ACTF may become the main platform for anti-corruption coordination and for related discussions entirely failed.

Unfortunately, the very same problems were encountered with the report for 2023, adopted in March 2024.[24] Again this year, the most notable deficiency was that the Government failed to provide the requisite support for the more progressive proposals, either in the compilation of the report or in the Government's evaluation of the proposals. Another challenge related to the general operations of the ACTF is that the data for the year under review are rarely available until January or February of the following year, which means that the ACTF does not have enough time to meaningfully evaluate the annual data until 15 March, i.e., the deadline set out by the law. This has been a particular challenge in the case of public procurement and crime data. Access to data and studies was generally difficult and slow, especially for non-governmental members of the task force. A glaring example of this was when, on behalf of the ACTF, the Ministry of Finance commissioned a research study on the control and audit mechanisms of EU and domestic funding. The research itself was carried out by an external supplier. The study was not made accessible to the non-governmental members of the ACTF; only a summary was provided. When CSO members of the ACTF officially asked the Ministry of Finance to grant access to the full study, a version of the study with deletions was shared with them. Moreover, due to restrictions set out by the law and the divisions of the professional subgroups, the ACTF could not investigate individual corruption cases or analyse several critical areas in the fight against corruption, including whistleblower protection, asset declaration, lobby regulation, and party financing. The report has also failed to evaluate the overall corruption landscape in Hungary.

As a result, three members of the ACTF, representing Átlátszó.hu, K-Monitor, and Transparency International Hungary, opposed the adoption of the report in March 2024. K-Monitor and Transparency International Hungary published a Special Report,[25] joined by five additional non-governmental members of the ACTF. The Integrity Authority published the Special Report on the ACTF website. It is crucial to highlight that while the Special Report received backing from the majority of non-governmental members, it does not fulfil the criteria of a "shadow report by non-governmental members" as mandated by law, due to the lack of unanimous support on behalf of the ACTF's non-governmental members. The Government did not respond to the Special Report.

Recommendations:

Amendments to Act XXVII of 2022 are required on the following points:

- Substitution for non-governmental members should be permitted. The law stipulates that non-governmental members are required to act in person. Many non-governmental members

[24] https://kemcs.hu/wp-content/uploads/2024/03/KEMCS-2023-rol-szolo-eves-jelentes.pdf
[25] https://kemcs.hu/wp-content/uploads/2024/03/Kulonjelentes_a_KEMCS_2023-as_Jelentesehez_final.pdf

of the ACTF possess the requisite professional background and also represent organisations associated with anti-corruption; it is exactly their involvement with these organisations that qualifies them for membership in the ACTF. It is important to permit a derogation from the in-person activity in their case.

- Fair compensation for non-governmental members. After two years, it is evident that participation in the ACTF requires a substantial time commitment. Appropriate guarantees should ensure fair remunerations for non-governmental participants, similar to the provisions established for the Monitoring Committees.
- Extending the deadline for the annual report. Annual data for numerous topics is typically accessible only in January or February of the year subsequent to the year under review. Consequently, the ACTF has a very limited timeframe to process the data and generate the report, hindering the possibility of comprehensive analysis.

Relevant milestones:

- Milestone 166 – Establishment of an Anti-Corruption Task Force (Q4 2022) [super milestone related to a conditionality measure (remedial action ii.)]
- Milestone 167 – The annual analysis of the Anti-Corruption Task Force for the year 2022 is publicly available (Q1 2023)
- Milestone 168 – The Government examines the first report of the Task Force (Q2 2023)

C9.R3: Introduction of a specific procedure in the case of special crimes related to the exercise of public authority or the management of public property ("judicial review")

In late 2022, an amendment to Act XC of 2017 on the Criminal Procedure Code was adopted and a new procedure called "judicial review" was introduced. This process allows individuals and private legal bodies to contest decisions made by the prosecution and investigating agencies that reject a crime report or terminate criminal proceedings. The original aim of the measure was to facilitate the prosecution of high-level corruption cases. Both private individuals and legal entities under private law can submit a complaint to a judge in seek of an assessment if the termination of the investigation by an investigating agency or by the prosecution service was well-founded. In response to the complaint, the judge may issue a binding order on the commencement or the continuation of the investigation. The judge is not bound to the complaint, and has to oversee the relevant casefile in its entirety, which means in practical terms that the judge may order the commencement or the continuation of the investigation even if the complaint itself is unfounded. Should the investigation commenced or continued on judicial order be terminated again, the complainant may submit a second complaint, in response to which the judge may enable the complainant to act as private prosecutor and take the case before a court of trial. The complainant has one month from the date of termination of the investigation to submit the complaint or to indict as private prosecutor and may only access the anonymized decision on the termination of the investigation and the anonymized excerpt of the casefile.

According to information received from the respective court, 38 judicial review requests were submitted in 2023 and 74 were submitted in 2024 until 20 November 2024. The court appointed to hear such motions has examined all 38 motions submitted in 2023 and has examined 71 motions out of the 74 motions submitted in 2024 until 20 November 2024. The court granted the motion in only 5 cases in 2023 and in a mere 3 cases in 2024, while the number of rejections was 27 in 2023 and 64 in

2024. A repeated motion for judicial review was submitted only in 1 case in 2023 and in another case in 2024. A repeated motion presupposes that the criminal procedure commenced or continued as the result of the motion for judicial review has been terminated by the investigating agency or the prosecution service. According to the information provided by the respective court, there was no private prosecution in any of the cases concerned. Judicial review motions were submitted in relation to the following types of criminal offences: abuse of public authority, misappropriation of funds, cartel offence, bribery, budgetary (practically: tax or subsidy) fraud, forgery, etc. The court however, due to privacy considerations, refused to clarify the exact number of the criminal offences concerned.[26] It may seem premature to reach conclusions based solely on these numbers, as reports from 2023 indicate that numerous applications were rejected on formal grounds (i.e. lack of legal representation or elapse of deadline).[27] Still, the absence of actual private prosecution corresponds to previous assessments, in which the authors of the current analysis warned that due to deliberate and premeditated procedural shortcomings in the relevant regulation, this legal solution was going to remain ineffective.

Both the European Commission and other stakeholders have identified several deficiencies related to the new institution. The Commission has highlighted the following points: (1) judicial rulings that overturn prosecutorial decisions lack binding authority over the prosecutor; (2) there is an additional (unnecessary) step by the trial court in the context of the new procedure for the judicial review; and (3) there is a lack of explicit guidelines that affirm the applicability of this new procedure to non-time-barred criminal offences committed prior to 1 January 2023.[28]

Based on empirical observations, the restricted access to casefiles and the stringent procedural deadlines render the private prosecution process nearly unfeasible. Analyses from the past year indicate that this legal solution is unfit to address high-level corruption, as the vast majority of the published anonymous decisions pertain to minor cases of maladministration.

Milestone 170 stipulated a revision of the procedure by December 2023. The review of the procedure was incorporated into the action plan for the National Anti-Corruption Strategy,[29] which required the Ministry of Interior to compile a report on the procedure, which should include a proposal for potential legislative amendments based on experience and statistical data by 29 February 2024. The action plan for the National Anti-Corruption Strategy also mandates the Government to present a draft law for amendment, following consultation with the Commission, by May or June 2024 and to subject it to public consultation. The most recent update on the implementation of the action plan (July 2024) indicates that the draft report is complete; however, a final government decision has not yet been made. As of 27 November 2024, there is no public consultation regarding this issue, and no additional public information is available concerning the adoption of the report or any other submissions.[30]

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[26] Information contained in the response by the Central District Court of Buda (filing number 2024.El.IV.H.17/4.) dated 29 November 2024. Document in the possession of Transparency International Hungary.

[27] See. e.g.: https://kemcs.hu/wp-content/uploads/2024/03/KEMCS-2023-rol-szolo-eves-jelentes.pdf, p. 72.

[28] Commission Decision of 13.12.2023 on the reassessment, on the Commission's initiative, of the fulfilment of the conditions under Article 4 of Regulation (EU, Euratom) 2020/2092 following Council Implementing Decision (EU) 2022/2506 of 15 December 2022 regarding Hungary https://commission.europa.eu/system/files/2023-12/C_2023_8999_1_EN_ACT.pdf

[29] See C9.R7.

[30] https://korrupciomegelozes.kormany.hu/download/9/f5/43000/NKS_2024-2024_MB_MTM%C3%A1trix_2024_II_negyed%C3%A9v.pdf

Recommendations:

- Procedural hindrances manifesting in short deadlines, limited access to casefiles and lack of the right to legal remedies ought to be removed.
- Applicability of the new regulations shall be expanded to cases where a decision dismissing a crime report or terminating the proceedings was adopted before 1 January 2023.
- Disclose the review's conclusions promptly and take the necessary government decisions.
- After thorough consultation with relevant stakeholders, initiate the necessary legislative amendments.

Relevant milestones:

- Milestone 169 – Introduction of a specific procedure in the case of special crimes related to the exercise of public authority or the management of public property (Q4 2022) [super milestone related to a conditionality measure (remedial action v.)]
- Milestone 170 – Review of the specific procedure in the case of special crimes related to the exercise of public authority or the management of public property (Q4 2023)

C9.R4: Strengthening rules related to asset declarations

The lack of meaningful changes to the asset declaration system remains an indicator for the low level of commitment to introduce effective anti-corruption measures in Hungary.

While the Government has amended relevant legislation to expand the number of individuals required to submit asset declarations, it has failed to similarly broaden the material scope of those declarations. Furthermore, the system is still fragmented as different regimes apply to MPs, government leaders and other high-level public decision-makers, mayors and municipal representatives, and to other categories of public officials and employees of publicly funded enterprises. The current material scope is even a degradation compared to the asset declaration system in place before the launch of the conditionality mechanism. For instance, individuals are no longer required to declare all real estate properties, and instead of providing exact income figures, they may now use an income scale.[31] Although a bill[32] (T/9994) has been submitted to the Parliament recently that includes minor amendments to the verification procedure of asset declarations, it does not address any of the shortcomings identified.

As mentioned before, the Integrity Authority still lacks the necessary powers to effectively carry out its duties regarding asset declarations, for instance it has no access to databases that contain information on the assets and incomes of declarants. Additionally, the outcomes of its "investigation (verification) procedure" are not binding on the other bodies responsible for the asset declaration process. In relation to parliamentarians' asset declarations, the powers of the Integrity Authority are even further limited. It is also important to note that some assets remain unverifiable due to inadequate record-keeping. For example, if someone is a beneficiary of a private equity fund or trust, or has preferential dividends in a company where s/he owns less than 25%, such assets cannot be

[31] K-Monitor, *Hungarian MP's Assets: Less Declared and Still Not Monitored*, 15 February 2023, https://k.blog.hu/2023/02/15/hungarian_mp_s_assets_less_declared_and_still_not_monitored

[32] https://www.parlament.hu/web/guest/folyamatban-levo-torvenyjavaslatok?p_p_id=hu_parlament_cms_pair_portlet_PairProxy_INSTANCE_9xd2Wc9jP4z8&p_p_lifecycle=1&p_p_state=normal&p_p_mode=view&p_auth=8UYU8Wug&_hu_parlament_cms_pair_portlet_PairProxy_INSTANCE_9xd2Wc9jP4z8_pairAction=%2Finternet%2Fcplsql%2Fogy_irom.irom_adat%3Fp_ckl%3D42%26p_izon%3D9994

properly verified. The same applies to optional agreements, which investigative media reports suggest are becoming more common methods for concealing assets. Equally problematic is the fact that only taxable revenues need to be declared. As insurance royalties are exempted from taxation, declarants may lawfully hide their incomes accumulated from insurance bonds. Overall, the range of assets required to be declared is much narrower than what the Government had indicated in the remedial measures and the RRP.

While the Office of the Parliament provides an electronic submission system for MPs, declarations can still be submitted on paper. In this case the document is manually digitised by the Office of the Parliament, which has done so for all asset declarations submitted in the previous years of this term. Despite the introduction of this system, there is no electronic submission platform for all declarants under Milestone 172 and no searchable database is available for the public. Consolidation of all MPs' asset declarations into a single searchable pdf document (about 2,000 pages long, available on the webpage of the Parliament[33]) is far from the fulfilment of the relevant milestone.

The most pressing commitment remains the implementation of effective, dissuasive sanctions for asset declaration violations. This new enforcement system, which should already be in place, has been repeatedly highlighted as a shortcoming in previous Group of States against Corruption (GRECO) reports[34] and in the Commission's annual Rule of Law Reports.[35] Yet the Government appears to be actively obstructing its development. Not only has the legal framework not been established, but there has been no consultation or debate on the matter. Besides, scrutiny of asset declarations by a competent authority and the measuring of asset declarations against tax declarations are not on the agenda, either. In lack of such verification and control, asset declarations remain unfit to screen the origins of the declarants' assets and the reliability of their enrichment.

The Integrity Authority published a comprehensive report on the shortcomings of the asset declaration system, including recommendations for reform.[36] The implementation of these would solve the vast majority of the problems identified above. Although the action plan of the National Anti-Corruption Strategy includes three actions that target the asset declaration system, the progress report published by the Ministry of Interior confirms that all planned measures are still in a preparatory stage at the Ministry of Justice. Two of these, the creation of an electronic submission system and a new system of sanctions for non-compliance were due in April and May 2024. A concept on the extension of the personal scope will be due at the end of November 2024.

Recommendation:

- Implement the reforms recommended by the Integrity Authority.

Relevant milestones:

- Milestone 171 – Entry into force of legislative amendments extending the personal and material scope of asset declarations, while ensuring frequent disclosure (Q4 2022) [super milestone related to a conditionality measure (remedial action iii.)]

[33] https://www.parlament.hu/web/guest/keresheto-vagyonnyilatkozatok-kepviselok

[34] See: https://www.coe.int/en/web/greco/-/hungary-publication-of-5th-round-evaluation-report-and-4th-interim-compliance-report-of-4th-round.

[35] European Commission, European Commission, *2024 Rule of Law Report – Country Chapter on the rule of law situation in Hungary*, https://commission.europa.eu/document/download/e90ed74c-7ae1-4bfb-8b6e-829008bd2cc6_en?filename%3D40_1_58071_coun_chap_hungary_en.pdf, pp. 22–23.

[36] https://integritashatosag.hu/wp-content/uploads/2023/12/Integritas_Hatosag_Vagyonnyilatkozatok_Eseti_Jelentes_2023-1.pdf

- Milestone 172 – Setting up of a new system for the electronic submission of asset declarations in digital format and a public database for asset declarations (Q1 2023)
- Milestone 173 – Introduction of effective administrative and criminal sanctions concerning the serious violations of asset declaration obligations (Q3 2023)

C9.R5: Ensuring the transparency of the use of public resources by public interest asset management foundations

In the last year, the legislation on public interest asset management foundations has not been amended significantly. Ad hoc resignations from the Board of Trustees followed conflict of interest concerns.

The Parliament adopted an amendment to Act IX of 2021 on Public Interest Asset Management Foundations on 4 November 2024. The amendment concerns only those public interest asset management foundations that are tasked to maintain higher education institutions and receive EU funds, and legal entities established by them.

Under the amendment, the maximum term of the Board of Trustees is limited to six years and reappointment is also restricted only for one term. Conflict of interest rules apply to Board of Trustees and supervisory board members, excluding most of the high-ranked government officials. However, government commissioners assigned by the Prime Minister, political advisors serving in the Government and political appointees overseeing government offices with county jurisdiction (called "főispán" in Hungarian) are not excluded. While employees serving in independent state authorities are excluded, lower-level government officials are not. Requirements of independence and integrity are also prescribed. Compliance check is made by the State Audit Office, however, its opinion does not bind the Board of Trustees. Board and supervisory board members are called upon to submit asset declarations in the same format as parliamentarians and checked by the Integrity Authority, however, concerns regarding the lack of effectiveness of asset declaration checks carried out by the Integrity Authority prevail.

Deficiencies highlighted in previous assessments remain. The law still allows the Hungarian state to relinquish the founding rights after the foundation has been established and transfer them to the Board of Trustees, which has been the case for all public interest asset management foundations, therefore, the Hungarian state has no power or influence in the management of the assets any more.

Although the foundations can accept contributions from the corporate sector and perform business activities, the vast majority of their resources come from public funds, as in addition to the free transfer of state assets, the Hungarian state is obliged by law to finance their operations serving public duties. Despite the fact that they perform a public function and are entitled to "at least" the same or higher level of financial support as state or municipal institutions, state bodies called upon to oversee the use of these funds are not explicitly designed by law. The courts of registration only carry out general checks on legal compliance and do not have supervisory powers over the management of public funds. Oversight by the State Audit Office is equally limited to prudency check, while the soundness of the practical management of state assets remains unscrutinised, and checks whether expenses are sensible are absent, either.

The law still provides only some very basic rules on the structure and functioning of the Board of Trustees, whose members retain the right to select their own replacements, resulting in a system of

co-optation. The legislation also fails to specify eligibility criteria for members of the boards of trustees and the supervisory board.

The right to challenge the Board of Trustees' decisions is vested in the board itself, the supervisory board of the foundations, and, in some cases of lacking legal compliance, the public prosecutor.

As stated above, conflict of interest rules exclude only the highest-ranking government officials, while enabling board membership of government commissioners and political advisors to the Prime Minister, and are only applicable to those public interest asset management foundations that are tasked to maintain running higher education institutions. The Hungarian Constitutional Court has not examined the conflict of interest rules since the summer of 2021.[37]

The amendment clearly fails to meet requirements under the conditionality mechanism relating to public interest asset management foundations, as those foundations which do not manage a higher education institution are exempted. Still, the Government seems to believe that this amendment is a major concession, in exchange for which the European Commission ought to lift the restrictions imposed on public interest asset management foundations. At least this conclusion follows from the provision that defines the amendment's entry into force, stipulating that these changes will be effective only in case the Commission waives the related restrictions, an odd and unprecedented concept in Hungary's corpus iuris.

As public interest asset management foundations perform public duties, they fall under the scope of Act CXII of 2011 on the Right of Informational Self-determination and Freedom of Information (hereinafter: Freedom of Information Act). Foundations are obliged to respond to data requests and publish data as set out in Annex 1 of the latter law proactively ("publication scheme"). Despite a recent amendment to the Freedom of Information Act,[38] foundations do not fall under the scope of the newly established repository of data on public contracts. Consequently, the National Authority for Data Protection and Freedom of Information cannot initiate the transparency procedure against and impose sanctions on foundations for failing to comply with the proactive disclosure requirements. The Authority's competence is limited to calling the foundations to publish data set in Annex 1 and if they fail to do so, the Authority can file a lawsuit against them.

Recommendations:

- Legislation should specify who is entitled to appoint board members, their exact term of membership (no longer than five years, exclusion of renewability), and the qualifications and experience that board members must have (board members need to be professionally qualified for the task).
- Law should explicitly provide which state body is competent to oversee the use of public funds.
- Law should provide that government officials (like for example government commissioners assigned by the Prime Minister, political advisors serving in the Government, low-level government employees) are excluded from board membership. An absolute ban of dual mandates for these positions as it has been before 2021 could solve the problem of dependency on the Government and the tension stemming from having a membership beside a full-time position in public service.
- It should be clarified that conflicts of interest might be not only political but also economic.

[37] Case no. II/02280/2021.
[38] Bill T/9514

- Extensive cooling off period requirements should apply to avoid revolving doors cases.
- Third parties (public interest litigants or the Integrity Authority) should have standing to challenge decisions of the Board of Trustees along their mandate as the prevailing scheme of oversight does not ensure effective remedies against board decisions.
- Public interest asset management foundations should fall under the scope of the Central Public Data Information Registry and the National Authority for Data Protection and Freedom of Information should have power to enforce proactive disclosures.

Relevant milestone:

- Milestone 174 – Entry into force of an act ensuring effective oversight on how public interest asset management foundations performing public interest activity and legal persons established or maintained by them make use of Union support (Q4 2022) [super milestone related to a conditionality measure (remedial action iv.)]

C9.R6: Enhancing the transparency of public spending

The Central Public Data Information Registry is accessible from 2023. In October 2024, Bill T/9514 was been submitted to amend the Freedom of Information Act, including rules on the Registry (Section 37/C). Pursuant to the bill, not only "budgetary bodies" within the meaning of the Public Finance Act are required to provide data to the Registry, but bodies registered by the Hungarian State Treasury would fall under the scope of the Registry as well. Consequently, the Registry will cover municipalities, however, public interest asset management foundations and publicly owned companies fall out of the scope of it. This also means that the new transparency procedure empowering the National Authority for Data Protection and Freedom of Information to impose sanctions for failure in disclosure does not apply for these entities.

It remains a shortcoming that only metadata of contracts is required to be uploaded to the Registry. The mandatory publication of contract amendments is not specified in the law. The bi-monthly update is in line with Milestone 175.

The law also enables the bodies concerned to stop uploading data on their own websites if they publish them in the Registry. This means that important data will no longer be found together with other data that have been published on the bodies' own website.

Government Decree 499/2022. (XII. 8.) on the Detailed Rules of the Central Public Data Information Registry has not been amended since its adoption.

The Registry still does not allow searching for contractors within the entire database, only within the documents of the contracting authority. This makes it impossible to list all contracts that a service provider concluded with public authorities. Furthermore, the lack of data download in bulk makes comprehensive data analysis impossible.

The annual report of the National Authority for Data Protection and Freedom of Information of 2023 shows that the Authority's new Transparency Unit, which has been operating since 1 March 2023, monitored 740 entities and initiated 109 proceedings by 28 June 2023.[39] For the period from 29 June to 28 December 2023, an additional 312 entities were monitored, and 75 transparency procedures were initiated. Out of the 160 decisions, the Authority found violations in 145 cases, and in 25 of these,

[39] https://naih.hu/eves-beszamolok?download=908:naih-beszamolo-a-2023-evi-tevekenysegrol

it ordered the bodies to improve or supplement the data disclosure. An administrative fine was imposed in 4 cases. No fines were imposed as a sanction.

The limited scope of the Registry is a significant problem as many procurements and subsidies are administered through entities that fall out of the scope of it. The National Authority for Data Protection and Freedom of Information also flagged the problem in its annual report of 2023. For example, one of Hungary's largest public procurement agencies, the Digital Government Agency, which centrally manages all digital procurements, operates in a corporate form.

While the establishment of the Registry and empowering the National Authority for Data Protection and Freedom of Information to monitor the uploads to the Registry, including the creation of a unit within the Authority to handle transparency procedures are steps into the right direction, the overall state of freedom of information has not improved.

In December 2023, the Government enacted nearly half a dozen legal provisions to restrict transparency, with no prior public consultation on the new regulations, which were adopted as part of bundled-up "omnibus" laws. Based on the newly adopted provisions, institutions are no longer obliged, among other things, to fulfil a request for information that is not aimed at data held directly by them, but by their subordinate entities, although based on previous practice, the requested data had to be collected in such cases.[40] In addition, state-owned enterprises were authorised to keep the data of their foreign investments secret for 10 years,[41] while the Government can block some of its decisions for 20 years instead of the previous 10 years[42]. These legal amendments contradict Hungary's obligations to enhance transparency of public spending.

Recommendations:

- The Central Public Data Information Registry should enable searching for information in the entire database, to enable, among others, the listing of all contracts connected to a given provider.
- The law should require that all information in the Central Public Data Information Registry is accessible and downloadable as a whole.
- Public bodies' proactive disclosure of their contract data on their own website should be upheld, beside the disclosure on the Central Public Data Information Registry.
- The Central Public Data Information Registry should include contracts and their amendments.
- To comply with Milestone 175, public interest asset management foundations and publicly owned companies should fall under the scope of the Central Public Data Information Registry and the National Authority for Data Protection and Freedom of Information should have the power to conduct transparency procedures.

Relevant milestones:

- Milestone 175 – Entry into force of a legislative act ensuring enhanced transparency of public spending (Q4 2022) [super milestone related to a conditionality measure (remedial action xvii.)]
- Milestone 176 – The central register set up under the remedial measures in the conditionality procedure is fully operational and the full set of information required is available in it (Q1 2023)

[40] Act CXII of 2011 on the Right of Informational Self-determination and Freedom of Information, Section 30(2a)
[41] Act CXXII of 2009 on Austerity Measures Applicable to Publicly Owned Corporations, Sections 7/K–7/L
[42] Act CXXV of 2018 on Government Administration, Section 7/A(2)

C9.R7: Development and implementation of a National Anti-Corruption Strategy and action plan

Uncertainties persist over the final implementation of the 2020–2022 mid-term anti-corruption strategy (Milestone 177), as it has not undergone publicly available assessment and its results are not comprehensively included into the new National Anti-Corruption Strategy adopted in February 2024[43] (Milestone 178). The strategy's adoption was long overdue, as the previous strategy expired in 2022, and Hungary had committed to adopting a new, more comprehensive anti-corruption approach under the RRP. The initial deadline for adoption was June 2023, but the strategy was not finalised until much later. The transparency of the process of the strategy development has been a major concern.[44] The ACTF's ability to provide meaningful input was restricted, most recommendations by the ACTF were not considered, and calls for broader public consultation were dismissed. This lack of engagement with stakeholders outside government circles is a significant shortcoming of the process.

The action plan[45] that accompanies the strategy outlines over 50 proposed measures across a range of areas, including transparency, judicial integrity, public procurement, economic competition, social integrity, and the fight against foreign bribery. While this suggests a comprehensive approach, the concrete measures proposed are relatively modest and lack specific details or deadlines. Many of the actions involve assigning tasks to independent bodies, such as e.g. the National Office for the Judiciary, leaving the Government with limited responsibility for ensuring their implementation. This weakens the potential impact of the strategy, as many of the measures depend on the actions of external actors over which the Government has little or no direct control.

In terms of specific areas of focus, the strategy includes proposals for improving transparency, such as reviewing the rules on political party funding and advancing the long-delayed freedom of information reforms. However, these measures remain vague and lack concrete plans for reform.[46] Besides, while the Government has committed to examining the foreign funding of political parties, it has not set clear goals for a comprehensive overhaul of the party funding system. Similarly, although the action plan mentions strengthening the asset declaration framework and introducing sanctions, there are no details on how these measures will be enforced or what specific actions will be taken.

One of the most significant issues is the lack of real progress on whistleblower protection. While the action plan acknowledges the need to strengthen the current level of protection, it does not include any substantive reforms or clear actions to address the shortcomings of the existing law. Hungary's whistleblower protection law, which was passed last year, still fails to offer adequate safeguards, particularly to those who expose corruption publicly. This is an area where Hungary continues to face

[43] https://cdn.kormany.hu/uploads/document/a/a6/a68/a68658c9b404f40e1c4a0a4bb0f8891f972ad773.pdf
[44] https://www.oecd.org/en/publications/a-strategic-approach-to-public-integrity-in-hungary_a5461405-en/full-report/
[45] https://njt.hu/jogszabaly/2024-1025-30-22
[46] E.g. the proposed amendments to the Freedom of Information Act, although they improve to some extent the accessibility of public interest information by resolving certain technical issues and foreseeing more stringent and more user-friendly proactive disclosure requirements, fail to address challenges that follow from previous government interventions aiming to introduce more hindrances in the way of access to information. Moreover, the proposed amendments, included in a draft omnibus law, were not consulted prior to submission to the Parliament with either the ACTF, or the National Authority for Data Protection and Freedom of Information, even though civil society members of the ACTF recurrently asked for such consultations. The Government's proposal, open for final vote in the Parliament, is available here: https://www.parlament.hu/irom42/09514/09514-0009.pdf.

criticism from both the EU and civil society,[47] yet the action plan provides little hope for meaningful change.

Another major concern is the lack of ambition in addressing shortcomings in the public procurement and economic competition frameworks. The measures proposed in these areas largely reflect recommendations from the previous year's ACTF report, and they focus on relatively minor issues, such as increasing oversight of partial tender awards. These measures are unlikely to lead to significant improvements in transparency or fairness in public procurement. Furthermore, there is no mention of systemic reforms, such as addressing the weaknesses in EU tender management or reviewing the centralization of public procurement processes.

As an improvement on the previous strategy, it also provides for the continuous monitoring of implementation by a monitoring committee, including the ACTF's non-governmental vice president. Currently, information is solely available on the first two quarterly reviews, with the most recent from July 2024. The evaluation matrix[48] indicates that deadlines have frequently been unmet and execution has stagnated at the highest levels of government (i.e., preliminary work is completed, consultations occur, but final governmental decisions remain unmade for unknown reasons).

Recommendations:

- Speed up government decision-making process at bottlenecks.
- Foster civil and stakeholder engagement in the implementation of the National Anti-Corruption Strategy.
- To enhance the action plan, it should include measurable results that clearly demonstrate how the implementation of each action will contribute to achieving the National Anti-Corruption Strategy's objectives.

Relevant milestones:

- Milestone 177 – Strengthening the anti-corruption framework in Hungary by implementing concrete actions under the National Anti-Corruption Strategy and a related action plan covering the period 2020-2022 (Q1 2023)
- Milestone 178 – Strengthening the anti-corruption framework in Hungary by putting in place a new National Anti-Corruption Strategy and a related action plan (Q2 2023)

C9.R8: Upgrading the cooperation systems of the prosecution service to tackle corruption practices

Currently, there is little publicly accessible information regarding this reform. The relevant RRF call[49] was released on 19 May 2023, specifically for the Prosecutor General's Office in a priority procedure. Nevertheless, the EU funding database indicates that while the Prosecutor General's Office has submitted the application, no decision has been made thus far. The expenses for the implementation of the project can be recorded from 1 February 2020, to 31 December 2025. According to the procurement notices, the Prosecution General's Office has acquired the system studies for the project

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[47] https://transparency.hu/wp-content/uploads/2024/01/K-Monitor_Transparency-Int-HU_letter_to_COM_on_transposition_of_whistleblower_directive_21122023.pdf

[48] https://korrupciomegelozes.kormany.hu/download/9/f5/43000/NKS_2024-2024_MB_MTM%C3%A1trix_2024_II_negyed%C3%A9v.pdf

[49] https://www.palyazat.gov.hu/programok/helyreallitasi-es-ellenallokepessegi-terv/rrf/rrf-911-23/alapadatok

already in 2022,[50] but there is no indication of the procurement of the necessary IT services. According to the call documentation, the completion deadline is 2025. The pace of the relevant IT developments remains uncertain. It is worth highlighting that IT-related developments, although necessary and useful, cannot solve the problems that stem from the architecture of the prosecution service leaving way too broad and unchecked discretion to hierarchical superiors and lacking a functional system of internal checks and balances, as underlined in GRECO's report.[51] In our assumption, these deficiencies explain, to a large extent, why the prosecution service lacks a robust track record of investigations of corruption and other incidents of wrongdoing concerning high-level officials and their immediate circle.[52]

Relevant milestone:

- Milestone 180 – Setting up of a new IT system for the handling of sensitive documents of the prosecution service (Q2 2024)

C9.R9: Awareness-raising for the eradication of gratuity payments in the healthcare sector

The National Protective Service (NPS) launched its awareness-raising campaign against informal payments in December 2022 by publishing the brochure *"Gratitude is Not Money"*.[53] An audiovisual campaign followed in January 2024[54] that consisted of two short campaign spots aired on television and promoted on social media. According to the NPS, the campaign ended in June and the two spots were aired at 21 TV stations.[55] However, the press release on the conclusion of the campaign did not state whether the overall campaign target reach of 5 million people was fulfilled.

A study published in June 2024 by the government-close Századvég Institute, commissioned by the NPS to survey citizens' attitudes towards informal payments after the reforms revealed that in 2022 (base line),[56] March 2024 (interim assessment),[57] and June 2024 (final assessment),[58] the group of respondents who stated that they were aware of the criminalization of giving and accepting informal payments consistently approached 90%.

According to the study, among those who learned in healthcare institutions about this change, around 30% were told by a healthcare worker. From March to June, the group who learned in waiting rooms of medical institutions that informal payments are illegal, for example from posters or publications, grew. By June, just over half of respondents mentioned this source. Around 50% of respondents in both March and June had encountered a television advertising campaign, followed by around 33% who saw a poster, and around 24% who came across an online advertisement. In June, there was a

[50] https://ekr.gov.hu/eljarastar/eljaras/EKR000569152022
[51] Group of States against Corruption (GRECO), *Fourth evaluation round – Evaluation Report Hungary* (Greco Eval IV Rep (2014) 10E),
https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806c6b9e
[52] See: European Commission, European Commission, *2024 Rule of Law Report – Country Chapter on the rule of law situation in Hungary*, https://commission.europa.eu/document/download/e90ed74c-7ae1-4bfb-8b6e-829008bd2cc6_en?filename%3D40_1_58071_coun_chap_hungary_en.pdf.
[53] https://okfo.gov.hu/Hirek/a-hala-nem-penz
[54] https://nvsz.hu/hirek/?p=115
[55] https://nvsz.hu/hirek/?p=266
[56] https://nvsz.hu/files/A_halapenz_lakossagi_megitelese_I_utem.pdf
[57] https://nvsz.hu/files/A_halapenz_lakossagi_megitelese_II_utem.pdf
[58] https://nvsz.hu/files/A_halapenz_lakossagi_megitelese_III_utem.pdf

notable increase in the number of people who cited radio or TV interviews or advertisements as their source of information, the final study by Századvég states.

A study by PwC concluded in December 2023[59] that the prevalence of informal payments in the Hungarian healthcare system has significantly decreased since the 2021 reforms, mainly due to salary increases and the stricter ban of informal payments. However, several conditions that fuelled the system were not addressed, maintaining tension in the public healthcare system.

Relevant milestones:

- Milestone 182 – Launch of an awareness-raising campaign on the acceptability of gratuity payments in healthcare (Q4 2022)
- Milestone 183 – Interim assessment of the first results of the awareness-raising campaign on the acceptability of gratuity payments in healthcare (Q3 2023)

C9.R10: Reducing the share of single-bid public procurement procedures

In order to facilitate the achievement of this objective, the Government adopted Government Decree 63/2022. (II. 28.) on Measures to Reduce the Number of Single-Bid Public Procurements, which entered into force on 15 March 2022. The Minister responsible for public procurement monitors the data on the proportion of single-bid public contracts on an ongoing basis, prepares an annual analysis and publishes the results of this analysis on the Electronic Public Procurement System (EPS) website by 15 February each year. The decree specifies, inter alia, the cases and conditions for the mandatory use of prior market consultation and the publication of a plan of measures if the proportion of single-bid tenders for contracts above the EU threshold exceeded 20% for the contracting authority in the calendar year preceding the year in question.

The decree initially limited the mandatory requirement to conduct prior market consultation or to apply the inefficiency ground to the procurement subject matters covered by a statistically high number of single-bidder procedures. This was changed by an amendment effective from 15 March 2024,[60] which requires market consultation for certain types of procedures, but allows exceptions for framework agreements, dynamic purchasing systems and the so-called "n. 115 paragraph procedure".

In February 2023, the Deputy State Secretariat for Public Procurement Supervision of the Prime Minister's Office published an analysis[61] of the evolution of single tender procedures between 2019–2022 (Milestones 195 and 196). Another report on the time period between 2019–2023[62] was published in February 2024.

The analyses indicate the proportion of public procurements per tender by type of financing. According to the report the share of single-bid tenders financed by the European Union reduced to 13.3% in 2022 from 15.9% in 2021. In 2023, the share of EU-funded single-bid tenders fell to 5.5%. The share of single-bid tenders financed from domestic (national) resources was reduced to 31.3% in 2022 from 35.9% in 2021, and to 29% in 2023.

[59] https://cdn.kormany.hu/uploads/document/f/f4/f48/f4847fe3d411845cf3671b8dd0d94fdc072386e9.pdf
[60] https://www.kozbeszerzes.hu/hirek/tajekoztatas-az-elozetes-piaci-konzultaciok-kozbeszerzesi-hatosag-altali-ellenorzeserol/
[61] https://ekr.gov.hu/portal/hirek/8798091965784
[62] https://ekr.gov.hu/portal/hirek/8798812861784

The correction process for EU-funded procurements, where the award of a contract is often conditional on multiple competing bids, has started from a much more favourable level, and the 15% target was reached by the end of 2022 (Milestones 185 and 187). This will be more challenging for domestically funded tenders. The target on domestically funded single-bid tenders was not met, as the proportion of procedures without competitive bids fell only to 29% instead of the targeted 24% in 2023 (Milestones 186 and 188). In its annual integrity report,[63] the Integrity Authority proposes to examine with particular attention whether the better values are indeed the result of competitive bids and not (at least in part) due to the practice of so-called "supporting bids".

According to the results of the performance measurement framework for public procurement (see the assessment of C9.R12), the proportion of framework agreements concluded with a single tenderer is extremely high (over 70%).

However, the improvement in the proportion of single-bid tenders is not sufficient to restore competition. This condition can be easily circumvented by collusion between bidders and the tailoring of tenders. Moreover, in the highly concentrated domestic public procurement market, some pro-government players have cemented themselves in an immovable leading position, far above their competitors, which is not offset by the measures recently introduced.

The tool used in the analysis was not disclosed, although this was not required by the milestone. There is no public information available whether the audit was made by EUTAF.

Recommendations:

- The findings of the evaluation by EUTAF about the assessment of single-bid tenders should be made public.
- Framework agreements and dynamic purchasing systems shouldn't be exempt from mandatory market consultation.

Relevant milestones:

- Target 185 – The share of tender procedures with single bids for procurements financed from Union support shall not exceed 15% (Q1 2023)
- Target 186 – The share of tender procedures with single bids for procurements financed from national resources shall not exceed 32% (Q1 2023)
- Target 187 – The share of tender procedures with single bids for procurements financed from Union support shall not exceed 15% (Q1 2024)
- Target 188 – The share of tender procedures with single bids for procurements financed from national resources shall not exceed 24% (Q1 2024)
- Milestone 195 – Setting up of a monitoring and reporting tool ("single-bid reporting tool") to monitor and report on public procurements closed with single-bids financed from Union support or from national resources in accordance with the Single Market Scoreboard methodology (Q3 2022) [super milestone related to conditionality measures (remedial actions vii., viii. and ix.)]
- Milestone 196 – First report based on the "single-bid reporting tool" is made available (Q1 2023)

[63] https://integritashatosag.hu/wp-content/uploads/2024/06/2023-Eves-Elemzo-Integritasjelentes.pdf

C9.R11: Development of the Electronic Public Procurement System (EPS) to increase transparency

A machine-processable database (in particular allowing structured search and bulk export of data on public procurement procedures) was created, containing in a structured format detailed information on contract award notices from public procurement procedures launched in the EPS, on the website of the Public Procurement Authority (Milestone 197) Data can be exported in CSV and Excel format. The new platform was launched on 30 September 2022. The search tool allows users to filter the database by selecting or combining different criteria, such as contracting authorities, bidding companies (alone or as a member of a consortium), subcontractors and their tax numbers, time period, cost, procedure and contract types, CPV codes, NUTS classification. A user manual for the platform was published on 21 December 2022. The disclosed database was completed with a search function for subcontractors. (Milestone 198) and with a search function for award notices from 1 January 2014 (Milestone 199).

New features were available in the EPS from 30 June 2024. The improvements were implemented as a measure included in the action plan for measures to increase the level of competition in public procurement (2023–2026), pursuant to Government Resolution 1118/2023. (III. 31.).

A celebrated development for further analysis and increased transparency is that access to public procurement data has improved somewhat thanks to the measures taken under the EU conditionality mechanism, which has made the data on contract award notices available for bulk download. As the Integrity Authority pointed out in its 2022 report, the level and quality of completion and information content of manually introduced records in the Electronic Public Procurement System varies, suggesting that further systematic data monitoring by the Public Procurement Authority is needed.

Apparent errors are related to the value of the tenders, such as too low value are not corrected. A recurring phenomenon is that in the case of framework agreements, contracting authorities do not indicate the value of the total purchase, but the value of the unit of the goods, works or services ordered. The names of winning bidders are not presented in a standard format, which makes it difficult to link them. For 17.5% of the winning bidders, the tax number is missing from data available for bulk export in EPS according to Transparency International Hungary's assessment on tenders awarded in 2023. The format of tax numbers is not uniform. The name and ID of unsuccessful bidders is not available at all in the downloadable database.

As stated in the previous assessment, the indication of subcontractors is only mandatory for contracts concluded from 30 November 2022 onward, previously contracting authorities only had the possibility to disclose this information in the contract award notices, therefore this information is only available for a small number of notices before 30 November 2022. However, the reporting of subcontractors is still very incomplete after this date.

On the EPS website, the final value of contracts and information on direct purchase orders based on framework agreements should be made more easily available. The fact that the required data content is still not fully available for mass downloading complicates further use. In particular, data on framework agreements of central public procurement bodies are limited in the database and difficult to evaluate. While some central public procurement bodies publish data only outside the EPS, in their own systems, others publish data for the contract period in a completely irregular way. This makes the system fragmented and the data difficult to compare, which is particularly important as central public procurement bodies manage a significant slice of public procurement. These factors represent

a high risk in the public procurement system, which was also reflected in the Integrity Authority's annual report[64] evaluating public procurement in 2023.

Data on the exact value of consortium shares is also held by the Authority, but is not publicly available, although it would provide useful information for assessing the concentration of the various market player. Meanwhile, the accessibility of the information contained in the more comprehensive database maintained by the Public Procurement Authority (available at www.kozbeszerzes.hu) is hampered by the presence of Captcha codes in the contract award notices.

Recommendations:

- The final value of contracts and information on direct purchase orders based on framework agreements should be made more easily available.
- Further systematic monitoring of contract award notices should be necessary by the Public Procurement Authority.
- More standardisation and automation of data entry is needed to reduce the possibility of errors by the bidding organisations entering the data.
- Consultation opportunities should be organised with civil society and media on the further development of the EPS system.

Relevant milestones:

- Milestone 197 – The EPS functions allowing the structured search and bulk export of contract award notice data are available to the public (Q3 2022) [super milestone related to a conditionality measure (remedial action x.)]
- Milestone 198 – The EPS functions allowing the structured search and bulk export of all data related to subcontractors is available to the public (Q4 2022) [super milestone related to a conditionality measure (remedial action x.)]
- Milestone 199 – The EPS functions allowing the structured search and bulk export of contract award notice data from 1 January 2014 are available to the public (Q1 2023)

C9.R12: Performance measurement framework for public procurements

In September 2022, the Government adopted Government Resolution 1425/2022. (IX. 5.), which aims to develop a performance measurement framework (hereinafter: the Framework) to assess the efficiency and cost-effectiveness of public procurement. The performance measurement framework became operational on schedule as published on the EPS website on 30 November 2022 (Milestones 200 and 201). The Framework is operated by a working group of independent CSOs and procurement experts in the field of public procurement in Hungary, selected through an open call for tender. The results of the Framework are published by 28 February each year. The first analysis[65] was published on 28 February 2023 (Milestone 202).

By Government Resolution 1230/2023. (VI. 16.), the Government ordered to ensure the further development of the framework documentation and the publication of the further developed documentation, with the involvement of independent non-governmental organisations and public procurement experts selected in accordance with the government resolution, and the Organisation

[64] https://integritashatosag.hu/wp-content/uploads/2024/07/Integritas-Hatosag-Integritaskockazat-elemzes-2024-002.pdf
[65] https://ekr.gov.hu/portal/hirek/8798092096856

for Economic Cooperation and Development (OECD). During 2023, the Deputy State Secretariat for Public Procurement Supervision of the Prime Minister's Office, now the Ministry of Public Administration and Regional Development, worked on the further development of the framework. The second analysis[66] was published on 28 February 2024 containing 115 indicators.

A major effort has been made in the Framework to provide an adequate methodological basis and to fill in missing data. Various new indicators were created. The main problem at present is that the approach to analysis is not sufficiently problem-oriented, so that many phenomena are not adequately explained. Although recommended by both the OECD and the ACTF, the Ministry of Public Administration and Regional Development did not accept that the ACTF should address the problem of high concentration in the public procurement market. They explain that measuring and analysing market concentration or identifying specific restrictive practices is beyond the scope of the Framework and the available data and expertise of the Ministry. Some other indicators, mainly based on the value of procedures and CPV, which were also among the OECD's proposals,[67] were not included, also citing data gaps.

The timing of the publication of the analysis at the end of February leaves very little time for comment, as there are only two months to compile the analysis based on the previous year's data. Therefore, the ACTF's Special Report was published a few months later than the original analysis, due to the limited time available for comments on the hundreds of pages of material. It contained a number of recommendations that were much more problem-oriented than the original report. The ACTF highlighted among its suggestions the need for "further analysis" of the activities of central purchasing bodies, and in particular of the National Communications Office, given "the lack of information available and the replies to the questionnaire, which point to the lack of a broad competitive environment and the lack of thoroughness in the preparation of procedures for framework agreements". They highlighted that the proportion of framework agreements concluded with a single tenderer is extremely high (over 70%), a factor which can also be highlighted in the context of the efficiency audit of central purchasing bodies. Longer-term framework agreements close the market and competition. These problems are not adequately addressed by the milestones either, it is therefore feared that the expected reforms in public procurement will not be achieved despite the implementation of the measures.

Recommendations:

- Raise awareness on the importance of ensuring a good quality of public procurement data.
- Provide the adequate time for each member to provide more valuable comments.
- Consider integrity and concentration issues to be included among indicators, and increase the analysis of central public procurement bodies.
- Provide concise and problem-oriented insights in the executive summary and the different chapters.

Relevant milestones:

- Milestone 200 – Setting up of a performance measurement framework of public procurements (Q3 2022) [super milestone related to a conditionality measure (remedial action xi.)]

[66] https://ekr.gov.hu/portal/hirek/8798812927320
[67] https://www.oecd.org/en/publications/enhancing-the-public-procurement-performance-measurement-framework-in-hungary_afc1d91a-en.html

- Milestone 201 – Entry into operation of a performance measurement framework of public procurements (Q4 2022) [super milestone related to a conditionality measure (remedial action xi.)]
- Milestone 202 – First annual analysis carried out under the performance measurement framework of public procurements (Q1 2023)

C9.R13: Action plan for increasing the level of competition in public procurement

The Government adopted Government Resolution 1118/2023. (III. 31.) on the Action Plan to Increase the Level of Competition in Public Procurement (2023–2026).

The action plan included a series of measures led by the Ministry of Public Administration and Regional Development, such as making the action plan publicly available on the Prime Minister's Office's website, conducting annual reviews, and collaborating with the OECD to assess competition levels and develop a performance measurement framework. Improvements to the Electronic Public Procurement System were also planned, including automated database queries, enhanced notification features, advanced search capabilities, and anonymous access to procurement documents.

Further actions to improve the public procurement system includes reviewing and potentially reducing fees for appeals, revising rules around preliminary market consultations to increase competition, and updating guidelines to reduce single-bid procurement cases. The Government also sought to support small and medium-sized enterprises (SMEs) by offering free procurement training and developing support programs to encourage their participation in procurement processes. Additionally, the Ministry of Public Administration and Regional Development, in collaboration with the National University of Public Service and the Ministry of Interior, committed to organise events to enhance organisational integrity and address corruption risks within public procurement.

Finally, the Public Procurement Authority, alongside the Competition Authority, decided to publish new guidelines addressing conflict of interest, corruption risks, and cartel behaviour within procurement. These steps aimed to create a fairer, more transparent procurement environment, further supported by sector-specific recommendations on mitigating market volatility and managing business risks.

In 2024, the Government adopted Government Resolution 1082/2024. (III. 28.) on the Review of the Action Plan on Measures to Increase the Level of Competition in Public Procurement (2023–2026). This plan mandates that the Ministry of Public Administration and Regional Development publishes the plan and initiates updates to the electronic procurement regulations to streamline submission and evaluation times. The Minister is also responsible for evaluating procurement practices, implementing rotation for selected bidders, and issuing methodological guidance to support competition and transparency in the process. The updates aim to enhance the efficiency of the EPS by 2025, while new guidelines on market engagement should be available by the end of 2024.

Additional actions involve the Ministry of Interior forming a working group to investigate the high incidence of single-bid procurements in the healthcare sector, with recommendations for reducing these cases expected by early 2025. Both the Ministry of Finance and Prime Minister's Office will review centralized procurement practices, particularly for EU-funded projects, with findings to be reported by the end of 2024. Meanwhile, the Competition Authority will conduct sectoral analyses of single-bid markets and publish the results online to identify and address barriers to competition.

The Public Procurement Authority and related organisations will create resources to aid fair pricing and encourage collaboration among smaller contracting entities. This includes the establishment of methodological support to reduce single-bid procurements. Finally, the Digital Government Agency and National Communications Office will pursue international partnerships to align Hungarian practices with EU standards, with applications for EU procurement networks to be submitted by mid-2024.

The majority of the measures are progressing as planned and are being implemented by the Government and various agencies. However, it is crucial to emphasise that, in numerous instances, the action plans have limited ambitions, which raises doubts about their potential to enhance competition. In some instances, the action plans only reiterate steps previously outlined in other reports and publications. (Such as e.g. the proposal on training and support for SMEs, which was already included in the original version of the RRP drafted in 2021.) The action plans hardly take into consideration the findings and the proposals of the Integrity Authority, the non-governmental members of the ACTF and the working group operating the framework for public procurements. This shortcoming is tangible in the case of certain types of procurement with high risk of corruption: notably for procurement procedures according to Section 115 of the Public Procurement Act (this procedure allows awarding low-value works contracts without prior contract notice) and multiannual framework contracts established by central purchasing bodies with a single market operator. In case of these procurements the action plans only commit to soft measures. (It is particularly noteworthy that in case of central purchasing bodies, the new measures only apply to procurements funded from EU funds.)

Recommendations:

- The Integrity Authority must be engaged in the formulation of the action plan.
- It is essential that the action plan addresses the intervention areas deemed problematic by key stakeholders (EU, OECD, Integrity Authority, ACTF).

Relevant milestones:

- Milestone 203 – Adoption of an action plan to increase the level of competition in public procurement (Q1 2023)
- Milestone 204 – Revision of the action plan to increase the level of competition in public procurements following its first annual review (Q1 2024)

C9.R14: Training scheme, and support scheme, on procurement for micro-, small and medium-sized enterprises to facilitate their participation in public procurement procedures

In Milestone 205 the Government has committed to offering free training sessions to at least 2,200 SMEs to support their engagement in public procurement processes. These sessions are led by public procurement experts and based on newly developed e-learning materials, allowing for both individual participation and in-person or online group training, all coordinated by the Ministry responsible for public procurement. The initial goal was to train 1,000 SMEs by 31 March 2024, with an additional 1,200 SMEs to receive training by 30 June 2026. The trainings started in June 2023. According to the latest available information, the training scheme was provided for 1,300 participants.

In Milestone 209, the Government committed to launch a support scheme for at least 1,800 SMEs for facilitating their participation in public procurement procedures. The scheme provides a flat-rate support for SMEs compensating for the costs associated with their participation in public procurement procedures. According to the central portal for EU funds, the call for application was opened on 31 March 2023. The objective of this measure was to reduce the entry barriers and facilitate their participation in public procurement. As of October 2024, 600 applications were favourably evaluated.

Until October 2024, the Government has not published the mid-term evaluation on the added value and effectiveness of the support scheme (Milestone 210).

While the training program for SMEs is reportedly on track, there are substantial concerns regarding the misuse of lump sum support funds. The key issue lies in the validity criteria, which allow applicants to claim support without necessarily submitting valid bids. This loophole arises from a "reverse evaluation" process, where bids are ranked by price or score, but only the top-ranking bids are reviewed for validity. K-Monitor's upcoming analysis indicates that over half of the grants have been awarded based on bids where the validity was not fully evaluated.

This deficiency has created opportunities for significant misuse. In some instances, the number of bidders were inflated to as high as dozens – all of them but the winner submitted unrealistically high bids and later claimed the lump sum support. In a notorious case, the total amount disbursed to SMEs as lump sum support was actually higher than the value of the procurement contract. Additionally, grants have gone to applicants whose business activities were not at all aligned with the procurement requirements – for example, procurement professionals bid albeit with an unrealistic bid for the provision of heavy equipment, and later claimed the lump sum grant. (Typically, a disproportionate number of beneficiaries of the lump sum scheme were persons or firms who are professionally involved in procurement consultancy – they have bid strategically on a wide variety of procurements, ranging from the supply of foodstuffs to road construction, effectively gaming the system.) Moreover, a network of interconnected companies has also exploited this scheme to win multiple lump sums through shared interests, circumventing the program's intent.

Such practices not only fail to promote fair competition in public procurement but also undermine the effective participation of SMEs genuinely suited to these opportunities. Preliminary estimates from K-Monitor suggest that at least as much as 30% of the program's funds to date may have been misallocated.

Recommendations:

- The support scheme should be suspended. The call should be amended in order to ensure that only applicants who submit a valid bid are allowed to win. A limitation of the amount that can be awarded to firms belonging to the same interest group should be considered.
- Misuses of the scheme and collusions should be thoroughly investigated.

Relevant milestones:

- Milestone 205 – Launch of a training scheme for facilitating the participation of micro-, small and medium-sized enterprises in public procurement procedures (Q2 2023)
- Milestone 206 – Number of micro-, small and medium-sized enterprises having received training on public procurement practices (Q1 2024)
- Milestone 209 – Setting up a support scheme for compensating the costs associated with participating in public procurements of micro-, small and medium-sized enterprises (Q1 2023)

- Milestone 210 – Carrying out of a mid-term evaluation on the added value and effectiveness of the support scheme (Q3 2024)

C9.R15–C9.R18: General remarks related to Milestones 213, 214, 215 and 216 concerning the judiciary

Acknowledging that judicial independence is an inherent prerequisite for the functioning of an effective internal control system for the budget, the RRP established four super milestones (hereinafter: Judicial Super Milestones) to remedy existing deficiencies in the Hungarian justice system. The four Judicial Super Milestones required (1) the entry into force of legislative amendments to strengthen the role of the National Judicial Council while safeguarding its independence (Milestone 213); (2) the entry into force of amendments to strengthen judicial independence of the Supreme Court, i.e. the Kúria (Milestone 214); (3) the entry into force of legislative amendments to remove obstacles to references for preliminary rulings to the CJEU (Milestone 215); and (4) the entry into force of legislative amendments to remove the possibility for public authorities to challenge final decisions before the Constitutional Court (Milestone 216). The Judicial Super Milestones were also included in identical terms under the Common Provisions Regulations as horizontal enabling conditions of the Charter of Fundamental Rights to have access to funds under 10 different operative programmes for the programming period 2021–2027.

In May 2023, Hungary adopted a judicial package[68] (hereinafter: Judicial Reform) and claimed to have met all four Judicial Super Milestones. Whilst CSOs called attention to outstanding deficiencies in compliance,[69] in December 2023, Hungary adopted further legislative amendments[70] to supplement the Judicial Reform, partly covering outstanding fundamental deficiencies.[71] In Decision C(2023) 9014 of 13 December 2023, the European Commission assessed the Hungarian judicial reforms positively and decided that, as regards the independence of the judiciary, the horizontal enabling condition on the Charter had been fulfilled.

Following the positive assessment of the Judicial Super Milestones by the Commission, subsequent legislative steps and implementing techniques have led to a regression. Amplifying the impacts of this regression, certain systemic deficiencies outside the scope of the milestones continue to jeopardise the independence of the Hungarian judiciary. The problematic issues include both concerns related to already implemented reforms, such as: the deficient execution of the new rules on case allocation, the escape-clause that allows for the *de facto* re-election of the Kúria President contrary to the express requirements of the milestones, or the concerning new trends in the functioning of the National Judicial Council and in the exercise of its supervisory functions; and concerns that were not tackled by milestones, such as a growing financial pressure on the judiciary, the lack of guarantees of the freedom of expression of judges, and the possibility of the Kúria as apex court to block the application of EU law through uniformity decisions. (See in more detail below under Section II.1.)

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[68] Act X of 2023 on the Amendment of Certain Laws on Justice related to the Hungarian Recovery and Resilience Plan was adopted by the Hungarian Parliament on 3 May 2023.

[69] Amnesty International Hungary – Eötvös Károly Institute – Hungarian Helsinki Committee, *Assessment of Act X of 2023 on the Amendment of Certain Laws on Justice related to the Hungarian Recovery and Resilience Plan*, 23 May 2023, https://helsinki.hu/en/assessment-of-hungarys-judicial-reforms/

[70] Amnesty International Hungary – Hungarian Helsinki Committee, *Last-minute, makeshift solutions cannot resolve long-standing rule of law concerns*, 8 December 2023, https://helsinki.hu/en/wp-content/uploads/sites/2/2023/12/Makeshift-solutions-cannot-resolve-RoL-concerns.pdf

[71] Hungarian Helsinki Committee, *Fundamental deficiencies of the Hungarian judicial reform*, 31 October 2023, https://helsinki.hu/en/wp-content/uploads/sites/2/2023/10/Fundamental_deficiencies_Judicial_Reform_20231030.pdf

Relevant milestones:

- Milestone 213 – Entry into force of legislative amendments to strengthen the role of the National Judicial Council while safeguarding its independence (Q1 2023)
- Milestone 214 – Entry into force of amendments to strengthen judicial independence of the Supreme Court (Q1 2023)
- Milestone 215 – Entry into force of legislative amendments to remove obstacles to references for preliminary rulings to the Court of Justice of the European Union (Q1 2023)
- Milestone 216 – Entry into force of legislative amendments to remove the possibility for public authorities to challenge final decisions before the Constitutional Court (Q1 2023)

C9.R19: Reinforced legal provisions setting out implementation, monitoring, and audit and control arrangements to guarantee the sound use of Union support

In September 2022, Government Decree 373/2022. (IX. 30.) on the Basic Rules and Responsible Institutions for Implementing Hungary's Recovery and Resilience Plan was issued. The Government Decree was amended several times in 2024. In September 2022, the Government amended Government Decrees 256/2021. (V. 18.) and 272/2014. (IX. 5.) on the use of EU funds. Subsequently, all three legislative measures have been revised to incorporate e. g. provisions for unannounced on-site inspections[72] of the implementation of EU projects, alongside with other technical provisions (Milestones 217 and 218). No guidance has been published on conflicts of interest in the institutional system for the allocation of EU funds, except for the Commission's own guidance. This lack of clear, practical guidance and training on conflicts of interest was also pointed out by the Integrity Authority in its 2022 and 2023 annual reports (Milestone 219).

The content of the relevant legislation meets the requirements formulated within the milestones. (The respective milestone was fulfilled according to the assessment of the Commission of 30 November 2022.)

Relevant milestones:

- Milestone 217 – Legal mandate for the implementation, audit and control of the recovery and resilience plan (Q3 2022) [super milestone related to a conditionality measure (remedial action vi.)]
- Milestone 218 – Amendment of the legal provisions relating to the implementation, monitoring, control and audit of the European Structural and Investment Funds and the funds under Regulation (EU) 2021/1060 in Hungary (Q3 2022) [super milestone related to a conditionality measure (remedial action vi.)]
- Milestone 219 – Adoption and start of application of guidelines to ensure the effective the prevention, detection and correction of conflict of interest for the staff of all bodies involved in the implementation, control and audit of Union support in Hungary (Q4 2022) [super milestone related to a conditionality measure (remedial action vi.)]

[72] These provisions were introduced at the behest of the Integrity Authority, which still advocates for an increased frequency of such inspections.

C9.R20: An effective anti-fraud and anti-corruption strategy for the implementation, audit and control of Union support

In November 2022, the Government adopted the anti-fraud and anti-corruption strategy (Milestone 220). The report on the strategy's implementation, which incorporates statistical data, was published after a significant delay, i.e. in September 2023 for year 2022,[73] and in September 2024 for year 2023.[74] The strategy was revised in August 2024 (Milestone 221). The strategy encompasses those proposals of the Integrity Authority and the ACTF which have received governmental backing, along with pertinent measures outlined in the National Anti-Corruption Strategy.[75]

Relevant milestones:

- Milestone 220 – Ensuring effective prevention, detection and correction of fraud and corruption in the implementation of Union support by drawing up and implementing an effective anti-fraud and anti-corruption strategy for Union support (Q3 2022) [super milestone related to a conditionality measure (remedial action vi.)]
- Milestone 221 – Ensuring effective prevention, detection and correction of fraud and corruption in the implementation of Union support by drawing up and implementing an effective action plan related to the anti-fraud and anti-corruption strategy for Union support (Q4 2022) [super milestone related to a conditionality measure (remedial action vi.)]

C9.R21: Full and effective use of the Arachne system for all Union support

In 2024, the government decree regarding the implementation of the RRP was revised to clarify the regulations for regular uploads to Arcane.[76] The Integrity Authority, in its most recent annual report, recommended the upload of supplementary data to Arachne. The Government did not accept this proposal. The EUTAF (Directorate General for the Audit of Union Funds, DGAEF) has conducted an audit[77] on the effective use of Arachne in 2023 and 2024, however, the findings of this audit are not publicly available.

Relevant milestones:

- Milestone 222 – Ensuring effective prevention, detection and correction of fraud and corruption in the implementation of Union support through appropriate arrangements ensuring the effective use of the Arachne risk-scoring tool (Q3 2022) [super milestone related to a conditionality measure (remedial action xv.)]
- Milestone 223 – Ensuring effective prevention, detection and correction of fraud and corruption in the implementation of Union support by confirming the adequacy of the

[73] https://www.palyazat.gov.hu/api/download_document?name=csalas_elleni_beszamolo_2022.pdf&urn=workspace%3ASpacesStore%2Fi%2Fd60f227b-0b19-4ff5-8ff9-0e159c515d6b

[74] https://www.palyazat.gov.hu/api/download_document?name=csalas_elleni_beszamolo_2023.pdf&urn=workspace%3ASpacesStore%2Fi%2Fce19d3cb-52d6-465d-8e4e-abf67b084aae

[75] https://korrupciomegelozes.kormany.hu/download/c/ee/43000/Csal%C3%A1s_%C3%A9s_Korrupci%C3%B3_Elleni_Strat%C3%A9gia_20240815.pdf

[76] Government Decree 213/2024. (VII. 29.) amending Government Decree 373/2022. (IX. 30.) on the Basic Rules for the Implementation of the Hungary's Recovery and Resilience Plan and the Institutions Responsible for it

[77] EUTAF (DGAEF) Revised Audit Strategy for the Hungarian Recovery and Resilience Plan, July 2024

procedures on the systematic and effective use of the Arachne risk-scoring tool (Q4 2022) [super milestone related to a conditionality measure (remedial action xv.)]

C9.R22: Establishment of a Directorate of Internal Audit and Integrity to reinforce the control of conflicts of interest when implementing Union support

Although the new Directorate for Internal Audit and Integrity (DIAI) was established, its impact vis-á-vis conflict of interest schemes, and, more generally, its operations and activities cannot be assessed in lack of the accessibility of relevant information. However, pursuant to the subsequent amendments of the relevant government decrees,[78] the DIAI's jurisdiction in handling objections and appeals related to EU funds has been broadened and its involvement in audits and external oversight has been strengthened.[79]

Relevant milestone:

- Milestone 224 – Ensuring effective prevention, detection and correction of fraud and corruption in the implementation of Union support through the setting up and full functioning of a new Directorate of Internal Audit and Integrity (DIAI) (Q4 2022) [super milestone related to a conditionality measure (remedial action vi.)]

C9.R23: Ensuring the capacity for the EUTAF to effectively carry out its tasks

The EUTAF was transformed into an autonomous state organ, as a result of which it is not anymore subordinated to the Ministry of Finance. However, no empirical evidence or publicly available information supports that the EUTAF's new legal standing would result in more efficient scrutiny of the use of EU funds in Hungary. Correspondingly, there is no sign of an improvement in the output of the newly reorganised EUTAF.

Relevant milestone:

- Milestone 225 – Ensuring effective prevention, detection and correction of fraud and corruption in the implementation of Union support through appropriate capacity for EUTAF (Q4 2022) [super milestone related to a conditionality measure (remedial action vi.)]

C9.R24: Strengthening cooperation with OLAF to reinforce the detection of fraud related to the implementation of Union support

By the adoption of Act XXIX of 2022, the Parliament amended the laws that govern the functions of the tax administration, which is in charge of uncovering and sanctioning financial irregularities, including ones related to the sound and proper use of EU funding. The amended legal regulations explicitly stipulate the cooperation with the European Anti-Fraud Office (OLAF) and the assistance to the processes of OLAF among the obligations of the tax administration, as well as the requirement to impose pecuniary sanctions of up to HUF 1 million on those who fail to comply with the requirements set by OLAF (Milestone 226). Since 2022, the tax authority has reported a single instance of effective

[78] Government Decrees 256/2021. (V. 18.) and 272/2014. (IX. 5.)
[79] https://integritashatosag.hu/wp-content/uploads/2024/06/2023-Eves-Elemzo-Integritasjelentes.pdf

collaboration with OLAF. (However, this does not rule out the possibility that there were additional cases.)[80]

Relevant milestone:

- Milestone 226 – Designation of a national authority in charge with assisting OLAF with its on-the-spot checks in Hungary and the introduction of the possibility to levy financial sanctions on non-cooperating economic actors (Q4 2022) [super milestone related to a conditionality measure (remedial action xvi.)]

C9.R25: Effective implementation, control and audit of the Recovery and Resilience Plan and the protection of the financial interests of the Union

This reform basically aims to ensure the effective implementation, control, and audit of the RRP and the protection of the Union's financial interests by two actions: (1) implementing a proper repository system for recording and storing data (Milestone 227) and (2) ensuring that the EUTAF has an effective audit strategy for the RRP's implementation (Milestone 228). Government Decree 373/2022. (IX. 30.)[81] established the legal background for creating a data repository system for the RRP. The third version of the audit strategy was adopted by the EUTAF in January 2023, which was revised in July 2024. The latest audit strategy is available on the website of the EUTAF.[82] Although the new strategy specifies in full the audits that EUTAF has and will conduct in 2023 and 2024, the findings of these audits are not publicly available.

Relevant milestones:

- Milestone 227 – Monitoring system for the implementation of the Hungarian recovery and resilience plan (Q4 2022) [super milestone]
- Milestone 228 – Ensuring effective audit of the implementation of the Hungarian recovery and resilience plan (Q4 2022) [super milestone]

C9.R26: Improving transparency and access to public information

The Parliament amended the Freedom of Information Act with Act XL of 2022 by speeding up court proceedings in access to public interest data cases. The amendment added further procedural rules to court procedure rules in the Freedom of Information Act. These rules have not been amended since their adoption in 2022 (Milestone 229).

Since 2015, Hungarian public bodies could charge fees for "disproportionate workload" on large data requests. Government reforms in 2022 limited charges to materials and postal costs only. During the pandemic, response times were extended to 45+45 days, leading to delays. This extension was also repealed in late 2022, returning response times to standard limits (Milestone 230).

[80] https://nav.gov.hu/olaf/Hirek/Eredmenyes_volt_a_nemzetkozi_egyuttmukodes
[81] Government Decree 373/2022. (IX. 30.) on the Basic Rules for the Implementation of the Hungary's Recovery and Resilience Plan and the Institutions Responsible for it
[82] https://eutaf.hu/wp-content/uploads/2024/07/RRF_audit_strategy_2024_FIN.pdf

The Freedom of Information Act was also amended by an omnibus bill, Act CI of 2023 in December 2023.[83] Information that could otherwise be directly obtained from a single (subordinate) entity has no longer to be shared with the requester. Under the December 2023 amendment, public bodies are obligated to report only the *main* grounds for rejecting requests to the National Authority for Data Protection and Freedom of Information. Furthermore, the Authority is tasked with conducting assessments of public bodies' compliance with the law, including proactive disclosure rules twice a year, or even upon a request, with the possibility of issuing recommendations to the entities under review. The law also provides that based on the monitoring and report of the obliged bodies, the Authority makes an overarching report, which forms part of the annual report of the Authority. The Authority's report is based on the bodies' reports. The purpose of the amendment was to comply with Milestones 231 and 232, which dedicated these tasks to the Government Control Office.

Legislation governing publicly owned companies, Act CXXII of 2009, has been changed by the December 2023 amendment, too. Requests directed at state or municipal owned enterprises must be denied for a period of 10 years if the release of data bearing financial, technical, or business significance could potentially harm foreign policy interests. The consideration of the public interest remains a requirement, but the involvement of the Minister's opinion on the public interest will be obligatory in all cases. Similar rules apply to the documentation of government meetings, upon Act CXXV of 2018 that has been amended by Act CIX of 2023. Under the new law, the disclosure can be denied for 20 years.

Bill T/9514 plans to make it clear that the period from the date of the request for clarification until the date of receipt of the response from the requester does not count towards the time limit for complying with the request. The amendment expands the range of entities controlling public interest data to include the bodies receiving the data from another data controller as well. The amendment broadens the grounds for rejection in case of preparatory data. The request can be refused if it would endanger the position of the body developed during a court proceeding. The rule concerning data held by EU bodies will be amended so that in the future, inquiries to the EU will only be sent if it is necessary.

Assessing the changes in legislation, the following observations can be made.[84] While Milestones 229–232 have been mostly complied with, new changes restricting freedom of information have been introduced.

New litigation rules have significantly speeded up access to information.[85] It can take months to close a court case instead of the year and a half it used to take. Speeding up the procedure is principally welcome and in line with Milestone 229. However, the fast-track rules can in many cases be burdensome for the data requester. There is still no rule on the time limit for the Constitutional Court to rule on freedom of information cases upon a constitutional complaint. No rule has been adopted to ensure compliance with Decision 7/2020. (V. 13.) of the Constitutional Court to provide judicial remedy against companies receiving public funds.

As a consequence of the amendment of December 2023, citizens are compelled to individually approach and, if necessary, engage in legal proceedings with various entities, even if the sought-after

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[83] For a detailed assessment, see: K-Monitor, *Hungarian Government Further Weakens Access to Information*, 23 January 2024, https://k.blog.hu/2024/01/23/hungarian_government_further_weakens_access_to_information.

[84] For a detailed assessment, see: K-Monitor, *What Has the Hungarian Government Done About Freedom of Information Since 2022?*, 19 November 2024, https://k.blog.hu/2024/11/19/what_has_the_hungarian_government_done_in_freedom_of_information_since.

[85] For a detailed assessment, see*:* K-Monitor, *K-Monitor's Report on the Hungarian Freedom of Information Reforms Adopted During the Conditionality Procedure*, 16 January 2024, https://k.blog.hu/2024/01/16/k-monitor_s_report_on_the_hungarian_freedom_of_information_laws_adopted_in_the_conditionality_proced.

data could reasonably be procured from a single body with control or oversight over multiple others. This amendment seems to be a response to a ruling (Pfv.20.278/2023/6).

The new reporting duty of the National Authority for Data Protection and Freedom of Information is not completely in line with the milestones (Milestones 231–232). Data that the monitored bodies' report should indicate is more general as prescribed by the milestone. The law foresees only one authority report in a year in contrast with the milestone requiring two reporting periods within one year. The basic content of the Authority's report is not governed by the law. The fact that these tasks will be carried out by the National Authority for Data Protection and Freedom of Information instead of the Government Control Office is a welcome change.

New rules on requests concerning foreign policy interests are principally in line with the Freedom of Information Act's provision on preparatory data as the denial is not automatic and a public interest test should be made by the Minister. However, courts might interpret the law as the balancing of the Minister cannot be reviewed by the court. Under this interpretation no judicial remedy would be provided for those contesting the Minister's decision. The same matter in case of the Budapest–Belgrade Act is before the Hungarian Constitutional Court (Case no. IV/02579/2022.). The law on foreign policy interests could also lead citizens to experience delays in receiving information regarding the status of their data request. Similar rules on government meetings' transparency are not in line with the Freedom of Information Act. The amendment extended the duration for non-disclosure, which now stands at 20 years, as opposed to the previous period of 10 years.

As a consequence of the Bill T/9514, new rules of the statutory due date for a reply could easily be used to unnecessarily delay responses to public interest data requests. The provision regarding future decisions paves the way for further restrictions on access to information. The clarification of the concept of public interest data and the provision regarding inquiries to the EU are forward-looking.

No rule has been adopted to ensure that any information made available upon an access to information request shall be made available simultaneously in the central register mentioned in Milestone 175.

Recommendations:

- To comply with Milestone 230, any information made available upon an access to information request shall be made available simultaneously in the central register mentioned in Milestone 175.
- Sectoral rules emptying out the freedom of information framework shall be withdrawn.
- The rules for legal proceedings shall be amended along the following issues:
  - The position of the data requester should be reinforced in legal proceedings. The defendant should be prohibited from altering the grounds for rejecting a freedom of information request after it has been communicated to the data requester prior to the commencement of the lawsuit;
  - If the defendant asserts that it does not process the requested data, it should be required to identify the public body responsible for the data in accordance with the Tromsø Convention;
  - The defendant should be mandated to submit a statement of defence prior to the first hearing. Furthermore, the defendant should be precluded from amending its defence during the course of the trial;
  - With the consent of both parties, the court should be granted the discretion to extend the standard 15-day time frame for scheduling hearings and set a later date if necessary;

- The court should have the authority to order a stay of proceedings upon joint request by the parties involved;
  - Standard rules regarding the submission of evidence should be applicable in these cases. Additionally, rules governing proportionality should be applied to the legal costs incurred by intervening defendants seeking to protect trade secrets, ensuring that the cost of legal proceedings does not serve as a barrier to citizens pursuing justice.
- A time limit should be set for the Constitutional Court when deciding on freedom of information cases.
- Compliance with Decision 7/2020. (V. 13.) of the Constitutional Court should be reached.
- Laws restricting access to information for more than 10 years should be repealed.
- Judicial remedy should explicitly include the review of the Minister's decision in cases where rejection is vested in the Minister's discretion.
- The National Authority for Data Protection and Freedom of Information should be empowered to impose sanctions in freedom of information cases and not only in transparency procedures. To comply with Milestone 232, the Authority's reporting should be semi-annually. The Authority's report should identify the shortcomings per public body concerned as Milestones 231–232 require.

Relevant milestones:

- Milestone 229 – Entry into force of a legislative act ensuring legal predictability in access to public information cases in court (Q4 2022)
- Milestone 230 – Entry into force of legislative amendments ensuring increased transparency of public information (Q4 2022)
- Milestone 231 – Report of the Government Control Office on access to public information (1) (Q4 2022)
- Milestone 232 – Report of the Government Control Office on access to public information (2) (Q2 2024)

C9.R27: Improving the quality of law-making and effective involvement of stakeholders and social partners in decision-making

The transparency and quality of the legislative process and the efficiency of public consultations in practice remain a source of concern despite the amendment of Act CXXXI of 2010 on Public Participation in Preparing Laws,[86] adopted in 2022, formally complying with the respective elements of Milestone 235.

Firstly, the following key regulatory flaws undermine the capacity of the amendments to ensure effective public consultation: (1) laws adopted in breach of public consultation rules can still become/remain part of the legal system; (2) the range of statutory exceptions when draft laws do not have to or must not be subject to public consultation remains wide; and (3) the Government Control

[86] Act XXX of 2020 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

Office which can impose fines on Ministries for violating the rules on public consultation is subordinated to the Government.[87]

Secondly, the impact of the amended rules remains rather limited, and the practice of public consultation remains deeply flawed. It still occurs that significant laws are not published for public consultation, which happened recently e.g. in the case of the 12th and the 13th Amendment to the Fundamental Law. In other instances, in an attempt to circumvent the obligation of public consultation, the Government returned to its practice of introducing laws to the Parliament that are clearly part of government policy via governing majority MPs, for example in the case of the Sovereignty Protection Act.[88] Another avenue used is the Legislative Committee of the Parliament, a super committee the composition of which reflects that of the Parliament and which can introduce amendments to any bill directly prior to the plenary vote. Examples for this include a last-minute amendment to an unrelated bill which changed the rules regarding preliminary references to the CJEU,[89] and amendments which restricted the right of access to information,[90] both in December 2023.

Ministries almost never provide a longer consultation period than the statutory minimum of eight days, irrespective of the length and complexity of the draft law: according to K-Monitor's data, in the period between 1 October 2022 and 4 October 2024, out of the 1,730 draft laws published, the consultation period was longer than eight days in only six instances.[91] The way in which draft laws are published only formally meets the legal requirements: purely technical amendments are put to consultation, and the titles and summaries of the published legislative packages rarely indicate clearly the subject matter of the proposals. It is a recurring practice that draft laws are published for consultation with a one-sentence reasoning: this occurred e.g. in the case of the last three laws authorising the Government to extend the state of danger[92] and an omnibus law that extended the asylum system that the CJEU had found to be in violation of EU law,[93] while a draft law amending rules on public interest asset management foundations was published for consultation with a two-sentence reasoning in October 2024.[94] The overwhelming majority of opinions submitted are rejected by the Government: according to K-Monitor's data, between 1 October 2022 and 4 October 2024, at least

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[87] See e.g.: Amnesty International Hungary – Eötvös Károly Institute – Hungarian Civil Liberties Union – Hungarian Helsinki Committee – K-Monitor – Mertek Media Monitor – Ökotárs – Political Capital – Transparency International Hungary, *Contributions of Hungarian CSOs to the European Commission's Rule of Law Report*, January 2023, https://helsinki.hu/en/wp-content/uploads/sites/2/2023/01/HUN_CSO_contribution_EC_RoL_Report_2023.pdf, p. 56.

[88] See the Parliament's website: https://tinyurl.com/2ubk24ud.

[89] For more information, see: Amnesty International Hungary – Hungarian Helsinki Committee, *Last-minute, makeshift solutions cannot resolve long-standing rule of law concerns*, 8 December 2023, https://helsinki.hu/en/wp-content/uploads/sites/2/2023/12/Makeshift-solutions-cannot-resolve-RoL-concerns.pdf.

[90] See e.g.: K-Monitor, *A bíróságok döntéseit felülírva szűkíti az átláthatóságot a kormány*, 18 January 2024, https://k.blog.hu/2024/01/18/a_birosagok_donteseit_felulirva_szukiti_az_atlathatosagot_a_kormany.

[91] K-Monitor, *Public Consultation – There Would Be a Need for It,* 29 November 2024, https://k.blog.hu/2024/11/29/public_consultation_--_there_would_be_a_need_for_it

[92] See the relevant documents here: https://kormany.hu/dokumentumtar/2022-evi-xlii-torveny-modositasarol-szolo-torvenytervezet-1, https://kormany.hu/dokumentumtar/2022-evi-xlii-torveny-modositasarol, https://kormany.hu/dokumentumtar/tarsadalmi-egyeztetes-veszelyhelyzet-hosszabbitas. The one-sentence reasonings are available here: https://cdn.kormany.hu/uploads/document/6/69/690/6903852ff11dc0a4a59fdfb61023cf565c94bc2f.pdf, https://cdn.kormany.hu/uploads/document/5/5f/5f2/5f2a2ebc12e1c2dec86f6f3d691eb96f3de9135a.pdf, https://cdn.kormany.hu/uploads/document/9/98/98f/98f14886o3cff904d7ff32562aae21e711959491.pdf.

[93] See the relevant documents here: https://kormany.hu/dokumentumtar/a-kozbiztonsag-mege-es-a-migr-ell-kuzdelem-erdekeben-szukseges-torvenyek-mod. The one-sentence reasoning is available here: https://cdn.kormany.hu/uploads/document/b/b0/b06/b06ffc72454de3204c322ca5e05b0ab1bde29ae8.pdf.

[94] See the relevant documents here: https://kormany.hu/dokumentumtar/a-kozfeladatot-ellato-kozerdeku-vagyonkezelo-alapitvanyokrol-szolo-torveny. The two-sentence reasoning is available here: https://cdn.kormany.hu/uploads/document/c/c9/c9d/c9d5d758dd9b7947db016bd5fb9df2d91aeb4b7e.pdf.

88% of the opinions were rejected, and without any real reasoning, e.g. that "the draft law implements the decision of the Government" or that the opinion "is contrary to the opinion of the legislator".[95]

According to the reports published by the Government Control Office pertaining to the last three months of 2022[96] and to the year 2023,[97] Targets 237 and 238 under the RRP were formally achieved, i.e. at least 90% of all government decrees, ministerial decrees and bills submitted by the Government to the Parliament were subject to public consultation. However, these reports do not contain detailed information on why certain draft laws were not put to public consultation (i.e. which statutory exemptions they supposedly fell under), and on whether and how the Government Control Office reviews the Ministries' claims in this regard. When the Hungarian Helsinki Committee (HHC) submitted a freedom of information request to the Government Control Office in relation to the issue, including the Government Control Office's methodology and the type of information Ministries should submit to the Government Control Office, the Government Control Office refused to comply or failed to provide meaningful responses. It also refused, among others, to disclose the list of laws that were not put to public consultation in the respective time periods or the actual information Ministries submitted to the Government Control Office for its reports.[98] Thus, the efficiency of the review carried out by the Government Control Office cannot be meaningfully assessed, and the lack of information in this regard counters the general aim of C9.R27.

The quality of the impact assessments of the draft laws and the summaries published about them in the course of the public consultation is often inadequate. Furthermore, even though the new methodology for the preparation of impact assessments, required by Milestone 236, was put to public consultation in February 2024 (in line with the consultation requirements and along with further documents foreseen by the milestone),[99] as of 31 October 2024, the new methodology has not been adopted yet.[100] Thus, Milestone 236, which would have been due by the end of 2023, has not been achieved yet.

The elements of Milestone 235 (which would have been due by the end of 2022) foreseeing the development of the capacity of the Office of the Parliament to help MPs and parliamentary committees to prepare impact assessments and conduct stakeholder consultations for the bills proposed by them and their possibility to request such assistance have not been achieved either. There is no public information that would indicate that any legislative or budgetary steps have been taken in this regard, and according to the response of the Office of the Parliament of 9 September 2024 to the Hungarian Helsinki Committee's freedom of information request, "nobody has asked the Office of the Parliament for help in preparing an impact assessment or conducting a consultation".[101] (The Office did not reply to the questions as to the existence of the regulatory, operational and budgetary preconditions to do so.) As of January 2023, the regulatory background for the Hungarian

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[95] K-Monitor, *Public Consultation – There Would Be a Need for It,* 29 November 2024, https://k.blog.hu/2024/11/29/public_consultation_--_there_would_be_a_need_for_it.

[96] Available at: https://cdn.kormany.hu/uploads/document/1/1b/1b8/1b89f211f360f193009ad1f7d9d9299a858d2c07.pdf.

[97] Available at: https://cdn.kormany.hu/uploads/document/0/0c/0cb/0cb223be52ca99cda3194c9b012343cc6f4518c5.pdf.

[98] The HHC's freedom of information request of 14 August 2024 is available here: https://kimittud.hu/request/tarsadalmi_egyeztetes. The Government Control Office's response of 21 September 2024 is available here: https://helsinki.hu/wp-content/uploads/2024/11/KEHI-valasz_tarsadalmi-egyeztetes_20240921.pdf.

[99] See: https://kormany.hu/dokumentumtar/arop-1-1-10-a-jogszabaly-elokeszitesi-folyamat-racionalizalasa-modszertan.

[100] Information shared with the HHC by the legal representative of the Cabinet Office of the Prime Minister at a trial hearing on 31 October 2024, held after the HHC challenged the Cabinet Office's refusal to comply with the HHC's related freedom of information request. See the HHC's request of 26 August 2024 and the Cabinet Office's response of 10 September 2024 here: https://kimittud.hu/request/hatasvizsgalati_modszertan?nocache=incoming-36139#incoming-36139.

[101] The HHC's freedom of information request of 26 August 2024 and the response of the Office of the Parliament of 9 September 2024 is available here: https://kimittud.hu/request/torvenyjavaslatokkal_kapcsolatos#incoming-36121.

Central Statistical Office to provide data to the Office of the Parliament necessary to carry out the impact assessments for MPs and committees is ensured,[102] but as of 9 September 2024, no related request was submitted by any MP or committee to the Office of the Parliament.

Milestone 234 regarding the laying down of a framework for effectively involving all relevant stakeholders in the implementation of the RRP is complied with as well,[103] but in other areas, the Government has taken steps towards eliminating existing forms of social consultation, such as public hearings by local governments and administrative authorities.[104]

Recommendations:

- In order to ensure more effective public consultation, it should be added to the provision of Act CXXXI of 2010 on Public Participation in Preparing of Laws that prescribes a consultation period of minimum eight days for draft laws that the consultation period must be adequate to the length and complexity of the law.
- Additional resources should be dedicated to the Office of the Parliament to develop its capacity to help MPs and committees of the Parliament to prepare effective impact assessments and conduct effective stakeholder consultations for the bills proposed by them. MPs and committees should explicitly have the possibility to request the Office to prepare impact assessments and carry out effective stakeholder consultations on bills or amendments initiated by them.

Relevant milestones:

- Milestone 234 – Entry into force of a legislative act laying down the framework for effectively involving all relevant stakeholders in the implementation of the Hungarian recovery and resilience plan (Q3 2022)
- Milestone 235 – Entry into force of amendments to the relevant legislative acts to enhance the use of public consultations and impact assessments in the law-making process (Q4 2022)
- Milestone 236 – Start of application of a new methodology for the preparation of impact assessments of legislative proposals (Q4 2023)
- Target 237 – Strengthening the effective application of rules concerning obligatory public consultation of legislative acts and the systematic publication of preliminary impact assessment summaries (1) (Q1 2023)
- Target 238 – Strengthening the effective application of rules concerning obligatory public consultation of legislative acts and the systematic publication of preliminary impact assessment summaries (2) (Q1 2024)

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[102] Government Decree 388/2017. (XII. 13.) on the Mandatory Data Provision under the National Statistical Data Collection Programme, Section 6

[103] In more detail, see: Amnesty International Hungary – Eötvös Károly Institute – Hungarian Civil Liberties Union Hungarian Helsinki Committee – K-Monitor – Transparency International Hungary, *Assessment of compliance by Hungary with conditions to access European Union funds*, April 2023, https://helsinki.hu/en/wp-content/uploads/sites/2/2023/04/HU_EU_funds_assessment_Q1_2023.pdf, pp. 39–40.

[104] For more details, see: Amnesty International Hungary – Eötvös Károly Institute – Hungarian Civil Liberties Union – Hungarian Helsinki Committee – K-Monitor – Mertek Media Monitor – Ökotárs – Political Capital – Transparency International Hungary, *Contributions of Hungarian CSOs to the European Commission's Rule of Law Report*, January 2024, https://helsinki.hu/en/wp-content/uploads/sites/2/2024/01/HUN_CSO_contribution_EC_RoL_Report_2024.pdf, p. 72.

C9.R28: Support to the data-based decision-making and legislative process with a view to increasing efficiency, transparency and reducing risks of irregularities

The relevant reform proposal was already included in the original RRP, and, unlike other reforms, was accompanied by a more substantial budget. The Government launched the call for application in a priority procedure in January 2023. The call was won by a state-owned company, the National Data Agency LLC (NAVÜ Kft.) in partnership with the Ministry of Justice and another state-owned company. The deadline for implementation, according to the tender portal, is currently 28 February 2025 (this was amended on 19 November 2024 from 12 December 2024, which indicates a minor delay in the project implementation). The procurement notices do not contain any tenders related to this call, however, the NAVÜ website does provide details of some minor contracts, mainly related to the training and consultancy part of the project. No more information on the current state of implementation is publicly available.[105]

Relevant milestone:

- Milestone 241 – Setting up of a data platform and data modelling system (Q2 2024)

[105] https://www.palyazat.gov.hu/eredmenyek/tamogatott-projektek/3680450201

II. Assessment of compliance with the horizontal enabling condition on the effective application and implementation of the Charter of Fundamental Rights

1. Independence of the judiciary

As regards deficiencies in Hungarian judicial independence, by implementing decisions adopted on 22 December 2022 (approving 10 different programmes for Hungary), the Commission considered that the effective application of the Charter of Fundamental Rights can only be considered as fulfilled once Hungary had taken a number of measures and once those measures were being applied. In the case of judicial independence, the measures required by the Commission's implementing decisions are fully identical with the Judicial Super Milestones under the RRP (see above under C9.R15–C9.R18), namely: (1) the entry into force of legislative amendments to strengthen the role of the National Judicial Council (NJC) while safeguarding its independence; (2) the entry into force of amendments to strengthen judicial independence of the Supreme Court, i.e. the Kúria; (3) the entry into force of legislative amendments to remove obstacles to references for preliminary rulings to the CJEU; (4) entry into force of legislative amendments to remove the possibility for public authorities to challenge final decisions before the Constitutional Court. By Commission Decision C(2023) 9014 of 13 December 2023 adopted under Article 15(4) of the Common Provisions Regulation, the Commission approved the fulfilment of the enabling conditions with respect to judicial independence with a view to the Judicial Reform adopted in 2023 (see also above under C9.R15–C9.R18).

Following the positive assessment by the Commission, subsequent legislative steps and implementing techniques led to a regression. Amplifying the impacts of this regression, certain systemic deficiencies outside the scope of the milestones continue to jeopardise the independence of the Hungarian judiciary. Concerning developments affect both areas related to already implemented reforms (see below under Section 1.1.–1.3.) and areas that were not tackled by milestones (see below under Sections 1.4.–1.7.).

1.I. Deficient execution of the new rules on case allocation at the Kúria

One of the expectations of the Judicial Super Milestones was to make the procedural arrangements for allocating incoming cases between the different chambers (panels of judges who decide cases) in the Kúria more transparent.[106]

According to the Kúria's case allocation scheme,[107] cases must be allocated on a first-come, first-served basis, meaning that the time of arrival should decide which chamber receives them. After

[106] In the wording of the milestone, "the parties to proceedings be able to verify on the basis of the case file whether the rules on case allocation have been duly applied" and "cases be allocated to chambers following pre-established, objective criteria". Annex to the Council Implementing Decision on the approval of the assessment of the recovery and resilience plan for Hungary, https://data.consilium.europa.eu/doc/document/ST-15447-2022-ADD-1/en/pdf, p. 133.
[107] The case allocation scheme for the relevant period of the monitoring (valid from 1 April 2024 until 31 October 2024) is available here: https://kuria-birosag.hu/sites/default/files/szabalyzatok/a_kuria_2024_januar_1_napjatol_hatalyos_ugyelosztasi_rendje_modositasokkal_egyseges_szerkezetben_1.pdf.

monitoring[108] the log files published on the Kúria's website and the actual operation of the case allocation system at the Kúria in 2024,[109] it can be established that although the system is more transparent than before the Judicial Reform,[110] the allocation of cases at the Kúria still raises questions and concerns. Such problems include that (1) it is difficult to monitor the case allocation practice based on the online log files, (2) in many cases the case allocation scheme was not followed and supposedly the case allocator (i.e. a court leader) made an error, and provided no explanation; (3) the law provides several vaguely defined grounds for deviating from the general rules for case allocation;[111] and (4) these deviations may not be monitored and explained without further background information that is not available.

As regards lower courts, although both the 2023 and the 2024 Rule of Law Report of the Commission recommended improving the transparency of their case allocation systems, no progress has been made regarding that issue.

Recommendation:

- Amend the respective laws to provide more transparency and more defined grounds for deviating from the general rules for case allocation at the Kúria; and amend the respective laws to ensure the transparency of the case allocation systems at lower courts.

1.2. Escape-clause allowing the *de-facto* re-election of the Kúria President contrary to express requirements of Judicial Super Milestones

The Judicial Reform significantly required Hungary to enhance the independence of the Kúria President, amongst others by excluding the possibility of re-election. While a new prohibitive provision on such exclusion was included in the law, the Parliament did not repeal the former rules under which the incumbent Kúria President may stay in office after the termination of their mandate until a new Kúria President is elected by at least a two-thirds majority of the votes of the MPs. This escape-clause in practice allows for the automatic prolongation of the Kúria President's mandate beyond expiration of its term by a one-third blocking minority of MPs, despite the explicit prohibition of re-election. Further concerns with respect to the status of the Kúria President have been raised by the Committee of Ministers of the Council of Europe, in connection with the execution of the *Baka v. Hungary* judgment, for the possibility of removing the Kúria President without legal remedy.[112] Considering the fact that the Kúria President holds key powers within the judiciary both in the final adjudication of cases, in ensuring the uniformity of the jurisprudence of Hungarian courts and in the management of the apex court, the possibility of keeping or removing the Kúria President in position allows the legislature to exert undue pressure on the judiciary.[113]

[108] Amnesty International Hungary, *Anomalies in the allocation of cases by the Kúria*, November 2024, https://www.amnesty.hu/wp-content/uploads/2024/11/241107_Briefing-paper_case-allocation-practice-at-the-Hungarian-Kuria.pdf

[109] For each week and for each department, the Kúria publishes the list of cases and their respective allocated chambers on its website: https://kuria-birosag.hu/hu/kuria-ugyelosztasi-rendszere.

[110] Amnesty International Hungary – Eötvös Károly Institute – Hungarian Helsinki Committee, *Joint assessment of Hungary's judicial reforms*, May 2023, https://www.amnesty.hu/joint-assessment-of-hungarys-judicial-reforms/

[111] Act CLXI of 2011 on the Organisation and Administration of Courts, Section 10(5)

[112] https://search.coe.int/cm?i=0900001680b0495d

[113] See Section II.1. of the Rule 9 communication of the Hungarian Helsinki Committee of 3 October 2023: https://hudoc.exec.coe.int/?i=DH-DD(2023)1245E.

Recommendation:

- Remove the possibilities of undue interference in the mandate of the Kúria President, including the possibility to keep him in position for an indefinite term.

1.3. The distorted point system for the assessment of judicial posts remains effective

The Judicial Super Milestones required Hungary to grant the NJC power to give a motivated binding opinion on the regulation of the points system for the assessment of applications for judicial posts. Due to the fact that the Judicial Reform did not set a deadline for the modification of Decree 14/2017. (X. 31.) of the Minister of Justice by which the widely-criticized points system[114] was introduced, the Judicial Reform did not bring any actual change to remedy the core rule of law concerns related to the system.[115] The current points system gives a preference to candidates for a judicial post who apply from the executive branch over candidates who apply from within the judiciary. By not introducing transitional rules that guarantee the effective application of the new powers of the NJC, the Hungarian government simply kept up the effect of the distorted points system, leaving the Judicial Reform meaningless in this regard.

Recommendation:

- Supplement the laws with new transitional rules obliging the Ministry of Justice to submit a new draft decree within a well-defined period of time, thereby activating the right of the NJC to provide a binding opinion.

1.4. Concerning new trends in the functioning of the National Judicial Council and in the exercise of its new supervisory powers

From 1 June 2023, the Judicial Reform remarkably strengthened the legal status and powers of the NJC, which, as a result of the election process that was due to take place, continued to carry out its duties in a new composition after 30 January 2024. The legal provisions governing the operation of the NJC establish a broad framework, therefore, members have a wide margin to define their role and scope of supervision. While only an independent NJC may fulfil its constitutional role in line with its newly strengthened powers, several signs indicate that the independence of the NJC in its new composition may have become compromised. Both the remarkably altered mode of its operation (especially the enhanced role of the NJC President) and the content of some decisions taken by the NJC raise concerns regarding the independence of the body. The most problematic issues are the following: (1) limiting – through providing a new interpretation to existing legal provisions – the right of NJC members to propose items to the NJC's agenda;[116] (2) concentrating powers in the hands of

[114] The Hungarian Association of Judges (MABIE) discussed the necessity of modification of the points system on several occasions. See the news feed section of MABIE: https://mabie.hu/hirek/sorsdonto-kerdesek-a-mabie-orszagos-valasztmanya-soron-kovetkezo-ulesenek-napirendjen and https://mabie.hu/hirek/regi-uj-lehetosegek-elott-a-mabie-motto-a-multtal-ket-dolgot-nem-szabad-tenni-elfelejteni-es-benne-ragadni-osszefoglalo-a-orszagos-valasztmany-ov-2019-november-22-napjan-tartott-uleserol.

[115] The Rule of Law Report of the Commission pointed out the concerns raised by judges in several years, in 2020: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020SC0316, footnote 4; in 2022: https://commission.europa.eu/document/download/5ca0f861-b4d4-412d-bd7d-dbe3582af1c1_en?filename=40_1_193993_coun_chap_hungary_en.pdf , p. 7.; and in 2023: https://commission.europa.eu/document/download/d69f242b-bd69-4e15-976f-870470b72b55_en?filename=40_1_52623_coun_chap_hungary_en.pdf, p. 5.

[116] See the debate around the right of NJC members to propose items on the agenda here: https://obt-jud.hu/sites/default/files/ulesek/Jegyzokonyv_2024-04-17.pdf, p. 7. According to Act CLXI of 2011 on the Organisation and Administration of the Courts, Section 112 (1) b), "any member of the NJC is entitled [...] to propose an item to the agenda for an NJC meeting".

the NJC President as the statutory representative of the NJC, resulting in actions taken on behalf of the NJC by the NJC President in his capacity as statutory representative without the authorisation of the NJC members (including participation at the meeting of Presidents and Representatives of Councils of Judges of the Organisation of Turkic States[117]), which has caused the resignation of a member.[118] (3) On 22 November 2024, the NJC President signed[119] a so-called "Agreement" with the Ministry of Justice, the Kúria President and the President of the National office for the Judiciary, consenting to undefined overall reforms that may further undermine the independence of the judiciary in exchange for the promise of a salary raise for judges and judicial staff, resulting in unprecedented public criticism from judicial associations[120] and individual judges[121] (including the former NJC President),[122] who objected to both the way of adopting the NJC resolution on signing the "Agreement" and the content thereof, and claimed that the NJC had given up its independence.[123]

1.5. Financial pressure on the judiciary

The remuneration of Hungarian judges and judicial staff is critically low, jeopardising the functioning of courts and the independence of the justice system.[124] The salary base of judges established by the annual Acts on the Central Budget has remained unchanged for three years equalling HUF 566,660 (ca. € 1,400). Considering that the inflation in Hungary was 14.5% in 2022 and 17.6% in 2023 (and has averaged 4% so far in 2024),[125] the salary of judges and judicial staff has lost approximately 40% of its real value over the years. Contrary to the laws of the European Union, the inadequate Hungarian legislation on the remuneration of judges and judicial staff permanently and systematically violates the institutional independence of the judiciary by, amongst others, keeping the salaries unchanged in a significantly deteriorating financial environment and not providing for a yearly indexation that is not dependent on the will of the executive and legislative branches of power. The deepening of the financial crisis prompted a Hungarian judge to turn to the European Commission with a complaint. This move was followed by more than one hundred others, including a Hungarian judge's association.[126] All complaints request the Commission to take meaningful steps to restore the institutional independence of the judiciary and ensure that the remuneration of judges and judicial staff is not dependent on the Hungarian government and the Parliament. The Commission's 2024 Rule of Law Report also contains a recommendation for Hungary to "take structural measures to

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[117] https://www.szabadeuropa.hu/a/az-obt-is-odaall-a-kormany-illiberalis-nyitasa-moge-elnoke-megis-reszt-vesz-a-turk-allamok-igazsagugyi-tanacskozasan-/32957886.html

[118] Tamás Gergye reasoned his resignation from the position as member of the NJC that he could not accept that "the representation of the NJC in matters related to its supervisory tasks lack a resolution by the NJC". See: https://obt-jud.hu/sites/default/files/ulesek/Jegyzokonyv_2024-04-17.pdf, p. 3.

[119] See: https://obt-jud.hu/hu/tajekoztatas. The NJC President signed the Agreement following a debate and vote at an NJC meeting held on 20 November 2024, where the draft Agreement had been shared with the NJC members only two days prior to the meeting.

[120] See the statements in Hungarian at: https://mabie.hu/berjavaslat/a-mabie-koezlemenye-az-obt-obh-kuria-igazsaguegyi-miniszterium-koezoetti-megallapodas-megkoeteserol and https://resiudicata.hu/kozlemeny-a-birosagokat-erinto-megallapodasrol/.

[121] See: https://mabie.hu/berjavaslat/felhivas-velemenynyilvanitasra-csatlakozo-nyilatkozatok-megkueldesere and https://resiudicata.hu/kozlemeny-a-birosagokat-erinto-megallapodasrol/.

[122] See also the statement of Tamás Matusik, former President of the National Judicial Council: https://x.com/TamasMatusik/status/1859490126155427965?t=ehnO_QDIR-MI44oisTkYew&s=19.

[123] See more here: https://helsinki.hu/en/wp-content/uploads/sites/2/2024/12/HHC_Black_Friday_Hungarian_judiciary_2024.pdf.

[124] See the report provided by the Hungarian Helsinki Committee to the UN Special Rapporteur on the Independence of Judges and Lawyers: https://helsinki.hu/wp-content/uploads/2024/07/UN-Special-Rapporteur-on-the-Independence-of-Judges-and-Lawyers.pdf

[125] See: https://www.ksh.hu/gyorstajekoztatok/#/hu/list/far.

[126] See their full complaint here: https://resiudicata.hu/en/complaint-for-the-immediate-restoration-of-the-institutional-independence-of-the-hungarian-judiciary/.

increase the remuneration of judges, prosecutors, and judicial and prosecutorial staff, taking into account European standards on remuneration for the justice system".[127] Until the cut-off date of the present assessment no steps have been taken to address the financial crisis evolved around the Hungarian judiciary for critically low judicial salaries.

Recommendations:

- Restore the financial independence of the Hungarian judiciary, also with a view to the arguments in the complaints submitted by Hungarian judges to the European Commission.

1.6. Lack of guarantees to the freedom of expression of Hungarian judges

Restrictions of the freedom of expression of judges have been a long-standing concern within the Hungarian justice system. In the *Baka v. Hungary* judgment delivered in 2016, the European Court of Human Rights created a new, higher standard for the freedom of expression of judges, requiring Hungary to take measures to ensure that judges can speak out in protection of human rights, democracy and the rule of law, even if the topic has political implications. Since Hungary has not executed the judgment for over eight years, in June 2024, the Committee of Ministers sent a letter to the Hungarian authorities conveying deep concern about the lack of progress in the case[128] and reminded them once again of the "importance of effective and adequate safeguards against abuse when it comes to restrictions on judges' freedom of expression".[129]

Recommendation:

- Take meaningful steps to guarantee the freedom of expression of judges when it comes to protecting democracy, the rule of law, and judicial independence.

1.7. The possibility of the Kúria to block the binding effect of CJEU judgments

In 2020, a new uniformity complaint system was introduced in Hungary, which in its current form, can be applied to block the binding direct effect of EU law as follows. Uniformity decisions shall be deemed as quasi laws within the Hungarian legal system, and therefore, judges and courts are subordinated to them to the same extent as to legal norms.[130] In a uniformity decision delivered in 2021,[131] the Kúria declared that the rulings of the CJEU should not have *erga omnes* effect vis-á-vis third parties.[132] In connection with this, the Kúria emphasised[133] that if a new interpretation of EU law by the CJEU conflicts with the obligatory interpretation having previously been adopted by the Kúria, Kúria judges must request the Kúria's uniformity complaint chamber to cancel the binding force of its previous uniformity decision in a separate procedure,[134] and may not simply put aside on their own

[127] European Commission, *2024 Rule of Law Report – Country Chapter on the rule of law situation in Hungary*, https://commission.europa.eu/document/download/e90ed74c-7ae1-4bfb-8b6e-829008bd2cc6_en?filename%3D40_1_58071_coun_chap_hungary_en.pdf, p. 2.
[128] https://www.coe.int/en/web/execution/-/the-committee-of-ministers-invites-its-chair-to-send-a-letter-to-the-hungarian-authorities-conveying-deep-concern-about-the-lack-of-progress-in-the-case-of-the-supreme-court-s-former-president-baka
[129] https://search.coe.int/cm?i=0900001680b0495d
[130] Fundamental Law of Hungary, Article 25(3)
[131] Jpe.II.60.027/2021/8., https://kuria-birosag.hu/hu/jogegysegi-panasz/jpeii6002720218-szamu-hatarozat
[132] According to the Kúria, "decisions of the CJEU in preliminary rulings are only binding on the parties concerned and have relative effect. This means that a decision on the interpretation of EU law does not, as a rule, have *erga omnes* effect beyond the case, nor does it extend to all the parties [in all proceedings]".
[133] See the Kúria's public statement relating to the CJEU's judgment in Case C-537/22, Global Ink Trade: https://kuria-birosag.hu/hu/sajto/magyarorszagi-korlatozott-precedens-rendszer-osszhangban-van-az-europai-unio-jogaval.
[134] Based on Act CLXI of 2011 on the Organisation and Administration of the Courts, Sections 32 (1) b) and 33 (1) b).

accord the Kúria's obligatory interpretation.[135] This is in clear violation of the primacy of the EU acquis as stipulated amongst others in the Costa v ENEL judgment of the CJEU.

In addition to the above, the Venice Commission found the uniformity complaint system to be in clear violation of the principle of judicial independence and recommended Hungary to modify the uniformity complaint system,[136] because it found that it creates a hierarchical organisation within the judiciary in the sense that it subordinates judges to higher instances in their judicial decision-making activity. In its current form, the uniformity complaint system does not allow lower tier courts to deviate from the uniformity decisions under any circumstances. Once a uniformity decision is taken by the Kúria, it is obligatory to all judges within the system and no deviation is allowed from it, not even by other chambers of the Kúria. In case of lower tier courts, a uniformity decision can only be delivered, repealed or modified based on the motion of court leaders, making the possibility to create an obligatory interpretation based on management decisions.[137] The Commission's 2024 Rule of Law Report also acknowledged concerns with respect to the compatibility of the Hungarian uniformity complaint system with the EU law.[138]

Recommendations:

- Abolish the possibility of the Kúria to counter the direct effect of EU law through uniformity decisions.
- Modify the legislation so that it allows lower tier judges to deviate from the wording of the uniformity decisions.
- Explicitly allow Hungarian judges to rely on EU law and put aside domestic legislation contradicting the EU acquis, including uniformity decisions of the Kúria.

2. Academic freedom and public interest asset management foundations

Description of the issue raised in the Commission implementing decisions:[139]

The Commission states that the new governance model of higher education institutions affecting 21 out of the former 26 public universities in Hungary seriously threatens the right to academic freedom enshrined in Article 13 of the Charter of Fundamental Rights. The Commission claims that universities managed by newly established public interest asset management foundations are exposed to the direct or indirect influence of the executive branch for the following reasons. The current Government

[135] For example, in decision Kfv.IV.37.386/2024/9-II, relating to the issue covered by the CJEU's judgment in Joined Cases C-420/22 (NW) and C-528/22 (PQ), the Kúria's respective chamber turned to the Kúria's uniformity complaint chamber on 29 October 2024.

[136] European Commission for Democracy through Law (Venice Commission), *Hungary – Opinion on the amendments to the Act on the organisation and administration of the Courts and the Act on the legal status and remuneration of judges adopted by the Hungarian parliament in December 2020*, CDL-AD(2021)036, 16 October 2021, https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2021)036-e, paras 35–49.

[137] Based on Act CLXI of 2011 on the Organisation and Administration of the Courts, Sections 27 (2).

[138] European Commission, *2024 Rule of Law Report – Country Chapter on the rule of law situation in Hungary*, https://commission.europa.eu/document/download/e90ed74c-7ae1-4bfb-8b6e-829008bd2cc6_en?filename=40_1_58071_coun_chap_hungary_en.pdf, p. 7.

[139] Commission Implementing Decision approving the programme "Economic Development and Innovation Operational Programme Plus" for support from the European Regional Development Fund and the European Social Fund Plus under the Investment for jobs and growth goal in Hungary, C(2022) 10009 final, https://ec.europa.eu/transparency/documents-register/detail?ref=C(2022)10009&lang=en and Commission Implementing Decision approving the programme "Digital Renewal Operational Programme Plus" for support from the European Regional Development Fund and the European Social Fund Plus under the Investment for jobs and growth goal in Hungary, C(2022) 10007 final,

induced most universities to submit themselves to "model change". The transformation of public universities to universities managed by public interest asset management foundations entailed the transfer of significant competencies over the organisation and the operation of these institutions from their representative body, the Senate, to the Board of Trustees appointed exclusively by the Government for an indefinite term. The Commission highlighted that no relevant eligibility criteria were set forth for the selection of the members of the boards, and the process took place without transparency and the involvement of representatives of the academic community of the affected institutions. Consequently, boards of trustees staffed mainly with pro-government officials operate under strong government influence while completely lacking safeguards for transparency and democratic accountability. Finally, the Commission considered that there is a serious risk of academic freedom being restricted in the support provided by the European Social Fund Plus (ESF+) and the European Regional Development Fund under certain specific objectives, as these specific objectives may include support to affected institutions.

Based on the above, the Commission concluded that the horizontal enabling condition "3. Effective application and implementation of the Charter of Fundamental Rights" is not fulfilled with regard to academic freedom.

Steps taken by the Hungarian authorities:

Seven ministers who were members of boards of trustees of universities' public interest asset management foundations have resigned as of 15 February 2023.[140]

The Government submitted a bill to Parliament on 16 October 2024 that proposed the amendment of Act IX of 2021 on Public Interest Asset Management Foundations that provides for the general legal framework for the establishment and operations of such entities. The proposal claimed to address the requirements set out in C9.R5 (see above) and did not mention any attempt to address deficiencies regarding academic freedom.

The amendment, inserting a new chapter entitled "Special provisions applicable to foundations managing universities that use financial resources of the European Union", was adopted on 4 November.[141]

Assessment of the steps taken, main deficiencies:

Details of these changes are explained above in relation to C9.R5. Two adopted changes could be theoretically relevant in the context of academic freedom:

- the conflict of interest rules related to members of Board of Trustees and supervisory board members, and
- the introduction of the possibility of a limitation of the length of mandates for members of boards of trustees and supervisory boards, in case the corresponding foundations received EU funds.

However, none of these directly address the undermining of academic freedom as assessed by the European Commission. These amendments do not even attempt to address the complete lack of structural guarantees of academic freedom,[142] including the deficiencies resulting from the derogations permitted under the 2011 Higher Education Act for not public universities, e.g.:

[140] See: https://kormany.hu/hirek/lemondtak-egyetemi-kuratoriumi-poziciojukrol-a-miniszterek.
[141] Act LIII of 2024 on the Amendment of Act IX. of 2021 on Public Interest Asset Management Foundations
[142] E.g. the reduction of the role of senates at universities managed by foundations to a mere consultative for a (Section 22(4) of Act IX of 2021 on Public Interest Asset Management Foundations).

- allowing a private institution to become religiously or philosophically committed, or include religious, ethical, philosophical, cultural knowledge in its teaching curricula;[143]
- permitting boards of trustees to take over the Senate's roles in adopting the universities' statutes, budget, and institutional development plans and the announcement of the proposal for the position of the rector (head of the Senate);[144]
- allowing boards of trustees, instead of senates, to select rectors.[145]

There are no clear, transparent selection criteria for members of the boards of trustees or the supervisory boards, and subsequent appointments will continue to occur through co-optation.

These concerns were listed among the grounds on which the Commission implementing decisions conclude that the effective implementation of the Charter with regards to academic freedom is not ensured.

Recommendations:

- Abolish the model change and revert previously public universities to public management and control.

In the alternative, as a minimum:

- A transparent selection procedure granting participatory rights for the Senate has to be created for Board of Trustees' members. The university community must be involved in the process of selecting members of the Boards of Trustees. The Senate must select the majority of the Board of Trustees and have veto power over all other nominees.
- There should be eligibility criteria for membership in the Board of Trustees: nominees for the Board of Trustees need to be professionally qualified for the task.
- Legislative amendments must ensure the transparency of the functioning of the Board of Trustees. Documents such as framework contracts, the statute, resolutions, the agenda and the minutes of Board of Trustees meetings must be publicly accessible on the website of the university.
- Effective oversight is needed regarding public interest asset management foundations, including a monitoring mechanism responsible for the oversight of the Board of Trustees, in particular in relation to academic freedom. The monitoring mechanism has to be open to receive complaints from students and university staff (the subjects of academic freedom), and has to be given powers to act as an effective remedy in the cases of violating academic freedom.
- All powers given to the Senates of state universities according to the current Higher Education Act have to be restored and guaranteed to the Senates in universities maintained by public interest asset management foundations. The Senate must regain its major powers over academic matters, including the right to elect the rector, decide on the recruitment of academic staff and their promotion. The Senate must have a veto power over the budget of the university. The composition of the Senate must be determined by the Senate.
- For this reason, certain parts of the Higher Education Act and Act IX of 2021 on Public Interest Asset Management Foundations need to be annulled in order to guarantee institutional

[143] Act CCIV of 2011 on the National Higher Education, Section 94(1)
[144] Act CCIV of 2021 on the National Higher Education, Section 94(6)
[145] Act CCIV of 2021 on the National Higher Education, Section 94(6a)

autonomy for higher education institutions. The powers given for maintainers (most of whom are public interest asset management foundations) diminishing the right of Senates have to be revised in order to eliminate all excessive powers infringing academic freedom.

- Ultimately, the annulment of the exceptional Sections 94(6) and 94(6a) of the Higher Education Act along with Section 22(4) of Act IX of 2021 on Public Interest Asset Management Foundations (organisational powers given back to the institutions' self-governing body, the Senate) is necessary to restore the basic guarantees for institutional autonomy of those universities which have undergone the "model change" and now are maintained by public interest asset management foundations.
- Furthermore, Section 73/A of the Higher Education Act enacted in 2021 needs to be annulled for it is conferring an excessive power to maintainers with vague terms upon which they could annul semesters which is a direct threat to academic freedom.
- An overall legislative reform of the Higher Education Act is preferable with strong guarantees of institutional autonomy regardless of the institutions' maintenance structure.

3. Right to asylum and the principle of non-refoulement

3.1. Repealing the pre-procedure system introduced in Hungary in 2020 that must be completed in a Hungarian embassy in a third country before a third-country national who is present on Hungarian territory, including at its border, can make an application for international protection

Description of the issue raised in the Commission implementing decision:[146]

On 27 May 2020, the Government introduced fundamental restrictions to access to asylum in the form of a decree later converted into an Act of Parliament (the so-called Transitional Act).[147] As a general rule, asylum-seekers are first required to express their intent to seek international protection at the Hungarian embassy in Serbia or Ukraine,[148] before they are able to access the asylum procedures in Hungary ("embassy system").[149] As a consequence, most foreigners within the territory of Hungary are summarily denied the possibility of submitting an asylum application and are instead directed to travel to either Serbia or Ukraine,[150] regardless of whether they have the legal right to enter those countries. Only people belonging to the following categories are not required to go through this process:[151]

- those having subsidiary protection status and are staying in Hungary;
- family members[152] of refugees and those having subsidiary protection who are staying in Hungary;

[146] Commission Implementing Decision approving the programme of Hungary for support from the Asylum, Migration and Integration Fund for the period of 2021–2027, C(2022) 10022 final, https://ec.europa.eu/transparency/documents-register/detail?ref=C(2022)10022&lang=en

[147] Government Decree 233/2020. (V. 26.), later converted into Act LVIII of 2020 on the Transitional Provisions related to the Termination of the State of Danger and on Epidemiological Preparedness (hereinafter: the Transitional Act)

[148] Government Decree 292/2020. (VI. 17.), Section 1

[149] Act LVIII of 2020 on the Transitional Provisions related to the Termination of the State of Danger and on Epidemiological Preparedness, Sections 267–268

[150] Ukraine is currently not applicable in practice and the HHC is not aware of any statement of intent ever being submitted at the Hungarian embassy in Ukraine.

[151] Section 5(1) of Government Decree 233/2020. (V. 26.) and Section 271(1) of the Transitional Act

[152] According to the Section 2(j) of the Asylum Act, family members are only spouses, minor children and children's parents or an accompanying foreign person responsible for them under Hungarian law. Adult children for example are therefore excluded.

- those subject to forced measures, measures or punishment affecting personal liberty, except if they have crossed Hungary in an illegal manner.

Those who do not fall under the exempted categories above cannot request asylum in Hungary.[153]

Technically, the embassy system is introduced *temporarily* in lieu of the previous automatic arbitrary detention system that was also found to be in breach of EU law by the CJEU in Case C-808/18.[154] The provisions prescribing the embassy system are extended annually for another year. The current extension is in place until 31 December 2024 (see below).

The embassy system does not ensure an effective and genuine access to the asylum procedure in Hungary.[155] Such view is also expressed by UNHCR.[156] The Commission referred Hungary to the CJEU in July 2021 over these changes. The CJEU ruled on 22 June 2023 that by introducing the embassy system, "Hungary has failed to fulfil its obligations under Article 6 of [the Asylum Procedures Directive]".[157] Despite the judgment, the embassy procedure remains in place.

Steps taken by the Hungarian authorities:

As explained above, the embassy system, technically, is a temporary system that (unless specifically extended via an amendment each time) is terminated at the end of the period prescribed in the same law.[158] The Government has prolonged the embassy system following the judgment of the CJEU on two occasions, instead of abolishing it, as required by the ruling.[159] Currently, the embassy system is in place at least until 31 December 2024. On 28 November 2024, the Government issued a decree under the authorisation it obtained through the state of danger, prolonging indefinitely the embassy system as of 1 January 2025.[160]

Assessment of the steps taken, main deficiencies:

The Government is openly refusing to implement the judgment of the CJEI, similarly to Case C-808/18 (see below).

Recommendation:

- Hungary shall immediately revert to its "regular" asylum system by (1) repealing the asylum-related provisions of the Transitional Act, and (2) ending the so-called "state of crisis due to mass migration" which, should only the embassy system be repealed, would result in a return to the transit zone system, which has already been found to be in breach of EU law in the CJEU's judgment in Case C-808/18.[161]

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[153] For a more detailed description of the embassy system, see: Hungarian Helsinki Committee, *Hungary de facto removes itself from the Common European Asylum System*, 12 August 2020, https://helsinki.hu/wp-content/uploads/new-Hungarian-asylum-system-HHC-Aug-2020.pdf.
[154] Judgment of the Court (Grand Chamber) of 17 December 2020 in Case C-808/18, European Commission v Hungary ECLI:EU:C:2020:1029.
[155] For further details and data, see: Hungarian Helsinki Committee, *No access to asylum for 18 months. Hungary's dysfunctional embassy system in theory and practice*, 15 December 2021, https://helsinki.hu/en/wp-content/uploads/sites/2/2021/12/No-access-to-asylum-1.11.2021.pdf.
[156] UNHCR, *Position on Hungarian Act LVIII of 2020 on the Transitional Rules and Epidemiological Preparedness related to the Cessation of the State of Danger*, June 2020, www.refworld.org/docid/5ef5c0614.html
[157] Judgment of the Court (Fourth Chamber) of 22 June 2023 in Case C-823/21, European Commission v Hungary, ECLI:EU:C:2023:504.
[158] Act LVIII of 2020, Section 267
[159] Act XCI of 2023, Section 91
[160] Government Decree 361/2024. (XI. 28.) on the Use of Temporary Rules of Asylum Procedures
[161] For more details on the effects of the state of crisis due to mass migration, see the 2021 update of the AIDA report on Hungary: https://asylumineurope.org/wp-content/uploads/2021/04/AIDA-HU_2020update.pdf, pp. 16–17.

3.2. Implementation of the CJEU's judgment in Case C-808/18 regarding the rules and practices in the transit zones at the Serbian-Hungarian border

Description of the issue raised in the Commission implementing decision:[162]

Hungary legalised push-backs (that is, collective expulsions), originally only from within an 8 km zone of the border fence erected at the Hungarian-Serbian and Hungarian-Croatian border sections in July 2016.[163] On 28 March 2017, significant asylum-related amendments entered into force. Among others, these prescribe that once a "state of crisis due to mass migration" has been declared by the Government, push-backs are to take place from the entire territory of Hungary. The CJEU ruled in December 2020 in Case C-808/18 that, among others, Hungary, by prescribing the removal of unlawfully staying third-country nationals to the Serbian side of the border fence, without undertaking any identification or individualised procedure and without allowing such individuals to make an asylum application, failed to fulfil its obligations laid down in Directive 2008/115/EC,[164] as well as in Articles 7, 18, 19, 24, and 47 of the Charter.[165] As the Government expressed its unwillingness to implement the judgment and even requested the Hungarian Constitutional Court to rule on whether implementing it would be in breach of the Hungarian Fundamental Law,[166] the Commission decided to refer Hungary back to the CJEU based on Article 260 TFEU, requesting the CJEU to impose fines for not implementing the judgment.[167] This is unprecedented in Hungary's history as an EU Member State.

The remainder of the judgment in Case C-808/18 has already been implemented by the time of the delivery of the judgment. The transit zones were shut down in May 2020, following another CJEU judgment in which the CJEU found, among others, that placement in the transit zones constituted unlawful detention.[168]

The Commission, for the first time in Hungary's membership in the European Union, decided to refer Hungary back to the CJEU under Article 260 TEU. On 13 June 2024, the CJEU issued its judgment in Case C-123/22, finding Hungary failing to fulfil its obligations for not implementing the judgment in Case C-808/18 and ordered Hungary to pay an unprecedented amount in lump sum (EUR 200 million) in addition to a daily EUR 1 million penalty payment.[169] The CJEU justified the extremely high lump sum amount with "the exceptional seriousness of the infringements at issue and Hungary's failure to cooperate in good faith in order to bring them to an end".[170]

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[162] Commission Implementing Decision approving the programme of Hungary for support from the Asylum, Migration and Integration Fund for the period from 2021 to 2027, C(2022) 10022 final, https://ec.europa.eu/transparency/documents-register/detail?ref=C(2022)10022&lang=en

[163] Hungarian Helsinki Committee, *Latest amendments "legalise" extrajudicial push-back of asylum-seekers, in violation of EU and international law*, 5 July 2016, https://helsinki.hu/wp-content/uploads/HHC-info-update-push-backs-5-July-2016.pdf

[164] Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals

[165] Judgment of the Court (Grand Chamber) of 17 December 2020 in Case C-808/18, European Commission v Hungary ECLI:EU:C:2020:1029.

[166] For more on the application of the Minister of Justice to the Constitutional Court, and on the Constitutional Court's decision, see: https://helsinki.hu/en/the-governments-attempt-at-sabotage-has-failed-and-the-cjeu-decision-must-be-implemented/.

[167] Case C-123/22. Casefile on the CJEU's website: https://curia.europa.eu/juris/liste.jsf?num=C-123/22. Press release of the European Commission of 12 November 2021 on referral to the CJEU: https://ec.europa.eu/commission/presscorner/detail/EN/IP_21_5801

[168] See more on these preliminary reference rulings where the HHC provided legal representation to the applicants: https://helsinki.hu/en/hungary-unlawfully-detains-people-in-the-transit-zone/.

[169] Judgment of the Court (Fourth Chamber) of 13 June 2024 in Case C-123/22, ECLI:EU:C:2024:493.

[170] § 132 of the judgment of 13 June 2024 in Case C-123/22, ECLI:EU:C:2024:493.

Steps taken by the Hungarian authorities:

No steps have been taken by the Hungarian government or the Parliament to remedy the situation. Push-backs continue. Hungary refuses to pay the fines imposed for not implementing the judgment. The Government also seeks to build narrative support for non-compliance by including the issue in the most recent so-called "national consultation", a political propaganda tool where directed questions are sent to each Hungarian citizen. Question 11, entitled "rejecting the migration penalty", reads: "[a]ccording to the decision of the European Court of Justice, Hungary must pay a penalty of one million euros per day for not opening its borders to immigrants. The Government, on the other hand, believes that instead of punishing our country, Brussels should accept that Hungary does not participate in the central migration policy, i.e. the mandatory reception and distribution of immigrants. What do you think about this? A. The penalty is outrageous, and Hungary has the right to be left out of the reception and distribution of immigrants. B. Hungary must accept the migration policy of Brussels."[171]

Recommendation:

- Repeal Sections 5(1a) and 5(1b) of Act LXXXIX of 2007 on State Borders which provide for the legalisation of push-backs.

3.3. Implementation of the CJEU's judgment in Case C-821/19 (regarding legislation criminalising the organisation of activities carried out to assist the initiation of applications for international protection in Hungary)

Description of the issue raised in the Commission implementing decision:[172]

The criminalisation of providing assistance to asylum-seekers, introduced as part of the infamous set of changes the Government dubbed as the "Stop Soros package", was found to be in breach of EU law by the CJEU in Case C-821/19 in November 2021. The CJEU specifically underlined the deterrent effect of the introduction of criminal penalties, which may lead persons wishing and able to provide assistance not to do so.[173] According to the CJEU, this is a restriction on the rights enshrined in Directives 2013/32/EU[174] and 2013/33/EU,[175] which contribute to giving concrete expression to the right enshrined in Article 18 of the Charter.[176]

Steps taken by the Hungarian authorities:

In early December 2022, a parliamentary supercommittee that is able to introduce amendments immediately prior to the final vote on bills in plenary, proposed an amendment to the relevant section

[171] Unofficial translation; the official questionnaire is available on the Government's website: https://kormany.hu/hirek/hetfotol-indul-a-nemzeti-konzultacio-ime-a-kerdesek.

[172] Commission Implementing Decision approving the programme of Hungary for support from the Asylum, Migration and Integration Fund for the period from 2021 to 2027, C(2022) 10022 final, https://ec.europa.eu/transparency/documents-register/detail?ref=C(2022)10022&lang=en

[173] Judgment of the Court (Grand Chamber) 16 November 2021 in Case C-821/19, European Commission v Hungary, ECLI:EU:C:2021:930, § 98

[174] Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection

[175] Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection

[176] Judgment of the Court (Grand Chamber) 16 November 2021 in Case C-821/19, European Commission v Hungary, ECLI:EU:C:2021:930, §§ 99 and 132

of the Criminal Code. The new provision, under the same title ("Facilitation, support of illegal immigration"), includes a completely different and vaguely defined ground for criminalisation.[177]

Assessment of the steps taken, main deficiencies:

While technically it might seem that the replacement of the content of the criminal provision with different grounds meets the requirements of implementing the CJEU judgment, the new provisions continue to have a deterring (chilling) effect on persons wishing and able to provide assistance not do so. The Commission has not closed the infringement procedure yet, moreover, the Commission Implementing Decision approving the programme of Hungary for support from the Asylum, Migration and Integration Fund for the period of 2021–2027, issued after the adoption of the amendments, finds in relation to the judgment in Case C-821/19 that the horizontal enabling condition requiring the effective application and implementation of the Charter is not fulfilled.[178]

Recommendation:

- Repeal in its entirety Section 353/A of the Criminal Code, originally introduced in 2018, and amended as of 1 January 2023.

4. Rights of LGBTQI+ persons

Description of the issue raised in the Commission implementing decisions:

In June 2021, the Hungarian Parliament adopted Act LXXIX of 2021 on Stricter Action against Paedophile Offenders and Amending Certain Acts for the Protection of Children, which prohibits or limits access to content that "propagates" or "portrays" so-called "divergence from self-identity corresponding to sex at birth, sex change or homosexuality" for individuals under the age of 18. In July 2021, the Commission launched an infringement procedure regarding this legislation due to breach of EU legislation in connection with violation of rights enshrined in provisions of the EU Treaties and in Articles 1, 7, 11 and 21 of the Charter of Fundamental Rights. Following the analysis of the Hungarian authorities' reply, the Commission issued a reasoned opinion in December 2021 and decided in July 2022 to refer Hungary to the CJEU under Article 258 TFEU. On 19 November 2024, the CJEU held a hearing[179] in the proceedings, where the representatives of Belgium, Denmark, Germany, Estonia, Ireland, Greece, Spain, Luxembourg, Malta, the Netherlands, Finland, Sweden and the European Parliament also presented their arguments. All the Member States that spoke at the hearing expressed agreement with the Commission's position that this infringement is "systemic, intentional and widespread", therefore constitutes a violation of Article 2 of the TEU as well. "Several speakers highlighted the harmful impact of the legislation, pointing out issues such as the absence of sex education in public schools, the censorship of exhibitions, and fines imposed on bookstores."[180]

The Commission in connection to the Implementing Decision approving "Economic Development and Innovation Operational Programme Plus" for support from the European Regional Development Fund

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[177] See the Hungarian Helsinki Committee's unofficial translation of Section 353/A of the Criminal Code in force as of 1 January 2023: https://helsinki.hu/en/wp-content/uploads/sites/2/2022/12/criminalisation_2022.pdf.

[178] Commission Implementing Decision approving the programme of Hungary for support from the Asylum, Migration and Integration Fund for the period from 2021 to 2027, C(2022) 10022 final, https://ec.europa.eu/transparency/documents-register/detail?ref=C(2022)10022&lang=en, recital 11.

[179] Hearing C-769/22, https://curia.europa.eu/jcms/jcms/p1_1477137/hu/

[180] ILGA-Europe, *EU member states unite against Hungary's anti-LGBTI propaganda law at infringement hearing,* 21. November 2024, https://www.ilga-europe.org/news/eu-member-states-unite-against-hungarys-anti-lgbti-propaganda-law-at-infringement-hearing/

and the European Social Fund Plus under the Investment for jobs and growth goal in Hungary[181] considers that the provisions of Act LXXIX of 2021 have a concrete, direct impact on compliance with the Charter in the implementation of the programme, in particular on actions supported by the ESF+ which are addressed to or are for the benefit of children, notably in the area of education but also other services provided to children which are subject to compliance with Act LXXIX of 2021. Act LXXIX of 2021 can have a direct impact on the development of education content and the training of teachers. In particular it may lead to the rejection of applications for funding projects developing competences and access to content that would portray homosexuality, divergence from self-identity corresponding to sex at birth and gender reassignment. In addition, development of educational material aiming at preventing and combating discrimination based on sexual orientation could also be rejected.

Additionally, regarding the Commission Implementing Decision approving "Human Resources Development Operational Programme Plus" for support from the European Regional Development Fund and the European Social Fund Plus under the Investment for jobs and growth goal in Hungary,[182] Act LXXIX of 2021 has a direct impact on the implementation of actions supported by the ESF+, notably training of teachers and child protection actions, such as education and training of parents and foster parent networks, and provision of mental and psychological support services. The content of training of teachers and child protection actions, such as provision of mental and psychological support services can disrespect the Charter as these actions are subject to compliance with Act LXXIX of 2021.

Act LXXIX of 2021 associates negative and pejorative characteristics with LGBTQI+ individuals, violating Article 1 of the Charter, which upholds equal human dignity, and Article 21 of the Charter by discriminating against LGBTQI+ individuals. By portraying LGBTQI+ people as inferior, Act LXXIX of 2021 undermines the fundamental principle of equality. Act LXXIX of 2021 also infringes on Article 7 of the Charter by failing to recognise gender identity as part of personal identity, thus limiting the right to respect for private life. By prohibiting the "propagation" or "portrayal" of content related to diverse sexual orientations or gender identities, Act LXXIX of 2021 also infringes upon Article 11 of the Charter, hindering public discourse and access to diverse information, which creates a chilling effect on public and private speech. Excluding objective information on sexual orientation and gender identity fosters an unsafe environment, heightening risks of bullying, harassment, and mental health issues for LGBTQI+ youth.

Act LXXIX of 2021 dissuades applicants who may otherwise seek funding for projects that promote inclusivity, mental health support, and educational diversity. This not only reduces potential beneficiaries' participation but also limits the social and developmental impact that ESF+ projects could have in Hungary.

Therefore, the horizontal enabling condition "3. Effective application and implementation of the Charter of Fundamental Rights" is not fulfilled.

Steps taken by the Hungarian authorities:

Provisions of Act LXXIX of 2021 have not been repealed and no legislative changes have been introduced that would target the related concerns. On the contrary, the Government, on 23 April 2024, amended Government Decree 210/2009. (IX. 29.) on the conditions for conducting commercial

[181] European Commission, C(2022) 10009 final, https://ec.europa.eu/transparency/documents-register/detail?ref=C(2022)10009&lang=en

[182] European Commission, C(2022) 10010 final, https://ec.europa.eu/transparency/documents-register/detail?ref=C(2022)10010&lang=en

activities, partially reformulating restrictions on the public display and distribution of LGBTQI+ content to support the enforcement of Act LXXIX of 2021. The amendment attempts to clarify which content falls under restrictions, by adding that the regulations must be applied when "divergence from self-identity corresponding to sex at birth, sex change or homosexuality" is the "defining element" of the product. Even though the formulation of the legal text aims to be clearer and more precise, it has the opposite effect: it was already unclear what "propagation of homosexuality" would mean, but now it is also unclear what the threshold is for LGBTQI-related content to become the defining element in the product, hence the new regulation still lacks the normative clarity required by international and constitutional standards. Moreover, this legal amendment aimed to override a court decision as follows, and therefore it is highly problematic from a rule of law perspective. In 2023, the Consumer Protection Authority fined a bookstore by approximately EUR 30,000 for selling the book Heartstopper, which "portrays homosexuality", and for categorising it as youth literature without properly wrapping it. The Budapest Regional Court annulled the decision on 9 February 2024 due to a grammatical error made by the legislator.

Assessment of the steps taken, main deficiencies:

The Hungarian authorities have not taken any steps to address the concerns raised by the Commission regarding Act LXXIX of 2021. It remains in force restricting access to content relating to "divergence from self-identity corresponding to sex at birth, sex change, or homosexuality" for individuals under 18. This lack of action demonstrates a failure to address significant breaches of the rights enshrined in the Charter, including equal human dignity, the right to respect for private life, freedom of expression, and the right to be free from discrimination.

Recommendations:

- Act LXXIX of 2021 must be repealed or substantively amended to remove provisions that restrict access to content portraying LGBTQI+ identities. This would align Hungary's legislation with EU principles on human dignity, non-discrimination, and freedom of expression.
- The Government should also repeal Section 20/A of Government Decree 210/2009. (IX. 29.), incorporate anti-discrimination trainings in the curriculum, and allow civil society organisations to hold workshops in schools to reduce stigma against LGBTQI+ individuals. This would mitigate bullying and harassment, contributing to a safer environment for all students.

III. Contextual information: the Sovereignty Protection Act

On 12 December 2023, the day before the European Commission reached the conclusion that the judicial reform of May 2023 addressed deficiencies regarding judicial independence, the Hungarian Parliament adopted Act LXXXVIII of 2023 on the Protection of National Sovereignty (hereinafter: Sovereignty Protection Act),[183] clearly showing that the Hungarian government and governing majority have no true intention to respect human rights or restore the rule of law.

The Sovereignty Protection Act, which entered into force on 22 December 2023, consists of two distinct elements: the setting up of the Sovereignty Protection Office (SPO), and an amendment to the Criminal Code prescribing prison sentence for using funding from abroad (overtly or "in disguise to circumvent the prohibition") for political campaign purposes. The first element is the culmination of earlier attempts by the Government to "securitize" independent civil society, and is aimed at intimidating and silencing critical voices, including civil society and the media. The SPO has wide-ranging tools at its disposal to investigate private individuals, informal groups and legal entities, including non-profit and for-profit organisations both inside and outside Hungary, and the law's vaguely drafted provisions allow it to use its invasive powers against virtually anyone exercising their democratic right to engage in public matters. The scope of the activities which might trigger the investigation of the SPO are extremely broad and open to arbitrary interpretation. Intelligence agencies shall provide information to the SPO on its request in order to facilitate its work. Investigations are followed by a public report, and there is no legal remedy (including judicial review) available against the actions of the SPO. The combined effects of the above are capable of exerting a considerable chilling effect on civil society, social movements and independent media as a whole in Hungary, exacerbating existing pressures[184] and leading to a serious distortion of public discourse and democratic life.

The Sovereignty Protection Act clearly violates international standards, as also shown by the range of stakeholders that criticized the law, including the Council of Europe Commissioner for Human Rights,[185] the UN Special Rapporteur on Freedom of Expression and the Special Rapporteur on Human Rights Defenders,[186] and the Venice Commission of the Council of Europe, which concluded in its respective opinion that "the regulation related to the establishment of the [SPO] and its mandate and competencies […] should be repealed".[187] The European Commission launched an infringement

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[183] For the official English translation of the law, see: https://njt.hu/jogszabaly/en/2023-88-00-00. For a related Q and A prepared by Amnesty International Hungary and HHC, see: https://helsinki.hu/en/wp-content/uploads/sites/2/2024/02/QandA_Sovereignty_Protection_Act_QandA_2024.pdf.

[184] For more details, see the written statement submitted by the HHC in the framework of the OSCE Warsaw Human Dimension Conference 2024 on shrinking space for independent civil society at https://helsinki.hu/en/wp-content/uploads/sites/2/2024/10/OSCE-Warsaw-Human-Dimension-Conference_Fundamental-freedoms_HU-CSO-input_02102024.pdf.

[185] https://www.coe.int/ca/web/commissioner/-/hungary-the-proposal-for-a-defence-of-national-sovereignty-package-should-be-abandoned

[186] https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=28661

[187] European Commission for Democracy through Law (Venice Commission), *Hungary – Opinion on Act LXXXVIII of 2023 on the Protection of National Sovereignty*, CDL-AD(2024)001-e, 18 March 2024, https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2024)001-e, para. 65.

procedure, and in October 2024, it decided to refer Hungary to the CJEU on account of the Sovereignty Protection Act violating several provisions of primary and secondary EU law.[188]

Despite these criticisms, the Sovereignty Protection Act remains in force, and it has already been utilized. In June 2024, Transparency International Hungary (TI Hungary) and Átlátszó.hu, an independent investigative news portal, announced that the SPO had sent them a notice of being under investigation along with an extensive list of questions[189] – since then, the SPO's respective reports have been published, containing ill-founded and unsubstantiated allegations.[190] This is all the more worrying because TI Hungary is a member of one of the domestic Monitoring Committees monitoring the use of EU funds and the public procurement performance measurement framework, and both TI Hungary and Átlátszó.hu are members of the Anti-Corruption Task Force established as one of the conditions to access certain EU funds. In September 2024, it was reported that the SPO had launched another investigation against two CSOs: a local association focusing on environmental issues at a suburban settlement and speaking out against contamination by a controversial battery factory housed by the town, and a foundation linked to Átlátszó.hu. Questions received by both entities relate to an EU-funded project jointly implemented by them that the SPO alleges to pose a threat to the sovereignty of Hungary.[191] These investigations are very likely to exacerbate the already existing chilling effect of the Sovereignty Protection Act, which creates fear and self-regulation, hinders cooperation between organisations, and diverts resources away from their actual activities, creating an environment where for example receiving EU funding can be perceived as a threat by CSOs.[192]

Domestic avenues of remedy against the Sovereignty Protection Act are closed: on 15 November 2024, the Constitutional Court of Hungary rejected the constitutional complaint of TI Hungary[193] submitted on account of the investigation launched against them (supported by an amicus curiae brief signed by 31 Hungarian CSOs[194]), concluding that the law is not unconstitutional.[195] It has to be mentioned as well that in July 2024, civil society members of the Monitoring Committees sent a joint letter to the Monitoring Committees, asking to convene extraordinary sessions with the participation of representatives of the SPO, to discuss whether the CSOs' work in the Monitoring Committees is seen as a ground to trigger an investigation.[196] However, the request was dismissed.[197] The issue was

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[188] INFR(2024)2001, https://ec.europa.eu/commission/presscorner/detail/en/inf_24_301, https://ec.europa.eu/commission/presscorner/detail/en/ip_24_4865. See also the following analysis prepared by Amnesty International Hungary and the Hungarian Helsinki Committee: https://helsinki.hu/en/wp-content/uploads/sites/2/2024/02/Sovereignty_Protection_Act_breaches_EU_law_2024.pdf.

[189] See: https://transparency.hu/en/news/spo-targets-ti-hungary/, https://english.atlatszo.hu/2024/06/25/the-sovereignty-protection-office-launched-an-investigation-against-atlatszo/.

[190] The reports and their English summaries are available here: https://szuverenitasvedelmihivatal.hu/dokumentumaink/.

[191] See: https://english.atlatszo.hu/2024/09/14/ngo-that-revealed-samsungs-pollution-targeted-by-sovereignty-protection-office/.

[192] See in this regard the result of a survey conducted among Hungarian civil society organisations: https://helsinki.hu/wp-content/uploads/2024/06/Consequences-of-the-Sovereignty-Protection-Act.pdf.

[193] The constitutional complaint of TI Hungary is available in English here: https://transparency.hu/wp-content/uploads/2024/11/TI-Hungary_Constitutional_Complaint_Sovereignty_Protection_Law_ENG.pdf.

[194] https://helsinki.hu/civilek-a-szuverenitasvedelmi-torveny-megsemmisiteseert/

[195] Case no. IV/02551/2024, https://media.alkotmanybirosag.hu/2024/11/sz_iv_2551_2024.pdf. See the press release of the Constitutional Court in Hungarian here: https://alkotmanybirosag.hu/kozlemeny/nem-alaptorveny-ellenesek-a-szuverenitasvedelmi-hivatalrol-szolo-torveny-tamadott-rendelkezesei/. In its decision, the Constitutional Court claims that the Sovereignty Protection Act does not restrict the applicant's right to freedom of expression, and since the SPO does not have the possibility of imposing sanctions directly in connection with its investigations, its procedure is not covered by the scope of protection of the right to a fair handling of one's affairs by the authorities.

[196] The English translation of the CSO representatives' letter is available here: https://helsinki.hu/en/wp-content/uploads/sites/2/2024/07/CSOs-letter-to-Managing-Authorities-and-Monitoring-Committees-1.pdf.

[197] The response of a deputy state secretary, dismissing the request, is available here: https://helsinki.hu/en/wp-content/uploads/sites/2/2024/07/Valasz_Helsinki-Bizottsag_alairt.pdf.

finally put on the agenda of the Partnership Agreement Monitoring Committee's December 2024 session. Upon the repeated requests of the signatories of the joint letter of CSOs insisting that they are present at the hearing, the signatories were finally invited on 28 November 2024.

Besides, the ACTF in its Resolution 16/2024. (IX. 17.), initiated by CSO members and approved at the plenary session of 17 September 2024 by unanimity vote of CSO members and by full abstention of government-delegated members, asked for the SPO's response whether the CSO members' participation in the work of the ACTF is acceptable or should be deemed unlawful. In its response, the SPO only reiterated that in its view, foreign-funded political pressure groups exploited the ACTF to further pressurise the Government of Hungary.[198]

Finally, it has to be emphasized that the EU law violations realised by the Sovereignty Protection Act and the SPO's investigations might also serve as a basis for suspending/blocking additional EU funds to Hungary. The law and the investigations, and in particular the chilling effect and the fear of retaliation instilled by them, undermine the purpose of Monitoring Committees and result in a breach of the rule of law as defined by the Conditionality Regulation. The problem applies, *mutatis mutandi*s, to monitoring compliance with Horizontal Enabling Condition 1 ("Effective monitoring mechanisms of the public procurement market") and 3 ("Effective application and implementation of the Charter of Fundamental Rights") under the Common Provisions Regulation as well. Moreover, the Sovereignty Protection Act and the SPO's investigations have a detrimental impact on the effective and independent CSO participation in the ACTF, undermining the work of a body specifically introduced in line with Milestone 166 of the RRP to access EU funds; and threaten the effectiveness of the private prosecution procedure introduced in corruption cases due to Milestone 169 of the RRP, given that TI Hungary and Átlátszó.hu are among the handful of actors that can realistically engage with the new procedure and that the intrusive investigative rights of the SPO can dissuade whistleblowers from coming forward. Thus, the situation gives rise to the need to trigger the Conditionality Regulation, a re-assessment of the fulfilment of the Horizontal Enabling Conditions 1 and 3 under the Common Provisions Regulation, and a reassessment of the approval of Hungary's RRP as amended with the REPowerEU facility.[199]

Recommendation:

- Abolish the Sovereignty Protection Office and repeal the Sovereignty Protection Act and all other laws hampering civil society organisations' capacity to carry out their mandate, in line with the recommendation of the European Commission's 2024 Rule of Law Report.

[198] See the resolution of the ACTF here: https://kemcs.hu/wp-content/uploads/2024/09/jegyzokonyv_20240917_alairt.pdf, and the SPO's response here: https://szuverenitasvedelmihivatal.hu/hirek/valasz-a-kemcs-17-2024-hatarozatara.

[199] In more detail, see the complaints submitted to the European Commission by the Monitoring Committee member delegated by HHC, one of these having been registered under CPLT(2024)01947.