

THE TRANSPARENCY OF THE BUDGET AND THE INSTITUTIONAL SYSTEM IN HUNGARY

A SUMMARY OF THE JOINT STUDY OF TRANSPARENCY INTERNATIONAL HUNGARY AND THE FISCAL RESPONSIBILITY INSTITUTE BUDAPEST

The transparency and the accountability of institutions are key issues not only for the democratic rule of law but also for an efficient economy. In order to meet today's challenges in policy-making, it is indispensable to provide fact-based and highly informative decision-making. Without an adequately operating institutional system the practice of democratic rights, the functioning of the political system and the competitiveness of the economy are equally undermined.

Transparency International Hungary (TI) and the Fiscal Responsibility Institute Budapest (FRIB) decided that with the approach of the 2014 general elections they would examine the transparency of the budget and the Hungarian institutional system. Our study analyses the situation of public authority decision-making, the budget, campaign financing, the freedom of information, public procurement and anti-corruption programmes in Hungary in terms of transparency. The study provides a solid basis for the next phase of the "What do we elect?" project, during which promises given by campaigning parties are going to be weighed and we are going to calculate the price of their promises to be paid from the state budget, that is, to be paid by us taxpayers.

The summary below only includes the most important conclusions. Detailed explanations can be found in the study. We sincerely hope that our assessment study will contribute to a more transparent public policy.

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Transparency International Hungary — Fiscal Responsibility Institute Budapest

1. THE MODALITY AND INSTITUTIONAL ENVIRONMENT OF PUBLIC AUTHORITY DECISION-MAKING

After the change of regime Hungary introduced a democratic model of exercising power based on the rule of law. Similarly to the former Hungarian Constitution, the new Fundamental Law of Hungary declares that Hungary is a democratic rule of law where the principle of power sharing applies. Hungary is a member state of the European Union and the Council of Europe, which assumes a strong commitment to the rule of law and to fundamental rights. The second article of the EU's founding treaty states the following: "The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights."

As a result of the general elections in 2010, the governing Fidesz party gained a two thirds majority which enables it to change the constitution at will. This started a new chapter in the life of institutions controlling the executive power. Exploiting its overwhelming majority the government has either appointed persons to head institutions meant to provide checks and balances who are committed to the executive power or limited the controlling authority of institutions with amendments to relevant laws.

As a result of these changes the system of checks and balances has broken down under the rule of this government. In the case of a change of government this process might result in an opposite effect, since the new government may end up in an administrative environment of sharply different political affiliation.

In a democratic rule of law the government, which is responsible to the legislative branch, influences the parliament's work (e.g. by drafting and submitting law proposals). However, actual legislation can only be made by respecting the relevant procedural framework – among others, following professional and social consultation. In Hungary, the majority of the laws causing the breakdown of the checks and balances system are motions initiated by members of parliament and they have been passed without any obligatory professional and social consultation. Furthermore, several economically influential laws have been passed the same way. This legislative procedure has been heavily criticised by the Constitutional Court. If short-term considerations influence a guaranteed legislative procedure, laws will serve the momentary interests of the authority instead of serving the common good.

In Hungary the corrupt involvement of certain corporate groups and the political system is a known fact. The public authority has become the captive of a government which concentrates political power that is not balanced out by any checks. Thus, the government makes arbitrary decisions about the business entities which it is willing to cooperate with. Advantages are conferred to these privileged corporate groups by using public authority methods, legislation and/or transferring public funds. This motivates economic agents to "fund hunting," which leads to interest in courting the government instead of gaining profit. At a macro level it distorts the optimal allocation of resources and results in "common bad" rather than in common good, thus decreasing economic performance and competitiveness.

The experience of the fight against corruption demonstrates that the quality of the checks and balances system is closely connected to the state's resistance against corruption risks. When the transparency and the accountability of public authority decrease, the risk of corruption increases.

Democracy, rule of law and a functioning checks and balances system are interdependent values; this is why if one of them weakens the other ones will deteriorate as well.

2. LACK OF FISCAL TRANSPARENCY

More and more, it is being recognized that when ordinary people are involved in managing the public's money, you get stronger decisions, less corruption and mismanagement, and better outcomes for a country's citizens, especially the poor. The lack of budget transparency hinders the effective operation of democratic institutions and puts the country at a disadvantage in the international competition for foreign investment.

Transparency begins on a much smaller scale and is necessary in a much broader scope than exposing the unfounded promises of politicians. Full transparency must extend to all relevant budgetary information regarding the government's policy-making and the implementation of decisions in the past and present, as well as to plans for the future.

The transparency of the Hungarian budget system is poor in a European as well as a global comparison. The origins of the lack of transparency can be traced back to the period of the communist regime, but none of the governments has felt it necessary to make radical changes in this field ever since.

The irresponsibility of budgetary policy in the 2001–2006 period was made clear by the size of the fiscal deficit, which was high by international standards all the way through, and particularly high in the two election years (above 9%). As a direct consequence of this, the debt ratio kept increasing. It was possible to finance this process on the global capital markets at the time, but the credibility of Hungarian economic policy was undermined on domestic and international markets alike for years to come. The non-transparency of the budget, together with the deliberate concealment and manipulation of relevant fiscal information, played a key role in undermining credibility and maintaining support for an irresponsible economic policy.

The fiscal policy pursued since 2010 has managed to keep the general government deficit around 3% of GDP but the price to be paid for this included the nationalisation of private pension fund assets and contributions as well as several other measures that, directly or indirectly (through worsening growth prospects) set the medium-to-long-term budget outlook on an unsustainable path. This is evidenced by the fact that the gross government debt to GDP ratio – calculated without the effects of the nationalisation of private pension funds – continues to increase. Once again, the funding of this irresponsible economic policy-making has been made possible by the favourable international financial environment. The continuation of such economic policy presupposes the lack of budget transparency, more specifically, the absence of medium- and long-term fiscal impact assessments and of baseline projections, and a lack of transparency in decision preparation.

Both periods mentioned above serve to prove that the creation of transparency is the most effective tool to assure sustainability. If a government fails to maintain transparency, it cannot possibly aim for sustainability either. And unsustainable promises cannot possibly be considered as credible.

In terms of transparency, very few European countries rank below Hungary, which scored 40 out of 100 on the transparency index (measured by the Open Budget Index). Indeed, even information of public relevance that is available to the government is often not made public, and the fast, clear and comparable presentation of public information is particularly missing. The primary reason is the lack of political will.

Transparency is not an end in itself. It is important because it leads to better government decisions, helps private sector entities to adapt and reduces the risk premium required from the country. Neglecting these channels significantly reduces the effectiveness of economic policy. It is a global trend that states need to finance ever more and ever higher quality services from less and less revenues, but the trend is particularly strong in Hungary considering the country's worsening demographic position and the almost total absence of natural resources. With inefficient fiscal and economic policies it is impossible to reach a sufficiently high and sustainable growth rate that is necessary to finance these public services.

3. CAMPAIGN FINANCING

The financing of political parties' campaigns has been an unresolved issue since the change of regime and at the same time is also the biggest corruption risk in Hungary.

Since the change of regime, the majority of the parties' revenue comes from subsidies from the state budget, while only a small part of it consists of party members' contributions. Today in Hungary, even the most politically committed citizens do not feel the need to financially contribute to the activities of their preferred party. Starting this year, in accordance with the new regulation, apart from state funds and member contributions parties can only accept financial support from natural persons of Hungarian nationality.

The financial management of the parties is not transparent enough: there is no clear-cut regulation regarding the deadline by which parties are obligated to publish their financial reports on their websites. What is more, the reports are not detailed enough to provide deeper insight into their finances.

Within the framework of its "képmutatás.hu" project, TI examined the campaign financing of the 2010 general elections. The inquiry showed that the biggest parties (Fidesz and MSZP – The Hungarian Socialist Party) spent about HUF 1.5 billion instead of the legally allowed HUF 386 million. If we accept the revenues and expenditures indicated in the official reports as legal sums, we have to assume that the exceptionally costly election campaigns are being financed from illegal financial resources.

If legal funds are not sufficient, the parties will look for illegal financing options. Based on TI's experience this mechanism works in the following way: parties become obligated to business entities which fund their campaigns, and when the governing party is elected the favour of corrupt financing is returned by allocating public funds in biased, fraudulent ways.

The Hungarian political elite has difficulties in admitting the fact that recognising the extreme expenditures of political parties and their campaigns, amounting to billions of forints, has lower social costs than gaining illegal funds.

On TI's initiative the parties of the parliament made a promise about a new regulation which makes campaign financing resistant to corruption. The new regulation would ensure the absolute transparency of the parties' and candidates' revenues and expenditures. In addition, there would be unified conditions of campaign platforms. The new law on campaign financing, which was adopted on 10 June 2013 and is to be applied in the 2014 campaigning period, does not correspond to the aforementioned commitments.

The advantages of the new regulation are, on the one hand, that it provides parties with hundreds of millions of forints for campaigning, and on the other hand, the ceiling of campaign spending per candidate was raised from HUF 1 million to HUF 5 million. This measure will harmonize the actual campaign spending with the realistic estimates made by TI. This is a huge step in the combat against corruption in campaigns because if the state covers the campaign expenditures in a transparent way, it "whitens" the campaign. According to Act 36 of 2013 on the electoral process, electronic platforms are available for political advertising free of charge in both commercial and public service media. If the campaign tools which used to be extremely expensive during previous campaigns are made free of charge, the ceiling of HUF 5 million per candidate will be a realistic amount. The raised ceiling of campaign spending and the free of charge media advertising together will whiten political campaigns.

The weakness of the Act is that it fails to render fraud impossible and it does not initiate ways of control suitable for revealing attempts at fraud. Therefore, on the whole, the Act is insufficient for extinguishing campaign corruption because it creates as many loopholes as it eliminates – if not more.

4. FREEDOM OF INFORMATION

Freedom of information, which is one of the fundamental communication rights (also including freedom of speech, freedom of expression, access to public data, protection of personal data, etc.), has been of utmost importance during the establishment of the rule of law in Hungary. After the change of regime the state sought to develop a regulation of data protection and informational self-determination which protects the privacy and the personal autonomy of citizens while ensuring a high level of transparency at the level of public authority. This means that the state has access to a minimal part of private life while the state itself has to be transparent and function transparently.

However, the practice after the change of regime often contradicted these principles and initial goals. Measures for accessing data of public interest (especially data on public funds) have not been proven sufficiently effective because of the governments' secrecy. For a long time, the secret spending of public funds has been possible for the following reasons: on the one hand, the concept of confidentiality in business has been interpreted too widely, covering the use of public funds as well; on the other hand, several public corporations and institutions, which are maintained by public funds, were late in being introduced to the public procurement system.

Since the change of government in 2010 the tools of the freedom of information (accountability of the public authority and traceability of public funds) have weakened. The law on freedom of information, which came into effect in 2012, eliminated the independent institution of the data protection ombudsman. The president of the newly established National Authority for Data Protection and Freedom of Information is appointed by the head of the government instead of being elected by Parliament.

In 2013 the Parliament amended the law on freedom of information. Obviously, the amendment was based on the tendency that the acquisition and the circulating of data of public interest are the privileges of the state authority. Transparency International rejects this because we consider freedom of information a tool for controlling public authority and not a favour from the authority.

The new law resulted in the fact that it is sufficient for the managers of these data to provide more limited access. The amendment also violates the right for judicial review: it is uncertain whether citizens and NGOs can lodge complaints against those public bodies which withhold data of public interest.

Regarding the transparency and accountability of the public authority the devolution of freedom of information is a significant step backwards. Today in Hungary, citizens have more difficulty in accessing data on public spending and the functioning of public authority, both funded by taxpayers. This weakens civil society's tools for holding the public authority accountable and it enables an irresponsible and unaccountable exercise of power.

Violating the institutional guarantees of freedom of information with these solutions – incompatible with the Fundamental Law and the European Convention of Human Rights – simply limits the access to data of public interest and data on public spending. This results in the tendency that public bodies have the opportunity to lock away data on both their operation and the justification of their decisions.

5. PUBLIC PROCUREMENT

In Hungary in 2012 the overall value of public procurements amounted to HUF 1,334 billion, around 4.7 % of GDP. This is the equivalent of Hungary's annual health care spending. Huge amounts of money go from the contracting entities into the pockets of winning bidders while there are no mechanisms suitable for actually controlling public spending. As a consequence, in several cases the path of the money is unclear: for example, remuneration from public funds is given not only to the winning bidder but also to other entities (as reinvested money); or we can also mention the lack of competition in certain public procurement processes.

It is important to highlight the "interaction" between corruption in public procurement and campaign financing: bidders chosen as a result of unfair competition "return" a certain amount to the non-transparent budget of the party. What is more, it also works the other way around: those entities which finance the campaign of the later governing party will be "paid off" via public procurement.

The current law on public procurement does not provide sufficient protection against corruption. In case of goods and service procurement amounting up to HUF 25 million and construction tendering amounting up to HUF 150 million several elements may facilitate corruption: a mock-competition with three bidders, the unclear regulation on conflict of interest, the insufficient guarantees on monitoring and the procedures shaped by the contracting entities.

Several factors make the adequacy and application of the public procurement system questionable: the administration service fees of legal remedy procedures are very high; there are more and more confidential public procurement procedures; there are numerous tenders with only one bidder. According to the National Integrity Study (2011) made by TI, systemic corruption raises the aggregated cost of public procurement procedures by 20–25%.

Corruption in public procurement is not caused solely by the defects of regulation. Its origins reach back to the depths of socio-economic processes. Public procurement corruption is incorporated in general corruption. Therefore, the most important goals are actual exposure, actual measures, adequate prevention and real sanctions.

There are numerous forms of corruption in public procurement: in exchange for a certain amount of money the contracting entity may favour one bidder; the bidders may also negotiate and decide whose bid will be the best one. Publishing the data on public procurement procedures (except for confidential business and national security information) would contribute to the reduction of corruption because if a public body is not willing to account for its procedures, we have reason to believe that it withholds something.

Transparency International's Integrity Pact is an important tool for drawing the population's attention to the fact that it is precisely them, the taxpayers, who finance public procurement procedures and this is why it is crucial for them to know how the money is spent. Those who signed the Pact not only distance themselves from every form of corruption but also commit themselves to the publishing of all data on procurement procedures.

6. GOVERNMENT ANTI-CORRUPTION SCHEMES

Similarly to other cases of state interference, the fight against corruption can only be successful if relevant information is accessible. However, data on corruption are hard to access because the interest of those involved is to keep them secret. Just like other developed countries, for a long time, Hungary had fought corruption mostly with the means of criminal law. The realization that the criminalization of corrupt conduct is not sufficient came too late.

At the end of the first decade following the change of regime, non-criminal means against corruption appeared. Accountability for corruption was raised to political and public law level by the State Secretary for public finances of the Socialist-Liberal Democrat government taking office in 2002, László Keller. The current government has revived the 2002 traditions, thus, first Ferenc Papcsák then Gyula Budai was appointed Government Accountability Commissioner. Even though this has contributed to the unfolding of some corruption cases, accountability attempts have not brought palpable changes in the amount of, or attitudes toward corruption. Accountability cannot be placed within the criminal justice system; therefore, from the rule of law's perspective, the fight against corruption at political level is not efficient. In a democratic rule of law corruption cannot be fought with means that are incompatible with the requirements of the rule of law.

Apart from insisting on accountability, the Fidesz government initiated a comprehensive government scheme against corruption in the spring of 2012. Among other things a new law on the protection of whistleblowers and new lobbying regulations were on the agenda. However, the protracted realization of the scheme has not brought any palpable change in the fight against corruption and it failed to prevent the already institutionalized corruption from becoming systemic.

Transparency International has been heavily criticising the law on the protection of whistleblowers which came into effect in January 2014. However, lawmakers have not paid any attention to the remarks and have not made any amendments. Therefore, this law is inadequate for the expected breakthrough in the fight against corruption. This is proven by the 2013 scandal of NAV (National Tax and Customs Administration of Hungary, NTCA). The procedure following the whistleblowing included the intimidating of the whistleblower instead of providing protection, while the uncovered phenomenon has not been sufficiently examined.

The new regulation of lobbying does not change the influence of stakeholders in the decision-shaping process and in the content of decisions. This results in the fact that lobbying remains a grey area on which the public cannot obtain any organized information.

The credibility of the Fidesz government concerning its commitment to the fight against corruption was ultimately ruined by the 2013 amendment of the freedom of information act, which contributed to TI's decision to quit the government's anti-corruption work group in April 2013.

Today in Hungary it is still not evident that a criminal investigation has to be launched for corruption cases revealed by investigative journalists. This leads to the low risk for corruption in Hungary because the danger of being caught red-handed and being punished is quite small.

RECOMMENDATIONS

Based on the six chapters above TI and the FRIB recommend the following:

1. The adequate functioning of democracy, the rule of law and the checks and balances system are interdependent values. This is why if one of them weakens the whole system will deteriorate. In order to establish suitable public law solutions reasonably limiting the executive power – regardless of its political composition –, we make the following recommendations:
 - The jurisdiction of the Constitutional Court has to be unlimited in the constitutional review of laws that affect budget income.
 - The government has to refrain from government MPs proposing bills on comprehensive laws.
 - The government has to provide a reasonable timeframe for the social and professional review of law proposals. It has to give feedback on the opinions, the observations and the reasons for rejection.
 - The appointment of the heads and members of institutions monitoring the executive power has to be based on professional considerations instead of political ones.
 - The length of these officials' mandates has to be shortened in accordance with the regulation that was in effect before 2010. The possibility of their re-election has to be limited as well.
 - Parliament has to re-establish the institutional protection of freedom of speech. In other words, instead of the Hungarian National Authority for Data Protection and Freedom of Information (NAIH) an independent ombudsman – chosen by Parliament – has to monitor the access to data of public interest.

2. Besides meeting international standards of budget transparency we recommend the following:
 - Publishing budget information has to be fast and systematic.
 - Standard documents based on international recommendations, which have not yet been prepared, have to be realized: a citizen-friendly budget, a six-month report, long-term forecasts, fiscal guidelines and pre-election fiscal reports.
 - The data content of the budget act proposal has to meet international requirements. To be precise, it is important to include comparable information on fiscal and macroeconomic data for the previous, the current and the future years as well as data on estimates and budget amounts.
 - Accessible and detailed impact assessments have to be made for each Parliamentary proposal's fiscal impact.
 - The government has to present quarterly a four-year forecast on macroeconomic and fiscal indicators (calculated with an unchanged legislative environment).
 - The government should create a new, consistent fiscal responsibility framework and propose it to Parliament.
 - Non-financial indicators measuring the performance of state operations have to become part of the budgetary process.
 - The representatives of the affected social groups have to be interviewed about their opinions by Parliamentary committees in a transparent way during the debate process on fiscal and other relevant policies.

3. Party and campaign financing have been poisoning Hungarian politics, economics and society for a long time. The optimal campaign regulation has several pillars:
 - Parties have to cover their campaign finances from an account kept at the Court of Auditors or at the Treasury. Account data have to be published on the websites of both institutions. Accountability has to extend to NGOs (associations, foundations), private persons and companies assisting the campaign.

- Severe sanctions (full repayment, high punitive interest rates) have to be imposed on those who violate the regulations of spending and accountability.
 - Owners and operators of public advertisements and billboards have to either standardize the regulation of benefits for political actors or eliminate all benefits. Billboard fees have to be public. Owners and operators of billboards have to publish data on their revenues from political campaigns within 30 days following the election.
 - The examination of the Court of Auditors has to extend to the parties' businesses, foundations and youth organizations as well as to the NGOs supporting them. State-subsidized parties have to be examined yearly instead of biannually. The institution of exceptional examination has to be established as well. The practice of informing the parties one month prior to the inquiry has to be terminated.
 - There must not be any loophole in the regulation of the 50-day long campaign period: outside the official campaign period no party-related advertisements must be allowed. Private and legal persons must be allowed to financially support candidates and parties. The maximum limits of campaign support should be HUF 5 million for companies and HUF 2 million for private persons.
 - The same disclosure and accountability rules have to apply to campaigning NGOs as to parties. For the government and state institutions, making campaign advertisements has to be prohibited even if they call it informative activity – this is covert campaigning.
 - No campaign commercial or political advertisement must be allowed to be published by state-owned enterprises and publicly funded companies.
 - Concerning spending on advertisements and commercials the same rules have to apply to state-owned enterprises and publicly funded companies as to parties and campaigning NGOs.
4. The gradual destruction of the freedom of information directly threatens the accountability of the public authority. In order to reverse this tendency the following steps are needed:
- Parliament has to restore the institutionalized protection of freedom of information, i.e. the access to data of public interest has to be supervised not by NAIH but by an ombudsman (independent from the executive power) elected by Parliament.
 - Parliament has to eliminate from the freedom of information law the provisions which limit the access to data of public interest and obscure the right to launch legal procedure.
 - Parliament has to restore the freedom to criticize public authority actors. Parliament has to provide every citizen the right to initiate a review of declaring data of public interest “state secret.” The review has to be conducted by a judge who decides whether the declaration is necessary and justified, i.e. the judge has access to these data in the process.
 - Parliament has to legally oblige the managers of data of public interest to enforce “active freedom of information policy”: data of public interest have to be public on the websites of state institutions as opposed to the current situation where citizens must claim access to them.
 - Parliament has to pass a law about publicly funded contracts stipulating that these contracts can only enter into effect after being published on the respective state institution's website (before fulfilling any segment of it).
 - Parliament should pass a law establishing unified requirements for the system of asset declarations of public authority decisionmakers. These requirements will ensure the precise listing of data and the publishing of the asset declarations together with the declarations of relatives on the state institutions' websites. Each year the declarations of assets have to be uploaded in a comparable form and they have to be checked by the tax authority.
5. Our recommendations concerning public procurement are divided into two categories: systemic recommendations and amendments of public procurement regulation.
- Systemic recommendations:
 - o Independent relations have to be established between the Public Procurement Authority and the Public Procurement Arbitration Board.
 - o The independence of the Public Procurement Authority has to be established.
 - o The respective authorities have to possess a genuine “policy approach.”

- More effective control mechanisms have to be incorporated in the system.
 - Electronic public procurement procedures need to be strongly encouraged.
 - Proposals for amendments of public procurement regulation:
 - The mock-competition of three bidders has to be eliminated; in case of goods and service procurement amounting up to HUF 25 million and construction tendering amounting up to HUF 150 million guarantees have to be included as well.
 - The prohibition of dividing tenders into parts has to be reconsidered.
 - The regulation of conflicts of interest has to be made clear.
 - Public access to public procurement data has to be enforced.
 - In the case of confidential public procurement procedures, stronger guarantees have to apply.
 - Charges for administrative services have to be reduced.
 - Database search has to be facilitated.
 - Compliance systems have to be established and adapted on both sides (contracting entities and bidders).
 - Stronger civil control has to be provided.
6. After the second amendment of the regulation concerning whistleblowers, after two governmental accountability programmes and after numerous failed corruption strategies, in 2014 it is still not evident in Hungary that a criminal investigation has to be launched for corruption cases revealed by investigative journalists. This leads to the low risk in corruption because the danger of being caught red-handed and being punished is quite small. In order to change the current situation we recommend the following:
- In cooperation with civil society the government has to make comprehensive amendments to the law on whistleblower protection. The amendments have to extend to the actual protection and financial support of whistleblowers and other vulnerable persons around them; they have to extend to the substantive investigation of whistleblowers' reports; they have to require authorities to investigate corruption cases uncovered by investigative journalists; they have to include the obligatory investigation of anonymous reports; they have to extend the competence of the commissioner responsible for fundamental rights to courts as well. The government has to assign the prosecution to be the primarily responsible body for investigation and whistleblower protection.
 - The government has to make proposals for the regulation of lobbying by law, ensuring the transparency of lobbying and the access to related data. With the amendment of the relevant decree the government has to strengthen the integrity consultants' competence of investigation.
 - The government has to create a new action plan on its national commitments laid down in the Open Government Partnership and take civil recommendations into consideration in the process. By enforcing the commitments of the new action plan it has to in earnest provide better access to data of public interest, limit the confidentiality of such data and provide the possibility for citizens to initiate a judicial review of declarations of state secret.