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## The European Commission should be more intransigent to stop systemic corruption in Hungary

*Civil society on Hungary's unfolding anticorruption package*

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Forced by the economic need to access EU-funding, Hungary's government launched perhaps the most significant anticorruption package of the last decade.

As revealed by the European Commission in its [proposal for an implementing decision by the Council](#), the government of Hungary offered to implement 17 remedial measures in order to have the Conditionality Mechanism closed.

The remedial measures profoundly differ in consistency and feasibility, and they require a different set of tools to be implemented. The Commission rated the remedial measures upon the timeframe of implementation, and concluded in an [explanatory memorandum](#) annexed to the proposal for an implementing decision by the Council that four of the measures require a longer implementation period, while the remaining 13 measures can be achieved by the adoption of immediate key implementing steps. The Hungarian government pledged to make these key implementation steps until 19 November 2022.

To this end, the Hungarian government has so far put forward legislative drafts or has amended the existing regulatory framework in numerous terrains including, *inter alia* public consultation in law-making, conflict of interest regulations, asset declarations, freedom of information, private prosecution in corruption related offences, and, most prominently, the setting up of Hungary's new Integrity Authority and the new Anti-corruption Task Force.

The co-signers of the present assessment highlighted in a [joint evaluation](#) published in October 2022 that as part of this effort, the Hungarian government introduced a series of often hastily designed regulations to the Parliament without any prior consultations with civil society or external experts. However, with the inclusion of non-governmental stakeholders the government could have demonstrated its readiness to refrain from unilateral decision-making. In addition, CSOs have criticised the government for the proposition of measures with anticipatedly humble impact on Hungary's anticorruption and rule of law performance. K-Monitor highlighted in a [recent post](#) a number of fields and corruption related problems that remain unaddressed, while the Hungarian Helsinki Committee formulated [a set of recommendations](#) necessary to safeguard the independence of the judiciary - a fundamental condition for making the above mentioned reforms work. Transparency International Hungary concluded in a [recent blogpost](#) that this anticorruption package, if adopted in its current format, is a missed opportunity.

In the present paper, we intend to draw attention to the fact that the measures devised in an attempt to convince European Union decisionmakers about the Hungarian government's determination to end intentional wrongdoing not only fall short of several of the 17 proposed remedial measures but fail to encompass the complexity of government malpractice in Hungary. Besides, we aim to provide input into the Council's decision-making process with a view to remedying to a certain extent the omission of the consultation phase and allow for information from the ground to make its way into the assessment of Hungary's commitments and their implementation so far.

Since the publication of our previous assessment, besides having adopted most of the legislative drafts, the Hungarian government has proposed new regulations, too. The regulatory changes, whether proposed or adopted, allegedly serve either to strengthen the capacities and the tools of the state to fight high level corruption and the misuse of EU funds or to improve the conditions for civil society and media to exercise oversight regarding public spending. Unfortunately, the proposed measures are unfit to fully meet these aims, as key control authorities of the state remain untouched, while newly introduced institutions and newly designed procedures rely on their cooperation. It is equally unfortunate that measures devised to increase the level of transparency of public spending or expand the legal toolset of watchdogs are moderately ambitious. Below we recapitulate the most important loopholes of the solutions offered by the Hungarian government and present a succinct summary of our key recommendations.

Before providing the substantive analysis, it is necessary to point out **the problems of the procedure** itself which the Hungarian government has been conducting with a view to complying with the 17 commitments. In addition to the total lack of public consultations with the relevant stakeholders, the legislative process has been hectic and characterised by a concerning absence of transparency and foreseeability. On 15 November 2022, just before midnight, the government submitted – with the professed view to bringing the Hungarian legal system in line with the commitments – two new draft laws to the Parliament ([Bill T/2032](#) and [Bill T/2033](#)) envisaging the amendment of several laws, including some of those that have been only recently adopted in the process of seeking compliance with the Commission’s requirements (e.g. the Criminal Procedure Code’s new rules on how private prosecution can be brought in corruption cases). Due to the closeness of the 19 November deadline set for Hungary, it is highly likely that these amendments will not even be adopted by the said date, not to mention the possibility that in the later stages of the legislative process there might be modifications to these proposed amendments.

This was the case regarding the participation of high-level political leaders, such as members of the Government in the boards of public interest asset management foundations. According to the original Bill envisaging the amendment of the regulation on such foundations, high-level political leaders could have remained on the boards. However, an additional amendment tabled by a parliamentary committee just days before the plenary vote, removed the provision explicitly allowing such leaders to be board members. The Bill was adopted on 4 October 2022 and entered into force on 13 October. Just a week later, following a press inquiry to the government about whether ministers and other political leaders currently sitting on the board would have to resign, a new amendment was initiated to re-introduce the incriminated provision into the text of the respective law. This amendment was adopted and came into force on 1 November 2022, so currently, political leaders of the highest level are allowed to be board members at public interest asset management foundations, just as before.

In addition, the two new draft laws amount to altogether 80 pages, and some of the proposed amendments concern complex issues, therefore, even if the bills are adopted as they are, and the laws are not amended again shortly after they are passed, the time remaining until the 19 November deadline is not sufficient for a fully thorough and reliable analysis of whether the proposed amendments actually facilitate or hinder Hungary’s compliance with the commitments. On the one hand, this deficiency in the compliance procedure is an obvious limitation to the present paper, and on the other, it must be taken into account by the Commission when assessing whether the Hungarian government has lived up to the commitments it made in the framework of the conditionality procedure.

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With regard to the concrete remedial measures, we elaborate our opinion as follows:

- The backbone of the package is Hungary's new **Integrity Authority**, a standalone anticorruption agency whose main task will be the instigation of incumbent state organs charged with combating corruption and wrongdoing to take action in their respective field of competence. Although the Integrity Authority is expected to receive adequate funding and sufficient number of staffers, it will lack the power to indict on its own, which makes this new institution reliant on other, currently existing state agencies to cooperate. Whether it will investigate relevant, high-level cases and expose previously uncovered incidents of fraud to the public will mostly depend on the ambitions and commitment of its leaders.

Therefore, it is worth noting that the process to select the members of the Integrity Authority's leadership was unforeseeable and unfair, while none of the applicants whose name was published has broad and international experience in the development or implementation of anti-corruption policies in the public sector. This might be also the result of the below facts:

- Firstly, the president of the State Audit Office, in charge of the selection process, published the scoring and evaluation system for candidates following the expiry of the application deadline, on the same day that the shortlist for the candidates was published, which made the application and selection process unforeseeable. It cannot be known whether the evaluation criteria (some of which are highly subjective) were actually determined before or after the shortlist became public, and – in the latter case – whether some of the criteria were tailored to favour those candidates whose candidacy was preferred by the president of the State Audit Office however, this weakens the credibility of the process.
- Secondly, the law on the Integrity Authority did not empower the president of the State Audit Office to define any selection criteria beyond the ones provided for in the law itself. Therefore, the issuance of this set of criteria lacked solid legal grounds.
- Thirdly, although in itself not a case for conflict-of-interest, the fact that one of the directors at the Directorate General for Audit of European Funds, the institution whose task is to incubate the new Integrity Authority was proposed for the Integrity Authority's vice-president raises concerns.
- Fourthly, the pro-government propaganda media launched a massive smear campaign against one of the candidates, a sitting judge at the criminal bench in one of Budapest's district courts, whose application was not selected.

Although in light of the above, it is hard to conclude that the selection process was fair and inclusive, the Integrity Authority's leadership was appointed in accordance with the submission made by the president of the State Audit Office.

The other signature body of the reforms is the **Anti-corruption Task Force** that convenes twice a year and, besides representatives of relevant government agencies, consists of external, i.e., non-state experts to be selected through an open application process. The main functions of this Task Force are rather consultative and are limited to putting forward recommendations on how to effectively combat corruption and related wrongdoing and drafting reports that evaluate the government's anticorruption performance. The Integrity Authority may but is not expected by the law to consider the findings and conclusions included in the report of the Task Force. A concern remains whether the government will become more open to consult civil society actors on anti-corruption related issues beyond reacting to the reports made by this Task Force.

In order to reaffirm the credibility and reliability of the government's anti-corruption endeavour, as well as to strengthen the Integrity Authority's capacities to combat wrongdoing, the government ought to

- guarantee that the Anti-Corruption Task Force, being one of only two institutions that enables civic participation in the fight against corruption, is adequately designed and is empowered to oversee the Integrity Authority's performance and intervene in case of serious omission or malpractice;
  - empower the Integrity Authority to exercise its powers without being dependent on other state agencies and to bring cases of serious corruption before justice, should the prosecution service omit to indict.
- Due to a series of procedural hindrances, the **new special remedy process to bring private prosecution in corruption cases**, is unsuitable to provide a meaningful solution if the state fails to prosecute corruption cases. Despite the importance of enabling both private individuals and legal entities under private law to take cases of corruption before justice, concerns regarding the accessibility of casefiles and the shortness of deadlines still remain. In addition, this amendment to the Code of Criminal Procedure does not tackle structural shortcomings following from the lack of internal checks and balances within the prosecution service and from the possibility of the Prosecutor General to unaccountably influence the work of subordinate prosecutors and to interfere in individual cases. Moreover, the government introduced a new legal draft to reamend this recently adopted section of the Criminal Procedure Code, which, though empowers the Integrity Authority to submit complaints in cases where the prosecution service terminates an investigation, not just fails to allow indictments by the Integrity Authority but makes it even more difficult for non-state actors to turn to court if authorities fail to prosecute corruption.

In order to offer real solutions, the government ought to

- join the European Public Prosecutor's Office to end the monopoly held by Hungary's prosecution service in the prosecution of corruption cases;
  - revise the concept with a view to empowering state agencies, including the forming new Integrity Authority to indict on their own;
  - implement all recommendations by the GRECO and by the Venice Commission of the Council of Europe aiming to strengthen the accountability of the prosecution service.
- Although changes to the **freedom of information legal framework** remove some of the most burdensome legal barriers of accessing information, many obstacles still remain. A fundamental shortcoming of the enacted changes is that none of them addresses the widespread practice of data holders to not comply with requests or to reject them with vague justifications that can only be contested efficiently before court. This empties out the FOI framework for many who do not have capacities to engage in litigation. Moreover, the most recent legislative changes on the pretence of speeding up freedom of information litigations, put an incommensurate burden on requesters who turn to the court, as fast paced court procedures with short deadlines to bring arguments are more challenging for requesters of information, who, in general, are under resourced compared to state agencies and publicly owned enterprises, being the usual defendants in FOI litigations.

Furthermore, newly adopted changes to improve proactive data disclosure of public contract data do not apply to all types of entities performing public services or using public funds. Most prominently, these regulations do not cover public interest asset management foundations and state-owned

enterprises, nor will they compel the publication of contracts financed at the expense of public resources in the newly designed data repository.

In order to substantially improve the freedom of information landscape, the government ought to

- systematically repeal all legal obstacles thrown in the way of accessing information introduced since 2012;
  - amend rules on legal remedies in freedom of information cases to 1) strengthen the role of the Freedom of Information Authority in dispute resolution processes, 2) better reflect the principle of equality of arms in a court process, 3) more proportionately distribute the burden of proof, and 4) enable reasonably expeditious decisions both in court and in processes commenced by the Freedom of Information Authority;
  - improve proactive data publication by making the use of the new transparency portal mandatory for all entities performing a public duty, and by the prescription of more frequent data publication, including the publication of contracts and their annexes and amendments;
  - enforce compliance with FOI Act by making the enforcement of contracts financed at the expense of public resources dependent on their prior publication.
- Assets worth over 3 billion Euros have been donated to **public interest asset management foundations** led by boards that often consist of high level government leaders and politically loyal appointees. New rules on conflict of interest in public interest asset management foundations fail to prevent most senior public officials, including government ministers and secretaries of state to participate in the foundations' leadership and to accept lucrative remunerations as member of the board or the supervisory board. At the same time, the management of the foundations remains without any state control, while they continue to dispose over vast quantities of public assets and receive project funding that is supposed to be financed by the RRF.

In order to mitigate the risks of outsourcing immense sums of public funds to nonstate organs, the regulations ought to

- ensure that the same rigour and transparency apply to public interest asset management foundations as does to state agencies;
  - introduce fundamental guarantees to prevent unaccountable and irrevocable decisions relating to the assets managed by the foundations;
  - introduce a new set of conflict of interest provisions to exclude senior public officials and members of the government from the leadership of public interest asset management foundations.
- Newly reintroduced rules on **asset declarations** of parliamentarians and key public functionaries result in even less transparency than under Hungary's often criticized asset declaration regime that was further emptied out this summer. From now onward, members of the Parliament and high-level government leaders will not be obliged to report on their real estate that is designated to be exclusively used by the declarant or a close relative while data on incomes will only be declared in ranges. It can hardly be justified that the introduction of an improved control and sanctioning scheme will only go operational by October 2023.

In order to meaningfully improve the system of asset and interest declarations, the government ought to

- prescribe the declaration of all real estate properties, exact incomes and updates to positions held outside of public administration / parliament;
  - introduce the regular monitoring of asset declarations against official records on assets and incomes;
  - Introduce financial and criminal sanctions for non-compliance and submission of false information.
- A great share of remedial measures focuses on increasing competition in **public procurement**, however a number of interventions cannot be evaluated yet. The government adopted a resolution to elaborate a public procurement performance measurement framework and published a call for applications for experts. The procedure was transparent and sufficiently elaborated. Another measure that has been formally implemented by now is the improvement of data publication in the Electronic Public Procurement System (EPS). Although the new functions can be seen as a step into the right direction, the commitment itself has several shortcomings, as it only concerns a minor share of information within the EPS and is limited to periodical data publication, instead of real time access.

To improve the public procurement framework, the government ought to:

- provide full bulk access to all public data of the EPS;
  - establish equal representation of government appointees and non-governmental procurement experts in the Public Procurement Council;
  - phase out non-transparent procurement types from the national regime;
  - take beneficial ownership information into account when defining, controlling conflicts of interest in case of public procurements.
- While a new "Anti-fraud and **anti-corruption strategy** for the 2021-2027 Programming Period and the Implementation of the RRP" has been adopted, besides describing the institutional set-up that will be put in place under the remedial measures, it does not provide information on how the new institutions will be able to actually reduce the existing corruption risks. In addition, the new strategy does not aim at all to increase transparency and social dialogue in the allocation of EU funds (this is partly because the strategy does not sufficiently identify the shortcomings of the current system). However, the amendments to the framework legislation governing the allocation of EU funds do contain forward-looking steps (such as the introduction of staff rotation, the strengthening of internal control and the application of stricter conflict of interest rules).

In order to ensure meaningful changes in the allocation of EU-funds, the government ought to

- ensure that Monitoring Committee members from civil society should be selected through transparent application processes;
- improve access to data on EU funding by allowing unrestricted bulk access to the palyazat.gov.hu portal and publishing detailed data on the content, implementation and progress of proposals, projects and individual payments;
- promote the opportunity to report irregularities in connection to EU funded projects on the anti-lop.hu website;

- publish identification numbers of the beneficiaries of agricultural subsidies to allow the interconnection of beneficiaries over years and various funding schemes. Publish identification numbers of parcels that are subject to SAPS payments;
- create a comprehensive central database for irregularities in EU / state funded projects, including financial damage, the applied correction and the recovered amount.

• An **independent judiciary** is a prerequisite of combating corruption effectively. Although the government of Hungary pledged to reinforce the independence of the judiciary, measures introduced or proposed so far in the framework of the conditionality mechanism do not envisage any steps at all intended to address the challenges that follow from the impact of the politicization of the judicial administration on the independence of judges and on the functional autonomy of the judiciary.

In order to restore judicial independence and ensure the right to a tribunal established by law, the government ought to

- strengthen the National Judicial Council so that it is able to exercise effective control over the administration of courts, and ensure the accountability of the president of the Kúria (Hungary's apex court) by judicial self-governing bodies;
  - provide guarantees against manipulation with judicial careers and judicial appointments circumventing ordinary application procedures;
  - establish guarantees with respect to case allocation within courts.
- New rules on the obligatory **public consultation** on draft laws and their impact assessments introduce a weak sanctioning mechanism based on fines to be imposed when consultation is unlawfully omitted, which does not foresee any further consequences, such as declaring laws adopted without prior public consultations null and void. This is particularly disquieting with regard to the fact that the Hungarian government has since 2010 systematically disregarded existing requirements on consultation.

In order to ensure meaningful public consultation, the government ought to

- introduce effective procedural solutions preventing drafts from becoming laws if the provisions concerning public consultation are violated;
- ensure that laws adopted in violation of public consultation rules can be annulled by the Constitutional Court.