



# Assessment of compliance by Hungary with conditions to access European Union funds

April 2023

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## **Authors:**

Amnesty International Hungary | [www.amnesty.hu](http://www.amnesty.hu)

Eötvös Károly Institute | [www.ekint.org](http://www.ekint.org)

Hungarian Civil Liberties Union | [www.tasz.hu](http://www.tasz.hu)

Hungarian Helsinki Committee | [www.helsinki.hu](http://www.helsinki.hu)

K-Monitor | [www.k-monitor.hu](http://www.k-monitor.hu)

Transparency International Hungary | [www.transparency.hu](http://www.transparency.hu)

# 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 assessment, prepared by Hungarian civil society organisations, looks at the steps the Hungarian government has taken to address the deficiencies identified by the European Commission and the representatives of Member States in the Council of the European Union as an obstacle to the country's access to EU funds.

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

- In the course of the **conditionality mechanism** launched in relation to Hungary in April 2022 under the Conditionality Regulation<sup>1</sup> 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, and prohibited Hungarian public interest asset management foundations from receiving EU funds.<sup>2</sup>
- 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 Recovery and Resilience Facility (RRF).<sup>3</sup> Four super milestones are 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.<sup>4</sup> A significant part of the milestones coincide with the 17 measures required under the conditionality mechanism.
- 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"** (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 are 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 results in the violation of academic freedom as guaranteed by the Charter; that (3) various elements of the Hungarian asylum system and the non-

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<sup>1</sup> 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

<sup>2</sup> 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/>.

<sup>3</sup> 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](https://ec.europa.eu/commission/presscorner/detail/en/IP_22_7273).

<sup>4</sup> 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>.

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 Eötvös Károly Institute, 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 20 milestones under the RRP that were due to have been complied with by the end of the first quarter of 2023 as per the deadline the Hungarian government has set itself, and the compliance with the horizontal enabling condition “3. Effective application and implementation of the Charter of Fundamental Rights” in the 4 areas identified by the Commission.

The present assessment works with a cut-off date of 31 March 2023, and so reviews the steps taken by the Hungarian authorities until that date. The reason for choosing this date as a cut-off date is that according to the indicative timeline included in the Annex to the Council Implementing Decision on the approval of the assessment of the recovery and resilience plan for Hungary (hereafter: RRP Annex), all super milestones were due to have been achieved by the end of the first quarter of 2023 at the latest. The review is based on legislative steps and other publicly available information and data, and experiences of some of the authors in the newly set-up Anti-Corruption Task Force.

After presenting and assessing the steps taken by the Hungarian authorities, we provide recommendations aimed at tackling the various rule of law and human rights deficiencies identified. Our recommendations are 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.

The conclusion of our assessment is that, up until 31 March 2023, the Hungarian government had not taken adequate steps in order to fully address the rule of law and human rights concerns raised, and so it **had not complied with most of the conditions established by EU institutions to access EU funds.**

- Out of the 27 super milestones, 13 have been achieved, 7 have been achieved only partly, and 7 have not been achieved.
- Out of the 20 “ordinary” milestones and targets that were due by the end of the first quarter of 2023 the latest, 8 have been achieved, 9 have been achieved only partly, and 3 have not been achieved.
- Out of the 4 areas of concern identified in relation to the operational programmes and the Charter of Fundamental Rights, none have been addressed.

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, the rights of refugees and asylum-seekers, academic freedom 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.

# 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**

## Milestone 160 – Setting up of an Integrity Authority

Nature of milestone: super milestone equalling a conditionality measure (remedial action i.)

Evaluation of compliance: partially

Steps taken by the Hungarian authorities:

In October 2022, the Hungarian Parliament<sup>5</sup> adopted Act XXVII of 2022 on the Control of the Use of EU Budgetary Resources, which created the legal framework for the establishment of the Integrity Authority. The Act also provided for the establishment of an Eligibility Committee, responsible for assessing the qualities of the applicants for the position of the President and Vice-Presidents of the Integrity Authority. The application for membership of the Eligibility Committee was published before the adoption of the Act. The call for application for the President and Vice-Presidents of the Integrity Authority were published almost immediately after the adoption of the Act (with a deadline of only 10 days) and were assessed by the members of the Eligibility Committee as a kind of pre-screening. 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. The Integrity Authority was established on 4 November 2022 and initially operated within the administrative and infrastructural framework of the Directorate General for the Audit of European Funds (*Európai Támogatásokat Auditáló Főigazgatóság*, EUTAF). Until 8 March 2023, the Authority operated at the seat of the EUTAF. The annual budget of the Integrity Authority is secured.

The law provides for the possibility for the Integrity Authority to act in cases where there is a risk of mismanagement of EU funds, and provisions have been adopted to ensure that in certain cases the Authority's powers are maintained even if a project is withdrawn from EU funding. The law foresees the deployment of a whistleblowing platform operated by the Integrity Authority.

Assessment of the steps taken, main deficiencies:

The deadline for implementing the measure was Q4 2022. On the whole, the law created the Integrity Authority with appropriate powers. However, some steps to establish the Authority (such as the selection of the members of the Eligibility Committee) were taken before the law was actually adopted, which clearly contradicts the principles of rule of law. The law is not clear on the cases in which the Integrity Authority retains its powers when a project is excluded from EU funding, where

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<sup>5</sup> Also referred to as National Assembly in the respective EU documents.

more concrete rules are needed. This shortcoming was also pointed out by the Commission in its November 2022 assessment, but the respective legal provision has not been clarified since then.<sup>6</sup>

It should be stressed that in the case of irregularities in the spending of EU funds, the Authority has essentially been given only soft powers, i.e. it can call upon other bodies to take action. Bodies contacted by the Authority must provide information within 60 days. These provisions, while in line with the commitments made by the Government and accepted by the Commission, raise overall questions about the effectiveness of the Integrity Authority in carrying out its responsibilities. On the positive side, the Authority's budget (HUF 17 billion for 2023 of which HUF 4 billion is operational budget) and staffing (90 persons) are expected to be sufficient.

The secure whistleblowing interface has not been established by 31 March 2023, nor did the Authority launch its own website. Furthermore, there are no publicly known cases in which the Authority has closed an investigation or an official procedure.

The Integrity Authority's jurisdiction is undersized and it cannot exercise most of its competences on its own, instead it must invite other state bodies to take appropriate action, therefore its work is entirely reliant on other government agencies, which are mostly captured and have proven reluctant to uncover and combat wrongdoing associated with the government.

#### Recommendations:

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

### **Milestone 161 – Report on the Integrity Risk Assessment Exercise**

Nature of milestone: "ordinary" milestone

Evaluation of compliance: yes

Steps taken by the Hungarian authorities:

The Integrity Authority published the report on the Integrity Risk Assessment Exercise in March 2023.<sup>7</sup>

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<sup>6</sup> According to the Communication from the Commission to the Council on the remedial measures notified by Hungary under Regulation (EU, Euratom) 2020/2092 for the protection of the Union budget: "(30) Insofar as the Integrity Authority maintains its appreciation on the underlying issues concerning fraud, conflict of interest, corruption and other illegalities or irregularities and their link with the Union budget, the provision could be taken to mean that even the said projects would remain subject to the scrutiny of the Integrity Authority. However, the interpretation and application of this provision will depend on decisions by the Hungarian authorities, and it is also possible that such a provision is interpreted in a way that allows depriving the Integrity Authority of its powers as soon as it starts examining certain public procurement procedures. (...) Legal certainty and the effectiveness of the Integrity Authority would have required the wording of the relevant provisions to state explicitly that the Integrity Authority's powers are maintained even after a project is withdrawn from Union funding, with no exception or limitation." Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX%3A52022DC0687&fbclid=IwAR2DxkhoFW3-jVx5wcHkChOWrgCGGjMfKmomtsUmlqP6GbEDB5U8BkFhYUI#page=10>.

<sup>7</sup> Available at:

[https://eutaf.kormany.hu/download/d/25/13000/Integritas\\_Hatosag\\_Integritaskockazat\\_ertekeles\\_2023\\_m%C3%A1rcius.pdf](https://eutaf.kormany.hu/download/d/25/13000/Integritas_Hatosag_Integritaskockazat_ertekeles_2023_m%C3%A1rcius.pdf).

Assessment of the steps taken, main deficiencies:

The exercise identifies risks related to procurements and follows the methodology of MAPS IV. pillar. The report has taken into account the contributions of national civil society organisations monitoring the state of integrity in Hungary. (Note that K-Monitor was also interviewed in the process.)

**Milestone 162 – Start of application of the powers and competences on the verification of asset declarations by the Integrity Authority**

Nature of milestone: “ordinary” milestone

Evaluation of compliance: partially

Steps taken by the Hungarian authorities:

Sections 5(6)–(6a) of Act XXVII of 2022 on the Control of the Use of EU Budgetary Resources entered into force on 31 March 2023 and provide rules on the Integrity Authority’s powers over high-risk officials. The legislation distinguishes between two categories of officials. For the first category of public officials, the Authority may itself carry out a so-called “asset declaration inquiry” before initiating the asset declaration procedure at the competent body. In the case of the second group (the President of the Republic, judges and Members of Parliament, including senior government officials who are at the same time MPs), the Authority is not allowed to make an “inquiry” but only initiate proceedings before the competent body. Another group is defined as those who do not belong to any of the above but have the right to propose, decide over or control EU funds; for example, those who are required to declare their assets in public procurement procedures.

Besides these powers, the Authority is called upon to make assessments and publish reports. In its Annual Integrity Report, due by 30 June 2023, the Authority will be required by law to review the whole asset declaration system, and by 31 December 2023, it will prepare an *ad hoc* report reviewing the regulatory framework and functioning of the Hungarian scheme.

Assessment of the steps taken, main deficiencies:

The Integrity Authority’s powers over the high-risks officials, including senior government officials defined by Section 183 of Act CXXV of 2018 on Government Administration, are only supplementary as they are limited to verifying the asset declarations only “in the course of performing its duties”, and to initiate procedures at other bodies.

The respective parliamentary committee’s powers regarding MPs and senior government officials remained unchanged. Therefore, deficiencies of enforcement are still significant.

Any other office holders not covered by the first and second group above fall under the scope of the Authority’s power if they are called upon to decide or recommend on EU funds or verify them. In this case, the Authority’s competence is also limited to initiate procedures at other bodies.

As opposed to judges, in relation to whom the Integrity Authority is empowered to at least initiate an asset declaration process before the competent body, prosecutors, except for the Prosecutor General and its deputies, entirely fall out of the Integrity Authority’s jurisdiction.

The Integrity Authority’s powers (i.e. substance of “inquiry” and tools of the Authority) are not detailed in the law, therefore, it is not clear what the Authority is called upon to do when exercising its competence under Sections 5(6)–(6a) of Act XXVII of 2022.

### Recommendations:

- The Integrity Authority's powers regarding asset declarations should be clarified by law. Over senior government officials' asset declarations the Integrity Authority should be provided with exclusive competence.
- The accuracy of the data indicated in the declarations should be checked automatically. Automatic comparison of asset declarations against tax returns should be provided by the tax administration or the Integrity Authority should be granted access to the necessary data held by the tax administration in order to complete this automatic comparison. In case of MPs, a parliamentary committee, in other cases, the Integrity Authority should examine all complaints on merit and an automatic wealth assessment to detect unexplained enrichment.

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

### **Milestone 166 – Establishment of an Anti-Corruption Task Force**

Nature of milestone: super milestone equalling a conditionality measure (remedial action ii.)

Evaluation of compliance: yes

#### Steps taken by the Hungarian authorities:

The Government set up an Anti-Corruption Task Force whose jurisdiction is in line with requirements under Milestone 166. The Task Force has 21 members, out of whom 10 members are delegated by state agencies and 10 members are representing civil society. Non-state members were selected by the Integrity Authority's president based on an open application process. The inaugural session of the Anti-Corruption Task Force took place in December 2022. The Task Force regularly convened between mid-January and end of March 2023 to adopt its first report on corruption, which took place by the end of March. The 2023 work plan of the Task Force shall be adopted by the end of April 2023.

#### Assessment of the steps taken, main deficiencies:

The adoption of the report by the Task Force highlighted tensions between non-governmental members who aim to broaden the room for manoeuvring and members who represent state agencies, who seem to follow a minimalistic approach and tend to deny the jurisdiction of the Task Force in certain cases.

Non-governmental members of the Task Force are under-resourced and lack the necessary capacity to perform the work following their participation.

In lack of any sound legal provision, only the selection of non-governmental applicants can prevent business stakeholders from becoming non-governmental members of the Task Force. Rules regarding the replacement and the substitution of non-governmental members also lack.

Jurisdiction of the Task Force vis-à-vis the Integrity Authority is very limited and the vaguely defined provision to prohibit the Task Force to interfere in the jurisdiction of other state organs further curtails its mandate.



### Recommendations:

- The mandate of the Task Force ought to be broadened and capacities of non-governmental members should be strengthened. Provisions relating to conflict of interest and replacement and substitution of non-governmental members need to be introduced.

### **Milestone 167 – The annual analysis of the Anti-Corruption Task Force for the year 2022 is publicly available**

Nature of milestone: super milestone

Evaluation of compliance: partially

Steps taken by the Hungarian authorities:

The Anti-Corruption Task Force adopted its first annual report by the deadline set out in the law. Three non-governmental members of the Task Force voted against the adoption of the report, while two further non-governmental members abstained from the voting. According to the members who voted “no”, the report failed to address several important corruption risks, it used an often apologetic language and preferred a descriptive approach instead of giving room to reasonable criticism. Without the contribution of non-governmental members, the report would have solely focused on how the Government delivered on certain milestones related to transparency and anti-corruption commitments and would entirely have avoided the identification of outstanding incidents of government malpractice.

Assessment of the steps taken, main deficiencies:

The drafting process of the report highlighted deficiencies. The Task Force, in lack of standalone administrative capacities, is highly reliant on the support of the Integrity Authority and the state members of the Task Force, and on the voluntary work of non-governmental members. As these are not always predictable, the sustainability of the Task Force’s functionality is put to risk.

The deadline for the adoption of the first report was far too short, therefore this report’s structure was designed in an *ad hoc* manner and the extent to which different chapters of the report was elaborated varies greatly.

In an effort to reach consensus, numerous findings and conclusions as well as several recommendations included in the report lacked the support of state members of the Task Force. Although this compromise helped the adoption of the report, it envisions that state members of the Task Force will obstruct activities on behalf of the Task Force with regard to the topics they disagree with.

The report should also have included the comments and recommendations of the Task Force on the draft National Anti-Corruption Strategy and Action Plan, which it does not, as this strategy was not completed by the time of the report’s adoption. At present, there are no appropriate procedures in place to ensure that annual reports for the subsequent years will be prepared more thoroughly, in the absence of which it can be anticipated that the first report’s hastily defined structure will prevail.

### **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')**

#### **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**

Nature of milestone: super milestone equalling a conditionality measure (remedial action v.)

Evaluation of compliance: partially

Steps taken by the Hungarian authorities:

Act XC of 2017 on the Criminal Procedure Code was amended by the adoption of Act XLIV of 2022. The new regulation, which entered into force on 24 November 2022 and is applicable from 1 January 2023, enables private prosecution of high-level cases of corruption and mismanagement, should the prosecution service fail to take such cases before justice. 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.

If the investigation commenced or continued on judicial order is 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.

Assessment of the steps taken, main deficiencies:

Limited accessibility of casefiles and the stringently short procedural deadlines make private prosecution practically impossible.

The complainant may not seek legal remedy against the dismissal of the complaint, and the private prosecutor may not appeal against the decision of the court of law. The court of trial may dismiss the case without a hearing if it finds the indictment by the private prosecutor unfounded. These rules are in conflict with the principle of equality of arms.

Legal entities under public law, save for the Integrity Authority, are not empowered to submit a complaint under the new regulations, and only private individuals and entities under private law may act as a private prosecutor. It is arguable if private individuals and non-state organs have the capacity to prosecute high-level delicts, and incidents of corruption.

The new regulations apply only to crimes which are not time-barred due to the statute of limitations, on condition that no decision dismissing a crime report or terminating the proceedings were adopted before 1 January 2023. This not only limits the applicability of the new regulation, but violates commitments under Milestone 169.

### Recommendations:

- Procedural hindrances manifesting in short deadlines, limited access to casefiles and lack of the right to legal remedies ought to be removed in order to enhance the efficiency of the new regulations. 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.

## **C9.R4: Strengthening rules related to asset declarations**

### **Milestone 171 – Entry into force of legislative amendments extending the personal and material scope of asset declarations, while ensuring frequent disclosure**

Nature of milestone: super milestone equalling a conditionality measure (remedial action iii.)

Evaluation of compliance: partially

#### Steps taken by the Hungarian authorities:

The laws on MPs and senior government officials have been amended several times. The content requirements of the asset declarations partly returned to the pre-2022 scheme. Despite the powers of the Integrity Authority that entered into force on 31 March 2023, the rules for enforcement principally remain unchanged. Information that has to be submitted has been narrowed in two key areas. One real estate serving for the exclusive use of the declarant and their family living in the same household does not have to be indicated. Furthermore, incomes of declarants have only to be submitted in broad ranges, while previously exact amounts were required.

#### Assessment of the steps taken, main deficiencies:

Act XXXVI of 2012 on the Parliament governing the MPs' asset declaration system does not require declarants to submit information on specific amounts of their income, but they can use a five-digit income scale. The highest category is HUF 5 million/month gross and above, therefore, transparency of MPs' wealth is restricted, meaning risks of corruption.

There is no obligation to declare optional agreements and untaxed revenues, either. Lack of declaration of such kind of data hinders the public to get a comprehensive overview of decision-makers' wealth and economic ties.

In addition, MPs are not obliged to declare all their business interests (with the exception of memberships and offices undertaken in any "economic operator") but only those they consider conflicting with their office.

The prevailing law does not require explicitly that beneficial ownership is indicated in the declaration.

MPs are no longer obliged to indicate the name or the number of their relatives living in the same household.

Relatives' declarations are not public. These rules serve to bypass transparency as it is common practice for politicians to transfer their assets to their spouses or children to avoid public scrutiny. Since the documents are not public, in practice, no one is able to file a proper complaint about their content. GRECO has also previously criticised the opacity of spousal declarations.

According to Annex 1 of Act XXXVI of 2012 on the Parliament, the flat or house serving for the exclusive use of the MPs and their family living in the same household has not to be indicated. This means that the most important and often most visible property, that is the MPs' home remains hidden. Furthermore, it is unclear how it can be checked which property is for the "exclusive use" of MPs and their relatives, if it is not even declared. Privacy related concerns can hardly be taken into account as only the name of the city had to be disclosed, not the exact address or the land register reference of the property. Furthermore, it is a common practice that officeholders use real estates owned by someone else, provided as a favour.

Sectoral laws such as Act CXXV of 2018 on Government Administration governing senior government officials' declarations are based on the rules for MPs, therefore, the problems listed above are relevant in the context of high-risk officials as well.

#### Recommendations:

- MPs should declare exact incomes as in the previous system.
- MPs should declare all their business interests and positions, even if they do not consider it conflicting with their public office.
- Beneficial ownership shall be indicated as well to enable conflict of interest checks. Declarants should provide if they have optional agreements that allow them to purchase or repurchase assets or business interests.
- All incomes, including non-taxable revenues such as return of premium in case of life insurance policies shall be mandatorily declared.
- All real estates owned by MPs and government leaders should be listed in the declaration indicating the municipality where it is located. All properties must be listed with an identifier that allows for the identification of the asset by relevant authorities and bodies (e.g. land register mark, licence plate, registration number, bank account number). This information may be excluded from publication.

### **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**

Nature of milestone: super milestone

Evaluation of compliance: no

Steps taken by the Hungarian authorities:

Act XXXVI of 2012 on the Parliament has been amended by Act XXXI of 2022 and a new provision providing searchable form for MPs' and relatives' declaration entered into force on 31 March 2023.

Assessment of the steps taken, main deficiencies:

For asset declarations submitted under Act XXXVI of 2012 on the Parliament, declarations must be made in a searchable form. This requirement applies to declarations made on or after 1 August 2022. MPs' declarations are to be published on the site of the Parliament as before.

Act CXXV of 2018 on Government Administration relies on the rules for MPs, therefore, the same applies for senior government officials defined by Section 183 of Act CXXV of 2018.

There is still no legislation adopted to set up a publicly searchable and centralised database for asset declarations. Bill T/3131 was submitted on 3 March 2023 to set up a site for asset declarations but the law has not been adopted yet. Pursuant to Section 15 of the Bill, the Government would be assigned to set the detailed rules for the site and to design the state body competent to run it.

Recommendations:

- Establish a system that requires the digital submission of asset declarations and not only ex-post digitization of declarations. Any declaration made in breach of this rule shall be deemed not to have been submitted.
- Create a user-friendly platform to access and compare asset declarations and search within their content.

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

**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**

Nature of milestone: super milestone equalling a conditionality measure (remedial action iv.)

Evaluation of compliance: no

Steps taken by the Hungarian authorities:

Section 5 of Act CXLIII of 2015 on Public Procurements has been amended. Section 5(1)(f) provides that public interest asset management foundations and any legal persons they establish or maintain fall under the scope of the law.

Act IX of 2021 on Public Interest Asset Management Foundations has been amended to govern case-by-case conflict of interest rules.

Assessment of the steps taken, main deficiencies:

Public interest asset management foundations are governed by Board of Trustees of up to five persons, initially appointed by the Government. No law excludes MPs and senior government officials from getting membership in a Board of Trustees. In February 2023, some ministers resigned from the Board of Trustees, once they were informally asked to do so, but the law has not been amended yet. This also means that no rules have been set that would regulate eligibility for board membership.

The law also allows the Hungarian state to relinquish the founding rights after the foundation has been established and transfer them to the Board of Trustees itself, 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.

The law provides only some very basic rules on the structure and functioning of the Board of Trustees. It gives the Board of Trustees the freedom to select their own members, resulting in a system of co-optation, for an unlimited period. The legislation also does not specify what conditions members must meet to be eligible for membership.

The Board of Trustees also is called upon to decide on the conflicts of interest of their own members on a case-by-case basis, and the rules on conflicts of interest are less strict than anywhere in the Hungarian public sector.

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.

The Hungarian Constitutional Court, despite submissions by the political opposition, has not examined the conflict of interest rules since the summer of 2021.<sup>8</sup>

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 set in Annex 1 of the latter law proactively. However, foundations do not fall under the scope of the newly established repository of data on public contracts.<sup>9</sup> Consequently, the National Authority for Data Protection and Freedom of Information cannot initiate the newly established transparency procedure against and impose sanctions on foundations for failing to comply with the proactive disclosure rules. 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 members, their exact term of membership (no longer than 5 years), term limits (potentially once renewable fixed term), and the qualifications and experience that board members must have (nominees for the Board of Trustees need to be professionally qualified for the task).
- Law should explicitly provide which state body is competent to exercise oversight over the use of public funds.
- Law should provide that members of Government are excluded from boards, just as other high level government officeholders and MPs. 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.
- As the prevailing rule on case-by-case examination of conflict of interest only reiterates the general rules of the Hungarian Civil Code, case-by-case conflict of interest rules should be complemented by mechanisms to control conflict of interest situations.
- It should be clarified that conflicts of interest might be not only political but also economic.
- A cooling off period should apply to avoid revolving doors cases.

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<sup>8</sup> Case number: II/02280/2021.

<sup>9</sup> For a detailed assessment, see Milestone 175.

- An obligation on board members to submit asset declarations is considerable.
- 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 newly set up repository of data on public contracts and the National Authority for Data Protection and Freedom of Information should have power to enforce proactive disclosures.

## **C9.R6: Enhancing the transparency of public spending**

### **Milestone 175 – Entry into force of a legislative act ensuring enhanced transparency of public spending**

Nature of milestone: super milestone equalling a conditionality measure (remedial action xvii)

Evaluation of compliance: partially

Steps taken by the Hungarian authorities:

The Parliament amended the Freedom of Information Act with Act XLIV of 2022 by creating a (new) central public data register to enforce the publication obligation. The amendment creates a Central Public Data Information Registry accessible to all from 2023.<sup>10</sup> Budgetary bodies and local as well as local ethnic minority self-governments will have to publish on this public platform the budgetary support they receive from EU or national sources exceeding HUF 5 million. They will also have to publish the contracts they have concluded and costs associated with non-core tasks. The new central register has to be updated every two months, and the data must be accessible for ten years. In addition, it will have to ensure “machine readability, group downloading, grouping, searchability, extraction and comparability of data”.<sup>11</sup> The detailed method of the publication is set out in Government Decree 499/2022. (XII. 8.) on the Detailed Rules of the Central Public Data Information Registry. The publication obligation applies to data generated on or after 29 November 2022.<sup>12</sup>

Besides, the amendment empowered the National Authority for Data Protection and Freedom of Information to conduct a so-called “transparency procedure” in the exercise of its official authority powers. In this context, the Authority could impose fines (from HUF 100,000 to 50 million) on budgetary bodies and local governments that fail to comply with their obligations regarding the Central Public Data Information Registry.<sup>13</sup>

Assessment of the steps taken, main deficiencies:

The Freedom of Information Act has already been providing for the mandatory and proactive disclosure of certain data of public interest specified in Section 37 and Annex 1 of the law.<sup>14</sup> Public sector bodies have to disclose a bunch of data about their organisation and staff, their activity and

<sup>10</sup> Act CXII of 2011 on the Right of Informational Self-Determination and Freedom of Information, Section 37/C

<sup>11</sup> <https://kif.gov.hu/>

<sup>12</sup> Act XLIV of 2022 on the Directorate General for the Audit of European Funds and Amending Certain Laws Adopted at the Request of the European Commission in Order to Ensure the Successful Completion of the Conditionality Procedure, Section 34(2)

<sup>13</sup> Act CXII of 2011 on the Right of Informational Self-Determination and Freedom of Information, Sections 63/A–63/B

<sup>14</sup> Act CXII of 2011 on the Right of Informational Self-Determination and Freedom of Information, Sections 32–36

operation, and their management on their own website, and these data must be kept up-to-date. Descriptive information on the website of the public sector bodies containing data of public interest and on the database and registers they maintain are aggregated in a central electronic register published on a dedicated website (Public Data Repository),<sup>15</sup> which can be accessed by anyone and provides the possibility to search public interest data.<sup>16</sup> According to research evidence included in a publicly available report by the National Authority for Data Protection and Freedom of Information, most of the public organs expected to proactively disclose information fail to meet this requirement.<sup>17</sup> Therefore, in most cases, websites of public bodies contain no or just outdated or inaccurate information of public interest. Also, the Public Data Repository is neither up to date, nor has an advanced search engine. Publication and the obligations attached to it do not make it easier to find information. Furthermore, the law does not impose any sanctions for failure to publish. The fact that no one is enforcing the rules that already exist and that the Public Data Repository has fallen to disuse, does not bode well for the efficiency of the new Central Public Data Information Registry. Rather than proliferating registers, the Government and public bodies should take the existing rules requiring proactive publication seriously instead.

After the amendment, the Freedom of Information Act still does not contain any rules to force the data controller to comply with the general disclosure obligation under Annex 1 through effective sanctions. In the transparency procedure, the National Authority for Data Protection and Freedom of Information is only empowered to verify compliance with the disclosure obligation for a limited number of public bodies (budgetary bodies and municipalities), only for certain management of data, and only in relation to the Central Public Data Information Registry. Even within this narrow scope, the accountability of the disclosure obligation depends on the willingness of the National Authority for Data Protection and Freedom of Information to initiate proceedings and impose fines on public bodies failing to comply. Albeit the maximum amount of the fine is HUF 50 million, which does seem stringent, it is arguable if this will in practice be deterrent in cases where outstanding sums of public money are at stake.

There are progressive elements in the regulation on the Central Public Data Information Registry. The Registry provides a single point of access to the contractual data of all budgetary bodies. The data to be uploaded on contracts are more detailed than the data that the budgetary bodies are obliged to publish on their own websites. The bi-monthly updated Registry requires the data to be published in a machine searchable format (i.e. no scanned and even illegible publication lists can be uploaded).

But there are also serious weaknesses in the regulation. Only the metadata of the contracts is required to be uploaded to the Registry instead of the whole contract, the mandatory publication of contract amendments is not specified in the law, and the bi-monthly update is unreasonably long. Furthermore, as the obligation only applies to public sector bodies, public interest asset management foundations and public companies are not subject to the publication requirement.<sup>18</sup>

Moreover, the amendment also enables the bodies concerned to stop uploading data on their own websites if they publish them in the Central Public Data Information Registry. This means that important management data will no longer be found together with other data of public interest of the body concerned on its website. Therefore the amendment does not serve the interest of freedom of information and is explicitly contrary to the legislative purpose.

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<sup>15</sup> <https://kozadat.hu/kereso/kozfeladatot-ellato-szervek>

<sup>16</sup> Act CXII of 2011 on the Right of Informational Self-Determination and Freedom of Information, Sections 37/A–37/B

<sup>17</sup> [https://infoszab.hu/sites/default/files/2022-12/Osszefoglalo\\_jelentes\\_donteshozok\\_reszere.pdf](https://infoszab.hu/sites/default/files/2022-12/Osszefoglalo_jelentes_donteshozok_reszere.pdf)

<sup>18</sup> See also: [https://k.blog.hu/2023/01/04/adatigenylok\\_figyelem\\_uj\\_informacioszabadsag\\_szabalyok\\_2023-tol](https://k.blog.hu/2023/01/04/adatigenylok_figyelem_uj_informacioszabadsag_szabalyok_2023-tol).



### Recommendations:

- The National Authority for Data Protection and Freedom of Information must be granted to monitor the own websites of the public bodies and the Public Data Repository/Central Public Data Information Registry as well in terms of the fulfilment of the disclosure requirements, and to impose an effective amount of fines.
- The obligation of disclosure of the public data on the own website of the public bodies must be upheld beside the obligation of disclosure on the Central Public Data Information Registry.
- Where public funds are involved the contract itself must be uploaded to the Central Public Data Information Registry.
- 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.

### **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**

Nature of milestone: “ordinary” milestone

Evaluation of compliance: partially

Steps taken by the Hungarian authorities:

According to Government Decree 499/2022. (XII. 8.) on the Detailed Rules of the Central Public Data Information Registry, the operator of the Central Public Data Information Registry is the National Data Agency (NDA). The body required to publish data in the Central Public Data Information Registry shall provide the data by filling in the electronic form and data sheet prepared by the NDA and submitting it to the NDA’s official repository, and the NDA publishes the data on the Central Public Data Information Registry. The NDA does not verify the content of the data sheet, and the public body responsible for publication is responsible for the regularity, completeness, accuracy, and veracity of the data instead. The data to be provided for the first time must be published on the Central Public Data Information Registry by 28 February 2023 at the latest. From that date, a notification may be made to the National Authority for Data Protection and Freedom of Information with a view to initiating the transparency procedure.

Assessment of the steps taken, main deficiencies:

The operation of the Central Public Data Information Registry is insufficient in terms of transparency. Data is only made available in separate files per body every two months and cannot be automatically processed. It is not possible to search for beneficiaries or contractors of budgetary bodies. Institutions do not have a unique identifier to prevent incorrect transmission of data (e.g. typed name). Entities in the database cannot be listed, they do not have their own linkable page with all the contracts they are a party to. It is not possible to download the whole database in raw form for analysis, the page generates one csv-file per disclosure, and it is not possible to generate an analysable table from that.<sup>19</sup>

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<sup>19</sup> See also: <https://k.blog.hu/2023/03/01/kozadat-portal-remalom>.

#### Recommendations:

- An advanced search engine, which enables anyone to analyse the data in an effective and comprehensive manner, must be developed on the Public Data Repository and the Central Public Data Information Registry as well.

### **C9.R7: Development and implementation of a National Anti-corruption strategy and action plan**

#### **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**

Nature of milestone: “ordinary” milestone

Evaluation of compliance: no

Steps taken by the Hungarian authorities:

Implementation of the 2020-2022 strategy was already significantly delayed a year ago. The backbone of the programme is various training courses and further eGovernment developments, which in most cases are funded from EU grants (such as the Public Administration and Civil Service Development Operational Program and the Internal Security Fund) submitted before 2020. There is no public information on the progress of the measures, which can only be inferred from the revised deadlines for the relevant applications. However, the government website dedicated to prevention of corruption regularly reports on training courses related to corruption prevention. These training sessions are presumably linked to the implementation of the strategy.

Assessment of the steps taken, main deficiencies:

The 2020-2022 medium-term strategy does not set very ambitious or transformative goals. Moreover, its major shortcoming is that not only external stakeholders are not involved in the review and monitoring of the strategy, but no public information on its implementation is available. With regard to the implementation of the related EU projects, we can see that there are also delays in meeting the milestones for the implementation of the projects. The available evidence suggests that the actions have only been formally implemented (if at all) and have not contributed to a meaningful reduction of corruption. This is all the more likely as according to our information, some of the measures will be part of the next strategy, albeit slightly improved.

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

#### **Milestone 182 – Launch of an awareness-raising campaign on the acceptability of gratuity payments in healthcare**

Nature of milestone: “ordinary” milestone

Evaluation of compliance: no

Steps taken by the Hungarian authorities:

No campaign has been launched as of 31 March 2023.

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

**Target 185 – The share of tender procedures with single bids for procurements financed from Union support shall not exceed 15%**

Evaluation of compliance: yes

Steps taken by the Hungarian authorities:

In order to facilitate the achievement of the aforementioned 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. This 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. In February 2023, the Deputy State Secretariat for Public Procurement Supervision of the Prime Minister's Office published an analysis of the evolution of single tender procedures between 2019-2022.<sup>20</sup> The analysis indicates the proportion of public procurements per tender by type of financing, according to which the share of tender procedures with single-bid procurement financed by the European Union reduced to 13.3% in 2022 from 15.9% in 2021.

Assessment of the steps taken, main deficiencies:

According to the description of the target, a final audit report with an audit opinion by EUTAF shall confirm that the share of single bids – calculated in line with the above methodology – is below 15%. 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.

**Target 186 – The share of tender procedures with single bids for procurements financed from national resources shall not exceed 32%**

Evaluation of compliance: yes

Steps taken by the Hungarian authorities:

The government decree referred to in the description relating to Target 185 covers Target 186, too. The same analysis by the Deputy State Secretariat for Public Procurement Supervision of the Prime Minister's Office indicates that the share of tender procedures with single-bid procurement financed from domestic (national) resources was reduced to 31.3% in 2022 from 35.9% in 2021.

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<sup>20</sup> <https://ekr.gov.hu/portal/hirek/8798091965784>

Assessment of the steps taken, main deficiencies:

According to the description of the target, a final audit report with an unqualified audit opinion by EUTAF shall confirm that the share of single bids – calculated in line with the above methodology – is below 32%. 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.

**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**

Nature of milestone: super milestone equalling a conditionality measure (remedial actions vii., viii. and ix.)

Evaluation of compliance: yes

Steps taken by the Hungarian authorities:

On 7 October 2022, the Hungarian authorities sent to the Commission services the audit report of the monitoring and reporting tool on single-bid procurements issued by EUTAF. Following comments from the Commission services, EUTAF issued a revised final audit report on 3 November 2022. The report finds that the single-bid reporting tool is in place, operational, functional and capable of monitoring the ratio of single-bid procurement procedures.<sup>21</sup> The final report on single-bid tenders in accordance with the methodology of the Single Market Scoreboard was assessed by the Deputy State Secretariat for Public Procurement Supervision of the Prime Minister’s Office and published on the website of the Public Procurement Authority on 15 February 2023.<sup>22</sup>

Assessment of the steps taken, main deficiencies:

The tool used in the analysis was not disclosed, although this was not required by the milestone.

Recommendations:

- Information is needed on the tool and the data used, the methodology and the results of the audit of the report.

**Milestone 196 – First report based on the “single-bid reporting tool” is made available**

Nature of milestone: “ordinary” milestone

Evaluation of compliance: yes

Steps taken by the Hungarian authorities:

According to Section 8 of Government Decree 63/2022. (II. 28.), the Minister responsible for public procurement shall continuously monitor the data on the proportion of single-bid public contracts, on

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<sup>21</sup> Communication from the Commission to the Council on the remedial measures notified by Hungary under Regulation (EU, Euratom) 2020/2092 for the protection of the Union budget, COM(2022) 687 final, [https://commission.europa.eu/system/files/2022-12/COM\\_2022\\_687\\_1\\_EN\\_ACT\\_part1\\_v5.pdf](https://commission.europa.eu/system/files/2022-12/COM_2022_687_1_EN_ACT_part1_v5.pdf)

<sup>22</sup> <https://ekr.gov.hu/portal/hirek/8798091965784>

the basis of which an analysis shall be made annually and the results of the analysis shall be published by 15 February each year. The State Secretariat for Public Procurement Supervision of the Prime Minister's Office published a report<sup>23</sup> based on their findings on 15 February 2023 in accordance with the methodology of the Single Market Scoreboard.<sup>24</sup> E.g. according to the introduction to the analysis, the number of procurements was taken into account per procurement lots if the contract was divided in several parts. Geographical indicators were also included in analysis.

Assessment of the steps taken, main deficiencies:

The analysis provides a detailed picture of single-bid procurements by different variables: procedures, forms of financing, contracts by CPV code and place of performance. The report does not include an assessment of the figures. There is no public information available on which tool was used to perform the analysis and whether it complied with the methodological and control criteria set out in Milestone 195, while Milestone 196 is based on Milestone 195.

Recommendations:

- More detailed public information is needed on the tool and the data used, the methodology and the results of the audit of the report.

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

### **Milestone 197 – The EPS functions allowing the structured search and bulk export of contract award notice data are available to the public**

Nature of milestone: super milestone equalling a conditionality measure (remedial action x.)

Evaluation of compliance: partially

Steps taken by the Hungarian authorities:

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.<sup>25</sup> 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.

Assessment of the steps taken, main deficiencies:

The creation of a detailed search and bulk download function is an important step forward to analyse public procurement data and to compare them with other databases. The feature is accessible for anyone, no registration is required. The search and download of data functions properly. However,

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<sup>23</sup> <https://ekr.gov.hu/portal/hirek/8798091965784>

<sup>24</sup> [https://single-market-scoreboard.ec.europa.eu/business-framework-conditions/public-procurement\\_en](https://single-market-scoreboard.ec.europa.eu/business-framework-conditions/public-procurement_en)

<sup>25</sup> <https://ekr.gov.hu/portal/kozbeszerzes/eredmeny-tajekoztato-hirdetmenyek>

the aggregated publication also highlighted shortcomings in the quality of public procurement data. Transparency International Hungary analysed and shared with the Public Procurement Authority, in the form of a letter, the errors detected in the data published in the EPS.<sup>26</sup> For example, our aggregation shows that the publication of the winning bidder's tax number was omitted in approximately 20% of successful procurements, although this could be an important starting point for comparison with company information. The lacking or incorrect publication of the value of public procurements also repeatedly makes it difficult to compare data. In addition, the downloadable data completely lacks information on the identity of the non-winning bidders, although this is available in the individual contract award notices.

The reason for incorrect or missing values is either a technical error or the fact that numerous individual cases cannot be handled by the EPS. On the other hand, it is currently almost entirely up to the contracting authorities to provide correct and complete data, as they administer the different stages of the procedures in the EPS on their own. No systematic checks are built into the information phase of publication. In its response the Public Procurement Authority indicated that it did not intend to correct the anomalies identified, as they were inaccurate for technical reasons or because of the contracting authorities' fault, and in some cases, some types of errors concerned too few procedures.<sup>27</sup> *"The further use of the downloaded data may require data cleaning or possible verification, cross-checking with individual notices,"* as the letter from the authority points out.

#### Recommendations:

- To meet the criteria set in this milestone, it is necessary to not only broaden the range of technical possibilities, but also ensuring that the information available is accurate.

### **Milestone 198 – The EPS functions allowing the structured search and bulk export of all data related to subcontractors is available to the public**

Nature of milestone: super milestone equalling a conditionality measure (remedial action x.)

Evaluation of compliance: partially

#### Steps taken by the Hungarian authorities:

Same as for Milestone 197. The disclosed database was completed with a search function for subcontractors.

#### Assessment of the steps taken, main deficiencies:

The indication of subcontractors is only mandatory for contracts concluded from 30 November 2022 onward,<sup>28</sup> 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.

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<sup>26</sup> The letter sent by Transparency International Hungary is available here: [https://transparency.hu/wp-content/uploads/2022/11/KH\\_eredmenytajekoztato\\_adatok.pdf](https://transparency.hu/wp-content/uploads/2022/11/KH_eredmenytajekoztato_adatok.pdf).

<sup>27</sup> The Public Procurement Authority's response is available here: [https://transparency.hu/wp-content/uploads/2023/03/KH\\_TI\\_valaszlevel\\_20221219.pdf](https://transparency.hu/wp-content/uploads/2023/03/KH_TI_valaszlevel_20221219.pdf).

<sup>28</sup> <https://ekr.gov.hu/portal/hirek/8797928256856>

**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**

Nature of milestone: “ordinary” milestone

Evaluation of compliance: partially

Steps taken by the Hungarian authorities:

Same as for Milestone 197. The disclosed database was completed with a search function for award notices from 1 January 2014.

Assessment of the steps taken, main deficiencies:

Although the EPS system is only operational as of 15 April 2018, the newly published, downloadable and searchable data on the EPS website include procedures from previous years, even back to 1 January 2014. However, the data for the period earlier than 2018 is more incomplete than the information relating to the period posterior to 2018, as neither the bidder’s tax number nor the subcontractors’ tax numbers were required at that time.

## **C9.R12: Performance measurement framework for public procurements**

**Milestone 200 – Setting up of a performance measurement framework of public procurements**

Nature of milestone: super milestone equalling a conditionality measure (remedial action xi.)

Evaluation of compliance: yes

Steps taken by the Hungarian authorities:

In September 2022, the Government adopted Government Resolution 1425/2022. (IX. 5.), which aims to develop a performance measurement framework to assess the efficiency and cost-effectiveness of public procurement. This resolution expects the Government to set up a Working Group and ensure the involvement of independent non-governmental organisations and public procurement experts in the process of developing the performance measurement framework. The Working Group was set up and non-governmental members, including the applicant on Transparency International Hungary’s behalf, were selected.

**Milestone 201 – Entry into operation of a performance measurement framework of public procurements**

Nature of milestone: super milestone equalling a conditionality measure (remedial action xi.)

Evaluation of compliance: yes

Steps taken by the Hungarian authorities:

The Performance Measurement Framework Working Group had four meetings. The first meeting was held on 15 November 2022. The first analysis carried out under the performance measurement framework was published on the EPS website on 28 February 2023. Based on data available in the EPS system, contracting authorities and bidder companies were surveyed and the Public Procurement Arbitration Board, the Public Procurement Authority and the Competition Authority provided the

necessary information sought from these authorities. The analysis contains eight annexes, including the Working Group's special opinion.<sup>29</sup>

Assessment of the steps taken, main deficiencies:

The Working Group's performance was mainly reliant on the information and the guidance provided by the Deputy State Secretariat for Public Procurement Supervision of the Prime Minister's Office. Both the methodology and the analysis were reviewed by the Working Group. However, due to time constraints and the limited prerogatives of the Working Group, it was not possible to fully incorporate the comments of the Working Group in the analysis, its opinion could only be presented in a separate annex. The operation of the Working Group was limited by the deadline of the first publication and the information made available within the short timeframe by state authorities. As stated in the special opinion published by the Working Group, certain data necessary for analysis were not available in the EPS system, or were accessible only in poor quality. Lack of data prevented the disclosure of relevant information about the prevalence of cost overruns compared to the estimated price.

**Milestone 202 – First annual analysis carried out under the performance measurement framework of public procurements**

Nature of milestone: "ordinary" milestone

Evaluation of compliance: yes

Steps taken by the Hungarian authorities:

See response with regard to Milestone 201.

Assessment of the steps taken, main deficiencies:

See response with regard to Milestone 201.

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

**Milestone 203 – Adoption of an action plan to increase the level of competition in public procurement**

Nature of milestone: "ordinary" milestone equalling a conditionality measure (remedial action xii.)

Evaluation of compliance: partially

Steps taken by the Hungarian authorities:

The Government adopted Government Resolution 1118/2023. (III. 31.) on the Action Plan to Increase the Level of Competition in Public Procurement (2023–2026). In this resolution, the Government made the following commitments: the OECD will prepare an analysis of the causes of one-off public procurement in Hungary by 2024 and propose a revision of the performance measurement framework indicators, reducing the administrative burden for public procurement, further development of the electronic procurement system, expansion of its functions, a review of the rules on redress fees,

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<sup>29</sup> <https://ekr.gov.hu/portal/hirek/8798092096856>



extension of the mandatory content of the pre-market consultation, training and support for SMEs, release of guidelines and organising integrity events in the public sector.

Assessment of the steps taken, main deficiencies:

In addition to the report of the Performance Measurement Framework Working Group, several newly created organisations, e.g.: the Integrity Authority<sup>30</sup> and the Anti-Corruption Task Force<sup>31</sup> have assessed the Hungarian public procurement system, however it is still difficult to draw conclusions about the extent of corruption in public procurement processes in Hungary and its embeddedness in the political sphere based on any of these analyses.

According to the report by the Performance Measurement Framework Working Group, further analysis is also needed of the activities of central purchasing organisations and in particular the National Communications Agency. According to the report by the Integrity Authority, to detect corruption at the data level, it would be essential to detect data linkages, to develop a risk analysis system and to create channels for civilian control. Government Resolution 1118/2023. (III. 31.) does not contain any measure referring to these suggestions. Some of the steps envisaged in the Action Plan have already been included in previous government commitments, such as support scheme for SMEs was already planned in RRP.

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

#### **Milestone 209 – Setting up a support scheme for compensating the costs associated with participating in public procurements of micro-, small and medium-sized enterprises**

Nature of milestone: “ordinary” milestone equalling a conditionality measure (remedial action xiv.)

Evaluation of compliance: yes

Steps taken by the Hungarian authorities:

The Government launched an EU call for proposals<sup>32</sup> under the support scheme at the end of March 2023. According to the call, any small, medium or micro enterprise can claim back a lump sum of HUF 600,000 for public procurement costs, provided that it submits a valid public procurement tender and has not been involved in a public procurement procedure for 12 months prior to the application.

Assessment of the steps taken, main deficiencies:

While overall the scheme fulfils the requirements undertaken, it is questionable whether it can really act as an incentive to widen competition in public procurement, as the call involves ex post cost reimbursements, thus it may not reduce entry barriers. A major shortcoming of the scheme is that it does not distinguish between medium and micro/small enterprises as suggested in the milestone.

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<sup>30</sup> Available at:

[https://eutaf.kormany.hu/download/d/25/13000/Integritas\\_Hatosag\\_Integritaskockazat\\_ertekeles\\_2023\\_m%C3%A1rcius.pdf](https://eutaf.kormany.hu/download/d/25/13000/Integritas_Hatosag_Integritaskockazat_ertekeles_2023_m%C3%A1rcius.pdf).

<sup>31</sup> Available at:

<https://eutaf.kormany.hu/download/7/d2/13000/Korrupci%C3%B3ellenes%20Munkacsoport%202022%20%C3%A9vre%20vonatok%C3%B3%20jelent%C3%A9gse.pdf>.

<sup>32</sup> Available at: [https://www.palyazat.gov.hu/RRF\\_951\\_23#](https://www.palyazat.gov.hu/RRF_951_23#).

Since it is a lump sum cost reimbursement, no cost justification is required, thus it might be possible that the lump sum exceeds the real costs related to the participation in the procurement process.

#### Recommendations:

→ Distinguish support schemes for medium size and small/micro enterprises.

### **General remarks related to Milestones 213, 214, 215 and 216 concerning the judiciary**

For each of the justice reform components,<sup>33</sup> the RRP Annex explicitly states that “[t]he implementation of the reform shall be completed by Q1 2023 and before the first payment request under the recovery and resilience plan”. This implies that the regulations containing the reforms should have entered into force by 31 March 2023 at the latest.

However, no legislative amendments have been passed by the Hungarian Parliament and therefore the justice reform did not enter into force by 31 March 2023. This means that Components C9.R15, C9.R16, C9.R17 and C9.R18 (Milestones 213, 214, 215 and 216) of the RRP Annex have not been met.

Only a draft proposal<sup>34</sup> (hereinafter: Proposal) by the Ministry of Justice was published for public consultation on 18 January 2023, as had been required by the RRP Annex.<sup>35</sup> The Ministry of Justice invited all to submit their opinion by 3 February 2023.

On 31 January 2023, the National Judicial Council (NJC) published<sup>36</sup> its comments and recommendations regarding the Proposal. The NJC articulated its recommendations and held that “[w]ithout the full incorporation of all the [NJC’s] above proposals, the draft does not meet the commitments made by the Government to the European Union and the legislative intentions to strengthen the role and powers of the National Judicial Council”.

On 31 January 2023 – upon request by both the Ministry of Justice and the National Office for the Judiciary (NOJ) –, the Hungarian Association of Judges (*Magyar Bírói Egyesület*, MABIE) also published its opinion<sup>37</sup> on the Proposal. MABIE generally “welcomed the extension of the powers of the NJC, which provide real guarantees of the rule of law. It should be pointed out, however, that a number of issues previously identified by MABIE and the NJC remain unresolved and that there are also some deletions of powers in the proposal which are strongly not supportable.”

On 3 February 2023, Amnesty International Hungary, Eötvös Károly Institute and the Hungarian Helsinki Committee shared their detailed written assessment<sup>38</sup> of the Proposal with the Government in the framework of the public consultation. According to their joint assessment, there were milestone

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<sup>33</sup> Components C9.R15, C9.R16, C9.R17 and C9.R18 of the RRP Annex.

<sup>34</sup> Available in Hungarian at:

<https://cdn.kormany.hu/uploads/document/6/67/674/6749f8f4633ec8e09cc1f5558b48c544a3e3a1fe.pdf>.

<sup>35</sup> “Before tabling the draft laws required for the implementation of this reform, a stakeholder consultation shall be organised, allowing at least the NJC, judicial associations, the Hungarian Bar Association, civil society organisations, the Kúria, the National Office for the Judiciary (NOJ), the Constitutional Court, and the Prosecutor General to give comments within no less than 15 days.”

<sup>36</sup> Available in Hungarian at: <https://orszagosbiroitanacs.hu/az-orszagos-biroi-tanacs-jogalkotasi-eszrevetelei-es-javaslatai/>. Available in English at: <https://pqwrk-websitemedia.s3.eu-west-1.amazonaws.com/production/pwk-web-encj2017-p/OBT%20Comments%20and%20Recommendations%20on%20the%20RRP%20Draft%20EN.pdf>.

<sup>37</sup> Available at: <http://mabie.hu/index.php/1676-a-mabie-velemenyezte-a-parlament-ele-kerulo-igazsagugyi-torvenycsomag-tervezetet>.

<sup>38</sup> Available at: [https://www.amnesty.hu/wp-content/uploads/2023/02/2023judicial\\_package\\_assessment\\_AIHU\\_EKINT\\_HHC-3.pdf](https://www.amnesty.hu/wp-content/uploads/2023/02/2023judicial_package_assessment_AIHU_EKINT_HHC-3.pdf).

elements the Proposal fully complied with, but these were mostly the ones that were rather technical in nature. At the same time, milestones that demanded core changes in the judicial system remained non-implemented. With respect to the latter, the Hungarian government either reduced the task of implementation to a ticking-the-box exercise or to creating the illusion of compliance, or, in some cases, openly refused to comply with the milestone. The civil society organisations also published a summary table<sup>39</sup> (hereinafter: Summary Table on Judicial Milestones) evaluating the compliance of the Proposal with the relevant milestones concerning the judiciary.

On 8 February 2023, upon an invitation by Secretary of State Róbert Répássy of the Ministry of Justice, representatives of Amnesty International Hungary, the Eötvös Károly Institute and the Hungarian Helsinki Committee met and engaged in a dialogue<sup>40</sup> with four state secretaries on the Proposal. The memorandum of the meeting is available in Hungarian.<sup>41</sup>

During the personal consultation, civil society organisations were informed that representatives of the Kúria (Hungary's apex court), the NJC and the NOJ were also consulted in person with the Ministry of Justice. They were also informed that both the Kúria and the NOJ submitted their opinion on the Proposal, however, they did not consent to the publication thereof.

At the meeting, representatives of the Ministry of Justice also claimed that they were planning to submit the bill to the Parliament around 20 February 2023. Later, at the meeting of the NJC held on 1 March 2023, the representative of the Ministry of Justice informed the members of the NJC that the bill would be submitted to the Parliament by 3 March 2023.<sup>42</sup> However, the bill was not submitted by 31 March 2023.

### **C9.R15: Strengthening the role and powers of the National Judicial Council to counterbalance the powers of the President of the National Office for the Judiciary**

#### **Milestone 213 – Entry into force of legislative amendments to strengthen the role of the National Judicial Council while safeguarding its independence**

Nature of milestone: super milestone

Evaluation of compliance: no

Steps taken by the Hungarian authorities:

The Ministry of Justice published a draft proposal of the expected reform on 18 January 2023 and opened it for public consultation by 3 February 2023. The respective bill has not yet been submitted to the Parliament for adoption. (See in more detail above under the general remarks related to Milestones 213, 214, 215 and 216 concerning the judiciary.)

<sup>39</sup> Available at: [https://www.amnesty.hu/wp-content/uploads/2023/02/compliance\\_judicial\\_milestones\\_20230221.pdf](https://www.amnesty.hu/wp-content/uploads/2023/02/compliance_judicial_milestones_20230221.pdf).

<sup>40</sup> Find more information at: <https://www.amnesty.hu/the-government-finally-met-civil-society-organisations-as-part-of-a-consultation-on-draft-legislation-%ef%bf%bc/>.

<sup>41</sup> Available at: [https://www.amnesty.hu/wp-content/uploads/2023/02/Emlékezteto\\_civil\\_egyeztetes\\_egyes\\_igazsagugyi\\_targyu\\_torvenyek\\_20220208-1.pdf](https://www.amnesty.hu/wp-content/uploads/2023/02/Emlékezteto_civil_egyeztetes_egyes_igazsagugyi_targyu_torvenyek_20220208-1.pdf).

<sup>42</sup> Available in Hungarian at: <https://orszagosbiroitanacs.hu/download/az-obt-2023-marcius-1-i-ulesenek-jegyzokonyve/?wpdmdl=2526&refresh=64395fb22f8bb1681481650&ind=1679508263047&filename=OBT-jegyzokonyv-2023-03-01-vegleges.pdf>, p. 21.

#### Assessment of the steps taken, main deficiencies:

The Proposal contained the first draft of the envisaged legislative changes expected by Milestone 213. Due to the fact that the respective bill was not submitted to the Parliament, the implementation of Milestone 213 can only be assessed on the basis of the Proposal. According to the written assessment of the Proposal<sup>43</sup> provided in the framework of the public consultation by Amnesty International Hungary, the Eötvös Károly Institute and the Hungarian Helsinki Committee, the implementation of Milestone 213 is deficient and the Proposal does not fully comply with all elements required by the milestone. The main deficiencies related to Milestone 213 are described in detail in the joint assessment and also briefly summarized in the Summary Table on Judicial Milestones prepared by the three civil society organisations.<sup>44</sup>

#### Recommendations:

- In their written assessment provided with respect to the Proposal in the framework of the public consultation, the civil society organisations provided recommendations for modifications regarding the Proposal necessary to achieve compliance with the milestone. The civil society organisations' main recommendations are also summarized in the Summary Table on Judicial Milestones under Milestone 213.

### **C9.R16: Strengthening judicial independence of the Supreme Court (Kúria)**

#### **Milestone 214 – Entry into force of amendments to strengthen judicial independence of the Supreme Court**

Nature of milestone: super milestone

Evaluation of compliance: no

Steps taken by the Hungarian authorities:

The Ministry of Justice published a draft proposal of the expected reform on 18 January 2023 and opened it for public consultation by 3 February 2023. The respective bill has not yet been submitted to the Parliament for adoption. (See in more detail above under the general remarks related to Milestones 213, 214, 215 and 216 concerning the judiciary.)

#### Assessment of the steps taken, main deficiencies:

The Proposal contained the first draft of the envisaged legislative changes expected by Milestone 214. Due to the fact that the respective bill was not submitted to the Parliament, the implementation of Milestone 214 can only be assessed on the basis of the Proposal. According to the written assessment of the Proposal<sup>45</sup> provided in the framework of the public consultation by Amnesty International Hungary, the Eötvös Károly Institute and the Hungarian Helsinki Committee, the implementation of Milestone 214 is deficient and the Proposal does not fully comply with all elements required by the milestone. The main deficiencies related to Milestone 214 are described in detail in the joint

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<sup>43</sup> Available at: [https://helsinki.hu/en/wp-content/uploads/sites/2/2023/02/2023judicial\\_package\\_assessment\\_AIHU\\_EKINT\\_HHC.pdf](https://helsinki.hu/en/wp-content/uploads/sites/2/2023/02/2023judicial_package_assessment_AIHU_EKINT_HHC.pdf)

<sup>44</sup> Available at: [https://helsinki.hu/en/wp-content/uploads/sites/2/2023/02/compliance\\_judicial\\_milestones\\_20230221.pdf](https://helsinki.hu/en/wp-content/uploads/sites/2/2023/02/compliance_judicial_milestones_20230221.pdf), pp. 1–5.

<sup>45</sup> Available at: [https://helsinki.hu/en/wp-content/uploads/sites/2/2023/02/2023judicial\\_package\\_assessment\\_AIHU\\_EKINT\\_HHC.pdf](https://helsinki.hu/en/wp-content/uploads/sites/2/2023/02/2023judicial_package_assessment_AIHU_EKINT_HHC.pdf).

assessment and also briefly summarized in the Summary Table on Judicial Milestones prepared by the three civil society organisations.<sup>46</sup>

Recommendations:

- In their written assessment provided with respect to the Proposal in the framework of the public consultation, the civil society organisations provided recommendations for modifications regarding the Proposal necessary to achieve compliance with the milestone. The civil society organisations' main recommendations are also summarized in the Summary Table on Judicial Milestones under Milestone 214.

## **C9.R17: Removing obstacles to references for preliminary rulings to the Court of Justice of the European Union**

### **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**

Nature of milestone: super milestone

Evaluation of compliance: no

Steps taken by the Hungarian authorities:

The Ministry of Justice published a draft proposal of the reform expected on 18 January 2023 and opened it for public consultation by 3 February 2023. The respective bill has not yet been submitted to the Parliament for adoption. (See in more detail above under the general remarks related to Milestones 213, 214, 215 and 216 concerning the judiciary.)

Assessment of the steps taken, main deficiencies:

The Proposal contained the first draft of the envisaged legislative changes expected by Milestone 215. Due to the fact that the respective bill was not submitted to the Parliament, the implementation of Milestone 215 can only be assessed on the basis of the Proposal. According to the written assessment of the Proposal<sup>47</sup> provided in the framework of the public consultation by Amnesty International Hungary, the Eötvös Károly Institute and the Hungarian Helsinki Committee, the implementation of Milestone 215 is deficient and the Proposal does not fully comply with all elements required by the milestone. The main deficiencies related to Milestone 215 are described in detail in the joint assessment and also briefly summarized in the Summary Table on Judicial Milestones prepared by the three civil society organisations.<sup>48</sup>

Recommendations:

- In their written assessment provided with respect to the Proposal in the framework of the public consultation, the civil society organisations provided recommendations for modifications regarding the Proposal necessary to achieve compliance with the milestone.

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<sup>46</sup> Available at: [https://helsinki.hu/en/wp-content/uploads/sites/2/2023/02/compliance\\_judicial\\_milestones\\_20230221.pdf](https://helsinki.hu/en/wp-content/uploads/sites/2/2023/02/compliance_judicial_milestones_20230221.pdf), pp. 5–7.

<sup>47</sup> Available at: [https://helsinki.hu/en/wp-content/uploads/sites/2/2023/02/2023judicial\\_package\\_assessment\\_AIHU\\_EKINT\\_HHC.pdf](https://helsinki.hu/en/wp-content/uploads/sites/2/2023/02/2023judicial_package_assessment_AIHU_EKINT_HHC.pdf).

<sup>48</sup> Available at: [https://helsinki.hu/en/wp-content/uploads/sites/2/2023/02/compliance\\_judicial\\_milestones\\_20230221.pdf](https://helsinki.hu/en/wp-content/uploads/sites/2/2023/02/compliance_judicial_milestones_20230221.pdf), p. 7.

The civil society organisations' main recommendations are also summarized in the Summary Table on Judicial Milestones under Milestone 215.

### **C9.R18: Reform regarding the review of final judgments by the Constitutional Court**

#### **Milestone 216 – Entry into force of legislative amendments to remove the possibility for public authorities to challenge final decisions before the Constitutional Court**

Nature of milestone: super milestone

Evaluation of compliance: no

Steps taken by the Hungarian authorities:

The Ministry of Justice published a draft proposal of the reform expected on 18 January 2023 and opened it for public consultation by 3 February 2023. The respective bill has not yet been submitted to the Parliament for adoption. (See in more detail above under the general remarks related to Milestones 213, 214, 215 and 216 concerning the judiciary.)

Assessment of the steps taken, main deficiencies:

The Proposal contained the first draft of the envisaged legislative changes expected by Milestone 216. Due to the fact that the respective bill was not submitted to the Parliament, the implementation of Milestone 216 can only be assessed on the basis of the Proposal. According to the written assessment of the Proposal<sup>49</sup> provided in the framework of the public consultation by Amnesty International Hungary, the Eötvös Károly Institute and the Hungarian Helsinki Committee the implementation of Milestone 216 is deficient and the Proposal does not fully comply with all elements required by the milestone. The main deficiencies related to Milestone 216 are described in detail in the joint assessment and also briefly summarized in the Summary Table on Judicial Milestones prepared by the three civil society organisations.<sup>50</sup>

Recommendations:

- In their written assessment provided with respect to the Proposal in the framework of the public consultation, the civil society organisations provided recommendations for modifications regarding the Proposal necessary to achieve compliance with the milestone. The civil society organisations' main recommendations are also summarized in the Summary Table on Judicial Milestones under Milestone 216. See further information regarding the proper implementation of Milestone 216 in the Q & A prepared by the same civil society organisations.<sup>51</sup>

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<sup>49</sup> Available at: [https://helsinki.hu/en/wp-content/uploads/sites/2/2023/02/2023judicial\\_package\\_assessment\\_AIHU\\_EKINT\\_HHC.pdf](https://helsinki.hu/en/wp-content/uploads/sites/2/2023/02/2023judicial_package_assessment_AIHU_EKINT_HHC.pdf).

<sup>50</sup> Available at: [https://helsinki.hu/en/wp-content/uploads/sites/2/2023/02/compliance\\_judicial\\_milestones\\_20230221.pdf](https://helsinki.hu/en/wp-content/uploads/sites/2/2023/02/compliance_judicial_milestones_20230221.pdf), p. 7.

<sup>51</sup> See: [https://helsinki.hu/wp-content/uploads/2023/04/Supermilestone\\_216\\_QA.pdf](https://helsinki.hu/wp-content/uploads/2023/04/Supermilestone_216_QA.pdf).

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

### **Milestone 217 – Legal mandate for the implementation, audit and control of the recovery and resilience plan**

Nature of milestone: super milestone equalling a conditionality measure (remedial action vi.)

Evaluation of compliance: yes

Steps taken by the Hungarian authorities:

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.

Assessment of the steps taken, main deficiencies:

The content of the relevant legislation meets the requirements formulated within the milestones. (This milestone was fulfilled according to the assessment of the Commission of 30 November 2022.<sup>52</sup>)

### **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**

Nature of milestone: super milestone equalling a conditionality measure (remedial action vi.)

Evaluation of compliance: yes

Steps taken by the Hungarian authorities:

In September 2022, the Government amended Government Decrees 256/2021. (V. 18.)<sup>53</sup> and 272/2014. (IX. 5.)<sup>54</sup> on the use of EU funds.

Assessment of the steps taken, main deficiencies:

The content of the relevant legislation meets the requirements formulated within the milestones. (This milestone was fulfilled according to the 11/30/2022 assessment of the Commission.<sup>55</sup>)

### **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**

Nature of milestone: super milestone equalling a conditionality measure (remedial action vi.)

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<sup>52</sup> Communication from the Commission to the Council on the remedial measures notified by Hungary under Regulation (EU, Euratom) 2020/2092 for the protection of the Union budget, COM(2022)0687, [https://commission.europa.eu/system/files/2022-12/COM\\_2022\\_687\\_1\\_EN\\_ACT\\_part1\\_v5.pdf](https://commission.europa.eu/system/files/2022-12/COM_2022_687_1_EN_ACT_part1_v5.pdf)

<sup>53</sup> Government Decree 256/2021. (V. 18.) on the Rules for the Use of Certain EU Funds in the Programming Period 2021–2027

<sup>54</sup> Government Decree 272/2014. (IX. 5.) on the Rules for the Use of Certain EU funds in the Programming Period 2014–2020

<sup>55</sup> Communication from the Commission to the Council on the remedial measures notified by Hungary under Regulation (EU, Euratom) 2020/2092 for the protection of the Union budget, COM(2022)0687, [https://commission.europa.eu/system/files/2022-12/COM\\_2022\\_687\\_1\\_EN\\_ACT\\_part1\\_v5.pdf](https://commission.europa.eu/system/files/2022-12/COM_2022_687_1_EN_ACT_part1_v5.pdf)

Evaluation of compliance: no

Steps taken by the Hungarian authorities:

The Government has set up a conflict of interest reporting system on the EU funds website,<sup>56</sup> with a link to the conflict of interest guidelines, but this link only redirects the reader to the relevant Commission Notice on the EUR-Lex portal.<sup>57</sup>

Assessment of the steps taken, main deficiencies:

No guidelines have been created, or are publicly available, however, according to the assessment of the Commission, this milestone was fulfilled.<sup>58</sup>

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

**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**

Nature of milestone: super milestone equalling a conditionality measure (remedial action vi.)

Evaluation of compliance: yes

Steps taken by the Hungarian authorities:

In September 2022, the Government adopted and shortly afterwards amended the Anti-Fraud and Anti-Corruption Strategy for all EU funds.<sup>59</sup>

Assessment of the steps taken, main deficiencies:

The content of the relevant legislation meets the requirements formulated in the milestones. (This milestone was fulfilled according to the assessment of the Commission of 30 November 2022.<sup>60</sup>)

**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**

Nature of milestone: super milestone equalling a conditionality measure (remedial action vi.)

Evaluation of compliance: yes

Steps taken by the Hungarian authorities:

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<sup>56</sup> Available at: <https://www.palyazat.gov.hu/osszeferhetetlenseg>.

<sup>57</sup> [https://eur-lex.europa.eu/legal-content/HU/TXT/PDF/?uri=CELEX:52021XC0409\(01\)&from=HU](https://eur-lex.europa.eu/legal-content/HU/TXT/PDF/?uri=CELEX:52021XC0409(01)&from=HU)

<sup>58</sup> Communication from the Commission to the Council on the remedial measures notified by Hungary under Regulation (EU, Euratom) 2020/2092 for the protection of the Union budget, COM(2022)0687, [https://commission.europa.eu/system/files/2022-12/COM\\_2022\\_687\\_1\\_EN\\_ACT\\_part1\\_v5.pdf](https://commission.europa.eu/system/files/2022-12/COM_2022_687_1_EN_ACT_part1_v5.pdf)

<sup>59</sup> Available at: [https://www.palyazat.gov.hu/csolas\\_es\\_korrupci\\_elleni\\_strategia#](https://www.palyazat.gov.hu/csolas_es_korrupci_elleni_strategia#).

<sup>60</sup> Communication from the Commission to the Council on the remedial measures notified by Hungary under Regulation (EU, Euratom) 2020/2092 for the protection of the Union budget, COM(2022)0687, [https://commission.europa.eu/system/files/2022-12/COM\\_2022\\_687\\_1\\_EN\\_ACT\\_part1\\_v5.pdf](https://commission.europa.eu/system/files/2022-12/COM_2022_687_1_EN_ACT_part1_v5.pdf)



In September 2022, the Government adopted and in November amended the Anti-Fraud and Anti-Corruption Strategy for all EU funds. The action plan is the 3rd annex of the Strategy.<sup>61</sup>

Assessment of the steps taken, main deficiencies:

The content of the action plan meets the requirements set in the milestone, however, it delegates the task of regular revision of the Anti-Fraud and Anti-Corruption Strategy to the Anti-Corruption Task Force.<sup>62</sup> This competence of the Task Force has no legal basis. (This milestone was fulfilled according to the assessment of the Commission of 30 November 2022.<sup>63</sup>)

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

### **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**

Nature of milestone: super milestone equalling a conditionality measure (remedial action xv.)

Evaluation of compliance: yes

Steps taken by the Hungarian authorities:

Relevant legislation has been adopted in the government decrees related to the use of EU funds (funds in the programming periods 2014–2020 and 2021–2027, and the Recovery and Resilience Facility<sup>64</sup>).

Assessment of the steps taken, main deficiencies:

No information is available on the practical implementation of the measure, the national legislation only stipulates that the results of the ARACHNE tool shall be “taken into account” by the responsible bodies, but this formulation allows for multiple interpretations. (However, this milestone was fulfilled according to the assessment of the Commission of 30 November 2022.<sup>65</sup>)

### **Milestone 223 – Ensuring effective prevention, detection and correction of fraud and corruption in the implementation of Union support by confirming the adequacy of the procedures on the systematic and effective use of the Arachne risk-scoring tool**

Nature of milestone: super milestone equalling a conditionality measure (remedial action xv.)

Evaluation of compliance: partially

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<sup>61</sup> Available at: [https://www.palyazat.gov.hu/csalas\\_es\\_korrupci\\_elleni\\_strategia#](https://www.palyazat.gov.hu/csalas_es_korrupci_elleni_strategia#), pp. 64–68.

<sup>62</sup> See Milestone 166.

<sup>63</sup> Communication from the Commission to the Council on the remedial measures notified by Hungary under Regulation (EU, Euratom) 2020/2092 for the protection of the Union budget, COM(2022)0687, [https://commission.europa.eu/system/files/2022-12/COM\\_2022\\_687\\_1\\_EN\\_ACT\\_part1\\_v5.pdf](https://commission.europa.eu/system/files/2022-12/COM_2022_687_1_EN_ACT_part1_v5.pdf)

<sup>64</sup> See Milestones 217 and 218.

<sup>65</sup> Communication from the Commission to the Council on the remedial measures notified by Hungary under Regulation (EU, Euratom) 2020/2092 for the protection of the Union budget, COM(2022)0687, [https://commission.europa.eu/system/files/2022-12/COM\\_2022\\_687\\_1\\_EN\\_ACT\\_part1\\_v5.pdf](https://commission.europa.eu/system/files/2022-12/COM_2022_687_1_EN_ACT_part1_v5.pdf)

Steps taken by the Hungarian authorities:

There is no publicly available information on the implementation of this measure.

Assessment of the steps taken, main deficiencies:

While the legal basis for the final audit of EUTAF is established, there is no publicly available information on the practical implementation of this milestone. (However, this milestone was fulfilled according to the assessment of the Commission of 30 November 2022.<sup>66</sup>)

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

### **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)**

Nature of milestone: super milestone

Evaluation of compliance: yes

Steps taken by the Hungarian authorities:

Act XXVIII of 2022, adopted in October 2022,<sup>67</sup> has amended Act CXXV of 2018 on Government Administration<sup>68</sup> and provided for the establishment of the Directorate of Internal Audit and Integrity and created the legal basis for the implementation of the provision.

Assessment of the steps taken, main deficiencies:

While the organisation has been set up in accordance with the law and a new leader was appointed in January 2023, there is no publicly available information on its practical operations (such as staffing, budget, rules of procedures and guidelines).

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

### **Milestone 225 – Ensuring effective prevention, detection and correction of fraud and corruption in the implementation of Union support through appropriate capacity for EUTAF**

Nature of milestone: super milestone

Evaluation of compliance: yes

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<sup>66</sup> Communication from the Commission to the Council on the remedial measures notified by Hungary under Regulation (EU, Euratom) 2020/2092 for the protection of the Union budget, COM(2022)0687, [https://commission.europa.eu/system/files/2022-12/COM\\_2022\\_687\\_1\\_EN\\_ACT\\_part1\\_v5.pdf](https://commission.europa.eu/system/files/2022-12/COM_2022_687_1_EN_ACT_part1_v5.pdf)

<sup>67</sup> Act XXVIII of 2022 on Amending Certain Laws Relating to the Control of the Use of EU Budgetary Resources

<sup>68</sup> Act CXXV of 2018 on Government Administration. Amended and newly introduced provisions: Section 3(7), 27(2), 29/B, 240/A, 279/A and 292.

#### Steps taken by the Hungarian authorities:

In November 2022, the Parliament adopted Act XLIV of 2022 on the Directorate General for the Audit of European Funds and Amending Certain Laws Adopted at the Request of the European Commission in Order to Ensure the Successful Completion of the Conditionality Procedure, which turned EUTAF, which had until the end of 2022 functioned as a government agency overseen by the finance minister, into an autonomous state body.

#### Assessment of the steps taken, main deficiencies:

The content of the relevant legislation meets the requirements formulated in the milestones. However, it has to be underlined that the new regulation leaves the jurisdiction of EUTAF unchanged. With regard to the fact that the EUTAF has during the past years failed to object to the misuse of European Union funding, it is yet a question if the change in its legal status will have a positive impact on its performance. The changing legal status of the EUTAF will serve as a litmus test. If the EUTAF starts to exercise its powers relative to the prevention and detection of the misuse of European Union funding, it may indicate that lack of visible action on this agency's behalf earlier was the consequence of the Government's influence.

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

#### **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**

Nature of milestone: super milestone equalling a conditionality measure remedial action xvi.)

Evaluation of compliance: yes

#### Steps taken by the Hungarian authorities:

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 European Union funding. The amended legal regulations explicitly stipulate the cooperation with 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.

#### Assessment of the steps taken, main deficiencies:

The amended regulation meets the expectations set by the milestone.

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

### Milestone 227 – Monitoring system for the implementation of the Hungarian recovery and resilience plan

Nature of milestone: super milestone

Evaluation of compliance: no

Steps taken by the Hungarian authorities:

Government Decree 373/2022. (IX. 30.)<sup>69</sup> establishes the legal background for creating a data repository system for the RRP.

Assessment of the steps taken, main deficiencies:

There is no other publicly available information on the implementation of this measure.

### Milestone 228 – Ensuring effective audit of the implementation of the Hungarian recovery and resilience plan

Nature of milestone: super milestone

Evaluation of compliance: yes

Steps taken by the Hungarian authorities:

In January 2023, a new audit strategy for the RRP<sup>70</sup> was adopted by EUTAF.

Assessment of the steps taken, main deficiencies:

While the audit strategy contains basically all requirements defined in the milestones, it is only available in English. There is no publicly available information on the implementation.

## C9.R26: Improving transparency and access to public information

### Milestone 229 – Entry into force of a legislative act ensuring legal predictability in access to public information cases in court

Nature of milestone: “ordinary” milestone

Evaluation of compliance: partially

Steps taken by the Hungarian authorities:

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 adds further procedural rules to

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<sup>69</sup> Government Decree 373/2022. (IX. 30.) on the Basic Rules and Responsible Institutions for Implementing Hungary’s Recovery and Resilience Plan

<sup>70</sup> Revised Audit Strategy for the Hungarian Recovery and Resilience Plan. Version 2. Available at: [https://eutaf.hu/wp-content/uploads/2023/02/RRF\\_audit\\_strategy\\_fin.pdf](https://eutaf.hu/wp-content/uploads/2023/02/RRF_audit_strategy_fin.pdf).

the already existing set of rules for public data actions against refusals to comply with a public data request, which will speed up the procedure. It lays down specific procedural time limits, in days, and additional rules on the procedural steps to be taken in requests filed in 2023.<sup>71</sup>

#### Assessment of the steps taken, main deficiencies:

The amendment of the Freedom of Information Act was not preceded by professional and public consultation. The Government failed to consult organisations or researchers that have relevant expertise in the field of freedom of information on the amendment. Furthermore, it did not take into account international best practices. The National Authority for Data Protection and Freedom of Information has recently conducted a research (finalised in autumn 2022) entitled "*Mapping the domestic practice of freedom of information and increasing its effectiveness*" (KÖFOP-2.2.6-VEKOP-18-2019-00001), which was partly supported by the European Union in one billion forints worth of funding.<sup>72</sup> However, the results of it are not reflected in the legislation at all, and there is no publicly available information if findings and conclusions of this research were taken into account during the preparation of the law.

The amendments to speed up litigation were indeed timely. Litigation on data requests to ensure public access to data of public interest, which is brought because public sector bodies refuse to comply with a public data request, usually takes months, if not years to conclude (from the hearing on the merits, the first instance judgment, the appeal and to the review by the Kúria). In many cases, this makes a data of public interest request pointless. The new rules indeed reduce the potential for time delays in litigation. However, the changes made to the freedom of information legislation were adopted with the sole purpose of reaching an agreement with the European Commission instead of the purpose to restore the constitutional guarantees of freedom of information. The changes do not systematically and comprehensively dismantle the obstacles, which have been accumulating over the past decade, to access data of public interest. While there are few forward-looking decisions, the legislator has instead placed new obstacles in the way of public access. We highlight some of the unresolved obstacles that the legislator should have removed but failed to.

1. The legislator has not resolved the implementation anomalies occurring following freedom of information lawsuits. Even speedy lawsuits provide no guarantee of timely access to data of public interest. In many cases, public bodies fail to comply with final judgments ordering the disclosure of data of public interest. In the current legal environment, if a public body denies access to public interest data, the enforcement rules cannot secure it to comply with the judgment. Therefore, even if the amendment speeds up freedom of information litigation, it is of no use if it does not guarantee the enforcement of final judgments. Even though non-compliance is punishable under the Criminal Code in this specific case, investigating authorities and the prosecution service decline to enforce these regulations.

2. The refusal to comply with a request for data must be justified by law. In a possible lawsuit, the data requester may challenge this justification. However, the law does not prohibit the data controller from modifying the reasons for refusing the data request in the course of a lawsuit. Thus, data controllers of public interest data may invoke restrictive grounds in a lawsuit on the lawfulness of a refusal to grant a data request that they have not invoked before. The data applicant is thus sometimes forced to challenge the ever-changing grounds for refusal, which leads to a prolonged procedure. Furthermore, the defendant does not have to file a counterclaim in advance, so the plaintiff, in the

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<sup>71</sup> Act CXII of 2011 on the Right of Informational Self-Determination and Freedom of Information, Sections 31/A–31/C

<sup>72</sup> <https://infoszab.hu/>

absence of a counterclaim, must go to trial without being able to prepare counterarguments and evidence.

3. As opposed to the rule enabling the defendant to change the legal basis of the defence, the plaintiff may not refer to changes that occurred posterior to the submission of the request for information. This means that data requestors are tied to their request in terms of the public information and the courts may refuse to take into account any changes in the context or circumstances that take place during the litigation. This is a seriously disproportionate burden on access to public information and it flies in the face of equality of arms by favouring the defendant over the plaintiff.

4. The amendment also contains rules with a slowing-down effect. The holder of a trade secret may intervene as third party litigant in the proceedings in order to ensure that the data controller wins the case. This puts an incommensurate burden on the plaintiff. Although the National Authority for Data Protection and Freedom of Information is entitled to step up as third party intervenor in favour of the plaintiff, it is questionable if the National Authority for Data Protection and Freedom of Information has ever used this right. This means that the plaintiff may not count on the assistance of the National Authority for Data Protection and Freedom of Information, whereas defendants are in practice supported by the *qui tam* litigation of trade secret holders.<sup>73</sup>

#### Recommendations:

- The legislator must amend enforcement rules in order to effectively force public bodies to comply with court judgments, e.g. by granting the enforcement authority or the National Authority for Data Protection and Freedom of Information the power to impose effective fines.
- The legislator must prohibit the data controller from modifying the reasons for refusing the data request in the course of a lawsuit.
- The legislator should take into account the suggestions made by the civil society members of the Anti-Corruption Task Force in its first report in this regard.<sup>74</sup>

### **Milestone 230 – Entry into force of legislative amendments ensuring increased transparency of public information**

Nature of milestone: “ordinary” milestone

Evaluation of compliance: partially

Steps taken by the Hungarian authorities:

Since 2015, public sector bodies have been able to charge for the “disproportionate use of staff resources necessary for the performance of their core activities” in the context of the reimbursement of costs for public data requests for large-scale copying. The criteria for determining the amount of the reimbursement that can be charged for “disproportionate workload” were laid down in Government Decree 301/2016. (IX. 30.). The “disproportionate workload” was also chargeable when the data requester requested electronic copies of data of public interest that were also processed electronically by the data controller. Public sector bodies were keen to use this possibility to hold up

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<sup>73</sup> Act CXII of 2011 on the Right of Informational Self-Determination and Freedom of Information, Section 31(4)

<sup>74</sup> *Anti-Corruption Task Force Report for 2022*, March 2023,  
<https://eutaf.kormany.hu/download/7/d2/13000/Korruptci%C3%B3z%C3%A9rtelmez%C3%A9s%202022%20C3%Agvre%20vonatkoz%C3%B3%20jelent%C3%A9se.pdf>, pp. 173–174.

requests for data, as they could make compliance conditional on advance reimbursement of costs in order to increase their costs. This burden was alleviated by Government Decree 382/2022. (X. 10.) (and Act XXVIII of 2022 amending the Freedom of Information Act in this respect), so that only “objective costs” of the physical medium (paper, optical, electronic) and postal charges may be charged as reimbursement of costs, and only up to certain limits. The cost of labour related to the fulfilment of a data request may no longer be charged to the data requestor.<sup>75</sup> The above-mentioned government decree also changed Government Decree 301/2016. (IX. 30.) on the Amount of Compensation for the Costs of Complying with a Request for Data of Public Interest and settled the minimum amount of reimbursement of the cost of fulfilling the information request at HUF 10,000 and the maximum at HUF 190,000.<sup>76</sup>

The time limit for responding to requests for public interest information was subject to Government Decree 521/2020. (XI. 25.), due to the state of emergency declared in 2020. According to this decree, bodies performing public functions had to respond to requests for public interest information within 45 days, which could be extended by a further 45 days. This time limit was in stark contrast with the 15-day time limit (which may be extended by 15 days in justified cases) under the Freedom of Information Act. Furthermore, public bodies only needed to claim that responding to the request for information more quickly would jeopardise their specific tasks and workflow due to the pandemic (and then the war in Ukraine). This led to arbitrary practice whereby data controllers routinely used the possibility of an extension without any substantive reasoning, without even fulfilling the constitutional requirement set out by the Constitutional Court that the extension must be factually justified. By the enactment of Act XLII of 2022, the Parliament approved Government Decree 425/2022. (X. 28.), which repealed Government Decree 521/2020. (XI. 25.) with the effect of 31 December 2022.

#### Assessment of the steps taken, main deficiencies:

While the emergency extension of the time limit for responding to the data request of public interest was repealed, there is nothing to prevent the Government from introducing it at any time again. The ongoing and practically forever renewable state of danger in Hungary provides the Government excessive emergency powers, which the Government has been using extensively and in an abusive manner, for purposes not related to the ground for the state of danger (previously the pandemic, presently the war in Ukraine).

The law still does not ensure that the information made available upon an access to information request shall be made available in the Central Public Data Information Registry mentioned in relation to Milestone 175. There is no page in the Registry dedicated for such disclosures either.

Where the recipient of a public interest data request otherwise has the intention to comply with the data request, the changes to the reimbursement of costs can be seen as a significant improvement in terms of access to public interest data. However, the possibility, also introduced in 2015, for the data controller to extend the deadline for responding to a public data request on the grounds that it would involve a “disproportionate” use of human resources necessary for the performance of its core task was not removed.

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<sup>75</sup> Act CXII of 2011 on the Right of Informational Self-Determination and Freedom of Information, Section 29(5)

<sup>76</sup> Government Decree 301/2016. (IX. 30.) on the Amount of Compensation for the Costs of Complying with a Request for Data of Public Interest, Section 6

## **Milestone 231 – Report of the Government Control Office on access to public information (1)**

Nature of milestone: “ordinary” milestone

Evaluation of compliance: yes

Steps taken by the Hungarian authorities:

According to Government Decree 355/2011. (XII. 30.) on the Government Control Office, the Government Control Office (*Kormányzati Ellenőrzési Hivatal*, KEHI) has only an annual reporting obligation to the Government. Under the Freedom of Information Act, the National Authority for Data Protection and Freedom of Information, which is responsible for monitoring and promoting the right of access to public data and data of public interest, publishes a report on its activities by 31 March each year and submits the report to the Parliament. These rules have not been amended since their introduction.

Representatives of the Prime Minister’s Office in the Anti-Corruption Task Force asserted in response to a question by civil society members that this milestone erroneously charges KEHI with reporting on access to public information. This task was apportioned to the National Authority for Data Protection and Freedom of Information.<sup>77</sup>

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

### **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**

Nature of milestone: “ordinary” milestone

Evaluation of compliance: yes

Steps taken by the Hungarian authorities:

In September 2022, the Government adopted Government Decree 373/2022. (IX. 30.) on the Basic Rules and Responsible Institutions for Implementing Hungary’s Recovery and Resilience Plan, which, among others, established the institutional system for implementing the RRP, the planning and grant implementation process, the financial management system, etc. Government Decree 373/2022. (IX. 30.) sets out that the respective National Authority (EUTAF) shall, for the purposes of social consultation with local and regional authorities, social partners, civil society organisations, youth organisations and other stakeholders relevant to the implementation of the RRP, establish a Monitoring Committee tasked with the monitoring of the implementation of the RRP. At least half of the members of the Monitoring Committee shall represent civil society organisations independent from the Government and public bodies which carry out relevant activities in specifically listed areas in a verifiable manner and for a sufficiently long time. Civil society members shall be selected through an open, transparent, and non-discriminatory selection process based on objective criteria related to expertise and merit. All members of the Monitoring Committee shall have the same rights and obligations. The Monitoring Committee shall meet at least twice per year and receive all relevant

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<sup>77</sup> [https://infoszab.hu/sites/default/files/2022-12/O%CC%88sszefoglalo%CC%81\\_tanulm%C3%A1ny\\_o.pdf](https://infoszab.hu/sites/default/files/2022-12/O%CC%88sszefoglalo%CC%81_tanulm%C3%A1ny_o.pdf)



information, and may issue recommendations to EUTAF to be adopted with a simple majority of its members, which EUTAF shall follow-up on and report on the progress of this follow-up to the Monitoring Committee.<sup>78</sup> In line with these provisions, EUTAF published a call for applications for civil society members of the Monitoring Committee on 16 January 2023, with an application deadline of 27 March 2023.<sup>79</sup>

Government Decree 373/2022. (IX. 30.) also sets out that EUTAF shall publish all calls on [www.palyazat.gov.hu](http://www.palyazat.gov.hu) for the purposes of public consultation with a 10-day deadline, and shall finalize the calls with a view to the opinions received.<sup>80</sup> In addition, it prescribes that EUTAF shall prepare and implement a strategy for social consultation, which shall include the definition of the steps for social consultation and the obligation to consult the social partners and stakeholders in the course of implementing the RRP.<sup>81</sup> However, this strategy was yet not available on the website of EUTAF<sup>82</sup> at the time of this assessment.

#### Assessment of the steps taken, main deficiencies:

The milestone is achieved insofar as the legislative act laying down the framework for consulting the relevant stakeholders during the implementation of the RRP, i.e. Government Decree 373/2022. (IX. 30.), entered into force. (1) In contrast to the milestone, it is not Government Decree 373/2022. (IX. 30.) itself that sets out “a binding strategy defining tasks and responsibilities on how the main stakeholders shall be involved” in the implementation of the measures of the RRP – instead, it makes this the task of EUTAF. (2) The rules pertaining to the role, set-up and operation of the Monitoring Committee comply with the requirements included in the milestone. However, it is yet to be seen how effective the Monitoring Committee will be in practice. (3) The requirement that EUTAF shall put all calls to public consultation and finalize them with a view to the opinions received fulfils the requirement that there shall be “an obligation to regularly and effectively consult social partners and stakeholders” during the implementation of the RRP.

### **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**

Nature of milestone: “ordinary” milestone

Evaluation of compliance: partially

Steps taken by the Hungarian authorities:

As of October 2022, Act CXXXI of 2010 on Public Participation in Preparing of Laws was amended.<sup>83</sup> Under the new rules, the Government “bears a responsibility” to ensure that (a) 90% of the draft laws (Acts of Parliament, government decrees and ministerial decrees) prepared in a given year are put to public consultation; and that (b) the provisions of Act CXXXI of 2010 which establish the exceptions

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<sup>78</sup> Government Decree 373/2022. (IX. 30.) on the Basic Rules and Responsible Institutions for Implementing Hungary’s Recovery and Resilience Plan, Sections 15–17

<sup>79</sup> The call for applications is available here: [https://www.palyazat.gov.hu/RRF\\_monitoring\\_bizottsag\\_reszvetel](https://www.palyazat.gov.hu/RRF_monitoring_bizottsag_reszvetel).

<sup>80</sup> Government Decree 373/2022. (IX. 30.) on the Basic Rules and Responsible Institutions for Implementing Hungary’s Recovery and Resilience Plan, Section 66(2)–(4)

<sup>81</sup> Government Decree 373/2022. (IX. 30.) on the Basic Rules and Responsible Institutions for Implementing Hungary’s Recovery and Resilience Plan, Section 66(1)

<sup>82</sup> <https://eutaf.hu/>

<sup>83</sup> 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

where public consultation is not mandatory or not allowed are used only if justified.<sup>84</sup> This essentially means that 90% of draft laws shall fall into the category where public consultation is mandatory. The scope of exceptions was narrowed down by abolishing Section 5(5) of Act CXXXI of 2010 that set out that no public consultation is required if there is an overriding public interest for a law's urgent adoption. The new rules establish a minimum consultation period of eight days, while also setting out that as a main rule, the deadline for comments shall be the same as the deadline for intra-governmental consultation with government bodies, and that draft laws shall be made available for public consultation at the same time as they are sent for intra-governmental consultation.<sup>85</sup> It is also set out that the Government shall have minimum five days to consider the opinions and proposals received in the framework of the public consultation before adopting the respective governmental/ministerial decree or submitting the bill to the Parliament.<sup>86</sup>

Under the amended rules, KEHI shall annually check compliance with the public consultation requirements, and publish its findings by 31 January in a report available online.<sup>87</sup> If the rules of public consultation are violated, KEHI shall impose a fine on the respective ministry the amount of which shall have a sufficiently deterrent effect,<sup>88</sup> and the reasons for imposing the fine shall be published in KEHI's annual report referred to above.<sup>89</sup>

Furthermore, Act CXXX of 2010 on Law-making was also amended, and now sets out that the Central Statistical Office shall contribute to the preliminary impact assessment of draft laws by providing official statistical data.<sup>90</sup>

#### Assessment of the steps taken, main deficiencies:

The milestone is partially achieved: while most legislative amendments required by the milestone have been adopted, there are some that have not been realized; and in addition to that, several factors undermine the capacity of the amendments to ensure effective public consultation.<sup>91</sup>

Firstly, even though Section 5(5) of Act CXXXI of 2010 was abolished, the law still contains a wide range of exceptions when draft laws do not have to or must not be subject to public consultation which was left intact.<sup>92</sup> As a result, the Government may comply with the new rules without consulting on draft laws that are truly significant socially or professionally. In the period reviewed in this assessment, examples for highly significant bills not put to public consultation included a law transforming the

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<sup>84</sup> Act CXXXI of 2010 on Public Participation in Preparing of Laws, Section 5/A(1)

<sup>85</sup> Act CXXXI of 2010 on Public Participation in Preparing of Laws, Section 10(1)–(2)

<sup>86</sup> Act CXXXI of 2010 on Public Participation in Preparing of Laws, Section 10(4)

<sup>87</sup> Act CXXXI of 2010 on Public Participation in Preparing of Laws, Sections 6/A(1) and 6/A(5)

<sup>88</sup> Act CXXXI of 2010 on Public Participation in Preparing of Laws, Sections 6/A(2) and 6/A(4)

<sup>89</sup> Act CXXXI of 2010 on Public Participation in Preparing of Laws, Sections 6/A(5)

<sup>90</sup> Act CXXX of 2010 on Law-making, Section 17/B

<sup>91</sup> See also: press release of 10 Hungarian civil society organisations of 27 July 2022 at <https://helsinki.hu/en/the-governments-bill-on-public-consultation-does-not-offer-real-solutions/>; Hungarian Helsinki Committee – K-Monitor – Transparency International Hungary, *Half-Hearted Promises, Disappointing Delivery. An Assessment of the Hungarian Government's New Measures to Protect the EU Budget and Related Recommendations*, 7 October 2022, <https://helsinki.hu/en/wp-content/uploads/sites/2/2022/10/Assessment-of-measures-to-protect-EU-budget.pdf>, pp. 4–5.

<sup>92</sup> According to Section 5(3) of Act CXXXI of 2010 on Public Participation in Preparing of Laws it is not mandatory to put to public consultation draft laws on (a) payment obligations, (b) state aid, (c) the state budget and the implementation of the budget, (d) aid from the European Union or international sources, (e) the promulgation of an international treaty, and (f) the establishment of an organisation or institution. According to Section 5(4), draft laws or concepts must not be put to public consultation if the consultation would jeopardise the protection of Hungary's particularly important interests in the fields of defence, national security, finance, foreign affairs, nature conservation, environmental protection or heritage protection.

status of the Hungarian Medical Chamber, a law on whistleblower protection, and a law on asset declaration processes (see under Target 237 below in more detail).

The setting out of a minimum eight-day consultation period is indeed an improvement compared to the previous wording (setting out that “adequate time” should be provided), but in the case of voluminous bills, it is highly questionable whether eight days is sufficient. It is worth noting in this regard that the ministries rarely provide a longer consultation period, irrespective of the length and complexity of the draft law. As a way of example, in March 2023, only eight days were provided for commenting on the 100-page long draft law that would fundamentally transform the legal status of public education teachers while simultaneously further restricting their professional autonomy and reducing their opportunities to assert their interests.<sup>93</sup> From among the 223 draft laws put to public consultation between 30 September and 31 December 2022,<sup>94</sup> a consultation period longer than eight days was provided in only two instances and both draft laws were about the promulgation of an international treaty.<sup>95</sup> From among the 177 draft laws put to public consultation between 1 January and 12 April 2023, a consultation period longer than eight days was provided in only four instances,<sup>96</sup> one of them being the draft law on the judiciary in relation to which the RRP Annex explicitly requires that no less than 15 days is ensured for commenting.<sup>97</sup>

The transparency of the process is not adequately ensured. The opinions submitted in the framework of the public consultation process are not published by the Government on its respective website in their entirety, and the summaries prepared and published by the Government leave much to be desired in terms of the level of information provided with regard to the content of the opinions submitted. The Government does not publish the information on whether they have asked for the opinions of relevant (non-governmental) stakeholders outside of the scope of public consultation and who these stakeholders are.

The quality of impact assessments is often inadequate as well. For example, the published impact assessment form of the 100-page draft law mentioned above that would fundamentally transform the status of teachers<sup>98</sup> is only one page long and only covers the effects of the salary increase for teachers, but touches on none of the other far-reaching changes envisaged by the draft law. There is no publicly available information on how the milestone requirement that “[r]elevant rules of procedures shall also ensure that the scope and content of impact assessments shall be in line with the methodology prepared under the project ‘ÁROP-1.1.10 - A jogszabály előkészítési folyamat racionalizálása’ [ÁROP-1.1.10 - Rationalisation of the procedure of preparing laws] co-financed by the European Union” is envisaged to be fulfilled.

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<sup>93</sup> The public consultation site for the draft law is available here: <https://kormany.hu/dokumentumtar/koznev-fogl-jogall-es-egy-es-kapcs-tvk-mod-mo-2023-evi-kozp-ktgv-et-sz-tv-modos>. For more details on the problems regarding the draft law, see: Hungarian Helsinki Committee, *Curtailing the rights of teachers in Hungary – How the Government used legal tools to crack down on teachers asking for improvements in the public education system*, 23 March 2023, [https://helsinki.hu/en/wp-content/uploads/sites/2/2023/03/HHC\\_Hungary\\_teachers\\_23032023.pdf](https://helsinki.hu/en/wp-content/uploads/sites/2/2023/03/HHC_Hungary_teachers_23032023.pdf).

<sup>94</sup> This is the period that the KEHI’s first report on the compliance with public consultations rules covers as per Section 21 of Act CXXXI of 2010 on Public Participation in Preparing of Laws.

<sup>95</sup> See: <https://kormany.hu/dokumentumtar/a-finn-koztarsasagnak-a-nato-csatlakozasarol-szolo-jegyzokonyv-kihirdeteserol> (10 days), <https://kormany.hu/dokumentumtar/a-sved-kiralyagnak-a-nato-csatlakozasarol-szolo-jegyzokonyv-kihirdeteserol> (10 days).

<sup>96</sup> See: <https://kormany.hu/dokumentumtar/10-2022-xii-16-pm-rendelet-modositasa> (9 days), <https://kormany.hu/dokumentumtar/tarsadalmi-egyeztetes-1> (9 days), <https://kormany.hu/dokumentumtar/a-374-2012-xii-18-korm-rendelet-modositasanak-tarsadalmi-egyeztetese> (11 days), <https://kormany.hu/dokumentumtar/egy-es-igazsagugyi-targyu-torvenyek-modositasarol-szolo-torvenyjavaslat> (11 days).

<sup>97</sup> See Components C9.R15, C9.R16, C9.R17 and C9.R18.

<sup>98</sup> Available at: <https://kormany.hu/dokumentumtar/koznev-fogl-jogall-es-egy-es-kapcs-tvk-mod-mo-2023-evi-kozp-ktgv-et-sz-tv-modos>.

Furthermore, on the basis of publicly available information, the following requirements of the milestone are not fulfilled: "Entry into force of amendments to the relevant legislative acts shall ensure that

(i) additional resources are dedicated to the Office of the [Parliament] to develop the capacity of the Office to help Members and Committees of the [Parliament] to prepare effective impact assessments and conduct effective stakeholder consultations for the bills proposed by them. The Members and Committees of the [Parliament] shall have the possibility to request the Office to prepare impact assessments and carry out effective stakeholder consultations on bills or amendments initiated by them.

(ii) the Hungarian Central Statistical Office shall provide data to the Office of the [Parliament] necessary to carry out the impact assessments."<sup>99</sup>

#### Recommendations:

- In order to ensure 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 established must be adequate to the length and complexity of the law.
- It should be ensured via the amendment of the relevant legislative acts that additional resources are dedicated to the Office of the Parliament to develop the capacity of the Office to help Members and committees of the Parliament to prepare effective impact assessments and conduct effective stakeholder consultations for the bills proposed by them. The Members and committees of the Parliament should have the possibility to request the Office to prepare impact assessments and carry out effective stakeholder consultations on bills or amendments initiated by them.
- It should be ensured via the amendment of the relevant legislative acts that the Central Statistical Office shall provide data to the Office of the Parliament necessary to carry out the impact assessments.

### **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)**

Evaluation of compliance: partially

Steps taken by the Hungarian authorities:

In January 2023, KEHI published its first report on ministries' compliance with public consultation rules,<sup>100</sup> which covers the draft laws submitted for intra-governmental consultation *and* promulgated between 30 September and 31 December 2022.<sup>101</sup> KEHI concluded that in the reporting period 92% of

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<sup>99</sup> In our understanding, this milestone requirement under (ii) shall be interpreted together with the requirement under (i). Accordingly, even though the new Section 17/B of Act CXXX of 2010 on Law-making sets out that the Central Statistical Office shall contribute to the preliminary impact assessment of draft laws by providing official statistical data, the milestone requirement under (ii) is not complied with, given that the Office of the Parliament is not tasked on a legislative level with preparing impact assessments for Members and committees of the Parliament as per the requirement under (i).

<sup>100</sup> The report (an original version published in January and a slightly corrected version published in March 2023) is available here: <https://kormany.hu/dokumentumtar/kormanyzati-ellenorzesi-hivatal-ellenorzesi-jelentes>.

<sup>101</sup> Act CXXXI of 2010 on Public Participation in Preparing of Laws, Section 21

the draft laws falling under the scope of Act CXXXI of 2010 on Public Participation in Preparing of Laws were subject to public consultation, exceeding the statutory minimum 90%, and that the exceptions when no public consultation took place were justified. However, KEHI imposed a fine of altogether 23.3 million HUF on eight ministries for violating various public consultation rules in relation to altogether 23 draft laws. Such infractions included not publishing the summary of the preliminary impact assessment, or not complying with the rule that there has to be a five-day minimum period following the public consultation to consider the inputs received before the laws are adopted/submitted. Although it is required by law that EUTAF confirms the achievement of the above 90% target in an audit report issued by 31 March the next year,<sup>102</sup> no such report was available with respect to 2022 on the website of EUTAF at the time of this assessment.

#### Assessment of the steps taken, main deficiencies:

Although the target was formally reached, a closer inspection reveals substantive deficiencies which undermine the effectiveness of the public consultation process.

Firstly, the numbers included in the KEHI report should be put into context. According to the report itself, in the reporting period altogether 682 Acts of Parliament, government decrees and ministerial decrees were promulgated, but the report only covers 405 laws. Thus, the report does not cover the 154 draft laws in relation to which (according to the ministries providing the data to KEHI) intra-governmental consultation was launched before 30 September 2022. Furthermore, the report does not cover 123 laws promulgated in the respective period that do not fall under the scope of Act CXXXI of 2010 on Public Participation in Preparing of Laws.

The latter category would mainly consist of emergency government decrees that are exempt from public consultation by law.<sup>103</sup> This is problematic because the ongoing and practically forever renewable state of danger in Hungary provides the Government excessive emergency powers, which the Government has been using extensively and in an abusive manner, for purposes not related to the ground for the state of danger (previously the pandemic, presently the war in Ukraine). In 2022, 42% of all government decrees were adopted as emergency decrees.<sup>104</sup>

Furthermore, in violation of public consultation rules as in force already before the October 2022 amendments, in the autumn of 2022 several significant laws were not published for public consultation. Most notably, public consultation was omitted regarding all draft laws the Government submitted to the Parliament in order to comply with the commitments it made in the conditionality procedure,<sup>105</sup> and the amendment of Act CXXXI of 2010 on Public Participation in Preparing of Laws itself. There have been similar examples in 2023 as well:

- As a reaction to the Hungarian Medical Chamber protesting regulatory steps affecting the medical profession, the Government submitted a bill to the Parliament without public

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<sup>102</sup> Act CXXXI of 2010 on Public Participation in Preparing of Laws, Section 5/B

<sup>103</sup> Act CXXXI of 2010 on Public Participation in Preparing of Laws, Section 1(1)

<sup>104</sup> For further information, see: Hungarian Helsinki Committee, *Government gains excessive powers from forever renewable state of danger*, 24 February 2023, [https://helsinki.hu/en/wp-content/uploads/sites/2/2023/02/HHC\\_Hungary\\_state\\_of\\_danger\\_24022023.pdf](https://helsinki.hu/en/wp-content/uploads/sites/2/2023/02/HHC_Hungary_state_of_danger_24022023.pdf).

<sup>105</sup> For more details and the list of the respective laws, see: Hungarian Helsinki Committee – K-Monitor – Transparency International Hungary, *Half-Hearted Promises, Disappointing Delivery. An Assessment of the Hungarian Government's New Measures to Protect the EU Budget and Related Recommendations*, 7 October 2022, <https://helsinki.hu/en/wp-content/uploads/sites/2/2022/10/Assessment-of-measures-to-protect-EU-budget.pdf>.

consultation that severely curtailed the powers of the Chamber. The bill was submitted on 27 February 2023, was adopted the next day, and entered into force on 1 March.<sup>106</sup>

- Bill T/3089,<sup>107</sup> which is supposed to transpose the EU's Whistleblower Directive,<sup>108</sup> was not put to public consultation either. Moreover, the Government failed to inform the members of the Anti-Corruption Task Force as well that it intends to submit the bill to the Parliament highly relevant for their work.<sup>109</sup>
- Bill T/3131 on amendments related to asset declaration processes<sup>110</sup> was submitted to the Parliament without any prior public consultation and the Government failed to inform the Anti-Corruption Task Force of its intent to submit the bill.

Finally, the effectiveness of the public consultation is severely undermined by the strong reluctance of the Government to accept the opinions and comments received. Based on the summaries published by the Government (which inevitably provides a limited picture, e.g. since the summaries of the opinions and the reasons for their rejection can be published only after the respective decree has been promulgated or the bill has been submitted to the Parliament<sup>111</sup>), one or more substantive opinions were submitted by the public for 27 from among the 223 draft laws that were published for public consultation between 30 September and 31 December 2022, with opinions being rejected by the Government fully with regard to 22 of them and partly with regard to three of them. From among the 157 draft laws that were published for consultation after 1 January 2023 and the consultation period of which ended on 12 April 2023 the latest, one or more substantive opinions were submitted by the public to 29 draft laws, but all of the comments were rejected by the Government.<sup>112</sup> It is common that the summaries merely state as the reason for the rejection that the opinion received is "contrary to the legislator's intent", "goes beyond the scope of the regulation", or "does not fit in with government policy", or that the draft law "implements the Government's decision".

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<sup>106</sup> Act I of 2023 on Amending Act XCVII of 2006 on Professional Chambers in the Health Sector and Act CLIV of 1997 on Health Care. For more information on the chain of events, see e.g.: <https://telex.hu/english/2023/02/28/a-battle-of-wills-hungarian-doctors-vs-the-government>, <https://telex.hu/english/2023/03/03/the-bill-on-medical-chamber-could-threaten-eu-funds-for-hungary>.

<sup>107</sup> Available in Hungarian at: <https://www.parlament.hu/irom42/03089/03089.pdf>.

<sup>108</sup> Directive (EU) 2019/1937 on the protection of persons who report breaches of Union law

<sup>109</sup> See: [https://k.blog.hu/2023/03/17/uj\\_bejelentovedelmi\\_torvenyjavaslat\\_a\\_kormany\\_a\\_minimumot\\_surolja\\_alulrol](https://k.blog.hu/2023/03/17/uj_bejelentovedelmi_torvenyjavaslat_a_kormany_a_minimumot_surolja_alulrol).

<sup>110</sup> Available in Hungarian at: <https://www.parlament.hu/irom42/03131/03131.pdf>.

<sup>111</sup> Act CXXXI of 2010 on Public Participation in Preparing of Laws, Section 11(2)

<sup>112</sup> The following table, based on reviewing the entries on the Government's respective website, lists the relevant draft laws and the outcome of the opinions submitted for each: [https://helsinki.hu/en/wp-content/uploads/sites/2/2023/04/annex\\_public\\_consultation\\_042023.pdf](https://helsinki.hu/en/wp-content/uploads/sites/2/2023/04/annex_public_consultation_042023.pdf).

## 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

The four justice reform components set out in the RRP Annex as precondition to access funds under Hungary's Recovery and Resilience Plan also appear in 10 different Commission Implementing Decisions approving Hungary's operational programmes from Union funds.<sup>113</sup> Concerning all operational programmes, the proper execution of the four super milestones concerning the judiciary is prescribed as an enabling condition. As detailed above, none of the four super milestones were implemented until 31 March 2023. (See in more detail above under the general remarks related to Milestones 213, 214, 215 and 216 concerning the judiciary.)

### 2. Academic freedom and public interest asset management foundations

Description of the issue raised in the Commission implementing decision:<sup>114</sup>

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

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<sup>113</sup> See:

1. Commission Implementing Decision C(2022)10004 on the Environmental and Energy Efficiency Operational Programme Plus [Article 3 (2) d)], [https://ec.europa.eu/transparency/documents-register/detail?ref=C\(2022\)10004&lang=hu](https://ec.europa.eu/transparency/documents-register/detail?ref=C(2022)10004&lang=hu);
2. Commission Implementing Decision C(2022)10007 on the Digital Renewal Operational Programme Plus [Article 3 (2) d)], [https://ec.europa.eu/transparency/documents-register/detail?ref=C\(2022\)10007&lang=en](https://ec.europa.eu/transparency/documents-register/detail?ref=C(2022)10007&lang=en);
3. Commission Implementing Decision C(2022)10008 on the Territorial and Settlement Development Operational Programme Plus [Article 3 (2) d)], [https://ec.europa.eu/transparency/documents-register/detail?ref=C\(2022\)10008&lang=hu](https://ec.europa.eu/transparency/documents-register/detail?ref=C(2022)10008&lang=hu);
4. Commission Implementing Decision C(2022)10009 on the Economic Development and Innovation Operational Programme Plus [Article 3 (2) d)], [https://ec.europa.eu/transparency/documents-register/detail?ref=C\(2022\)10009&lang=en](https://ec.europa.eu/transparency/documents-register/detail?ref=C(2022)10009&lang=en);
5. Commission Implementing Decision C(2022)10010 on the Human Resources Development Operational Programme Plus [Article 3 (2) d)], [https://ec.europa.eu/transparency/documents-register/detail?ref=C\(2022\)10010&lang=en](https://ec.europa.eu/transparency/documents-register/detail?ref=C(2022)10010&lang=en);
6. Commission Implementing Decision C(2022)10011 on the Integrated Transport Development Operational Programme Plus [Article 3 (2) d)], [https://ec.europa.eu/transparency/documents-register/detail?ref=C\(2022\)10011&lang=en](https://ec.europa.eu/transparency/documents-register/detail?ref=C(2022)10011&lang=en);
7. Commission Implementing Decision C(2022)10018 on the Hungarian Fisheries Programme Plus (HFP Plus) [Article 3 (2) d)], [https://ec.europa.eu/transparency/documents-register/detail?ref=C\(2022\)10018&lang=en](https://ec.europa.eu/transparency/documents-register/detail?ref=C(2022)10018&lang=en);
8. Commission Implementing Decision C(2022)10019 on the Internal Security Fund [Article 3 (2) d)], [https://ec.europa.eu/transparency/documents-register/detail?ref=C\(2022\)10019&lang=en](https://ec.europa.eu/transparency/documents-register/detail?ref=C(2022)10019&lang=en);
9. Commission Implementing Decision C(2022)10020 on the Instrument for Financial support for Border Management and Visa Policy [Article 3 (2) d)], [https://ec.europa.eu/transparency/documents-register/detail?ref=C\(2022\)10019&lang=en](https://ec.europa.eu/transparency/documents-register/detail?ref=C(2022)10019&lang=en);
10. Commission Implementing Decision C(2022)10022 on the Asylum, Migration and Integration Fund [Article 3 (2) d)], [https://ec.europa.eu/transparency/documents-register/detail?ref=C\(2022\)10022&lang=en](https://ec.europa.eu/transparency/documents-register/detail?ref=C(2022)10022&lang=en)

<sup>114</sup> 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](https://ec.europa.eu/transparency/documents-register/detail?ref=C(2022)10009&lang=en)

direct or indirect influence of the executive branch for the following reasons. The current Government 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 organization 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 from 15 February 2023 and the Government expects all other politicians holding both positions in the Government and the public interest asset management foundations to resign from the latter.<sup>115</sup>

By 31 March 2023 no further steps had been taken by the Hungarian government to eliminate the risk of academic freedom being undermined by the new model of university governance.

#### Assessment of the steps taken, main deficiencies:

##### *1.1. The concept of academic freedom in international and EU law*

The Magna Charta Universitatum adopted in 1988 in Bologna begins by recognizing institutional autonomy as a defining feature of the university, and lays down the requirement for research and teaching to be independent of all political authority and for governments to ensure respect for these freedoms.<sup>116</sup>

Academic freedom is not only an individual liberty for those engaging in teaching or research but also the “freedom of universities to institutional autonomy”.<sup>117</sup> This approach is also reflected in the text of the 2011 Fundamental Law of Hungary, which does not only declare the freedom of scientific research, teaching and learning, but also recognizes university autonomy by stating that “higher education institutions shall be autonomous in terms of the content and the methods of research and teaching”.<sup>118</sup>

Article 13 of the Charter of Fundamental Rights explicitly recognizes academic freedom by claiming in its second sentence that “academic freedom shall be respected”. In 2020, in its judgment on the so-

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<sup>115</sup> See: <https://kormany.hu/hirek/lemondtak-egyetemi-kuratoriumi-poziciojukrol-a-miniszterek>.

<sup>116</sup> The Magna Charta of the European Universities, Bologna, 18 September 1988, <https://www.magna-charta.org/magna-charta/en/magna-charta-universitatum/mcu-1988>

<sup>117</sup> Eric Barendt, *Academic freedom and the law: A comparative study*. Hart Publishing, 2010, p. 26.

<sup>118</sup> Article X Section (3) of the Fundamental Law of Hungary



called Lex CEU, the CJEU provided a broad understanding of academic freedom enshrined in the Charter and found that the concept incorporates an individual and an institutional dimension, the latter being “an essential prerequisite for teaching and research activities”.<sup>119</sup> The CJEU therefore recognized that academic freedom can prevail only if the autonomy of higher education institutions is guaranteed.

Institutional autonomy incorporates the idea of independence vis-à-vis the executive branch and also requires self-government meaning that the university community must participate in making decisions in university matters.

### *1.2. The current framework of governing universities under public interest foundations*

The Ninth Amendment to the Fundamental Law introduced the public interest asset management foundation as a new organizational framework for performing public tasks. The amendment laid down the requirement of a cardinal law adopted by a two-thirds majority for regulating the fundamental aspects of the functioning of these foundations, namely the establishment, operation and termination of these foundations and regulating the public task performed by them.<sup>120</sup> Later, the particular foundations managing universities were established in separate pieces of legislation for each. Also, the Parliament adopted Act IX of 2021, which laid down the common rules for the legal status of these entities. All these laws are cardinal laws meaning that any change in the legal framework requires a qualified majority in Parliament. While the Government justified this regulatory method by referring to the principles of legal certainty, stability and independence, this approach essentially removes questions of university governance from democratic control. It therefore raises serious concerns about the democratic accountability of the system.

### *1.3. Assessment of the main deficiencies*

For the first time in 2023, the European University Association (EUA) did not evaluate Hungarian higher education within the framework of the EUA Autonomy Scorecard, which provides a comparative analysis of university autonomy based on four dimensions across Europe.<sup>121</sup> According to the EUA, the new model of university governance restricts institutional self-determination and fails to meet European standards by establishing a governing body (the Board of Trustees) appointed exclusively by the Government for an indefinite term and by transferring substantial decision-making powers from universities’ Senate to these boards. The new model, therefore, cannot be adequately captured by the methodology of the Scorecard and is inapt for a comparative exercise. For the above-mentioned reasons, EUA issued a separate analysis of Hungarian higher education, which includes recommendations to restore the prerequisites of academic freedom.<sup>122</sup>

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<sup>119</sup> Case C-66/18 – Commission v Hungary, Judgment of the Court (Grand Chamber) of 6 October 2020, ECLI:EU:C:2020:792

<sup>120</sup> The legislative process was criticized by the Venice Commission for failing to meet the basic standards of law-making based on the principles of the rule of law and democracy. The Venice Commission highlighted that the draft law was submitted as a government bill being part of a major legislative package. The process took place during the state of danger declared on the pretext of the COVID-19 pandemic, which hindered the possibility of genuine democratic discussion. Also, the draft law was not put to public consultation, and the relevant provisions entered into force immediately, without any transitional period. For more details on the problems of adopting the Ninth Amendment to the Fundamental Law, see: European Commission for Democracy Through Law (Venice Commission), *Opinion on the constitutional amendments adopted by the Hungarian parliament in December 2020*, CDL-AD(2021)029-e, 2-3 July 2021, [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2021\)029-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2021)029-e), paras 12–14.

<sup>121</sup> European University Association, *University Autonomy in Europe IV – The Scorecard 2023*, Enora Bennetot Pruvot, Thomas Estermann and Nino Popkhadze, March 2023, <https://eua.eu/downloads/publications/eua%20autonomy%20scorecard.pdf>

<sup>122</sup> EUA’s recommendations:

The Venice Commission has also raised concerns about academic freedom regarding the change of the governance model of universities. The Venice Commission argued that “the submission of public universities to the management of a board of trustees, initially appointed by the government and subsequently released from democratic supervision, risks threatening their academic freedom and weakening their autonomy”.<sup>123</sup>

The Parliamentary Assembly of the Council of Europe in its Resolution 2352 (2020) has called on the Hungarian government to “take immediate action to reverse recently adopted legislation and/or practices that limit respect for principles of academic freedom and institutional autonomy”<sup>124</sup> as Hungary ranks one of the lowest in the Academic Freedom Index, yet the Hungarian government has failed to take any progress to this day.

The ministers’ resignation from the Board of Trustees of public asset management foundations of universities is a positive development yet not much progress compared to what is needed to restore the academic freedom and institutional autonomy of the universities affected by the “model change” of state ownership to public asset management foundations. There is no information on the resignation of other politicians holding positions in the Government.

Though the Government has expressed willingness to annul the lifelong positions of the board members of public interest asset management foundations,<sup>125</sup> legislation in this matter is only planned to follow in April 2023.<sup>126</sup>

Institutional autonomy of universities maintained by public interest asset management foundations continues to be gravely hindered by the legislative exemptions of Act CCIV of 2011 on the National Higher Education (hereinafter: Higher Education Act).

Currently, the higher education law only provides institutional autonomy for state universities. According to Section 11(1)(a) of the Higher Education Act, the university establishes its rules of organization and operation. According to Section 12(1), the governing body of the higher education institution is the Senate and according to Section 12(2) the Senate holds the rights declared in the Fundamental Law. Section 12(3) lists the powers of the Senate. According to Section 73(3)(ca)–(cc), the maintainer of the institution only has a right to examine the institution's rules of organization and operation, institutional development plan and budget.

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<sup>123</sup> “- Recognise the specificity of higher education institutions compared to other foundation-run organisations in society, notably in a context where most of the university sector is expected to move to that status (contrary to European practice elsewhere).

- Set regulations for a limited term of office of the members of the board of trustees: this does not mean prescribing an exact mandate duration in law but including provisions requiring that a term of office is set, with a maximum allowed duration, as well as provisions regarding the possibility to renew.
- Involve the university in the selection of the members of the board of trustees in a formal way. Currently, the university is just one of the stakeholders consulted in the selection process. As mentioned before, if board members have no limited term of office, they are selected by university bodies, not by government.
- Re-design the balance of powers in university governance. If the board of trustees is externally appointed, then it should not be possible to revise the balance of powers between the board of trustees and the university senate. Rather, there should be a clear distinction of competences and guarantees that the university senate can rule on academic matters, which should not be subject to a derogation clause in the law.” (p. 11.)

The full EUA report on Hungary’s higher education of March 2023 is available here:

[https://www.eua.eu/downloads/publications/2023%20eua%20autonomy%20scorecard\\_hungary.pdf](https://www.eua.eu/downloads/publications/2023%20eua%20autonomy%20scorecard_hungary.pdf).

<sup>124</sup> European Commission for Democracy Through Law (Venice Commission), *Opinion on the constitutional amendments adopted by the Hungarian parliament in December 2020*, CDL-AD(2021)029-e, 2-3 July 2021, [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2021\)029-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2021)029-e), para. 65.

<sup>125</sup> <https://pace.coe.int/en/files/28881/html>

<sup>126</sup> <https://kormany.hu/hirek/lemondtak-egyetem-kuratoriiumi-poziciojukrol-a-miniszterek>

<sup>126</sup> <https://index.hu/gazdasag/2023/04/05/europai-bizottsag-brusszel-navracsics-tibor-unios-forrasok/>

Although the Higher Education Act declares<sup>127</sup> itself to ensure the system of higher education in the framework set out in Section 3 of Article X of the Fundamental Law,<sup>128</sup> in reality the Higher Education Act only ensures institutional autonomy for state-run universities (which were the main type at the time of drafting the law), providing derogative possibilities to private institutions as an exception from the rule. Such derogative possibilities are found in Section 94. Section 94(1) allows the private institution to become religiously or philosophically committed. Section 94(6) allows the maintainer of private universities (in the case of “model changed” universities, the maintainer is the public interest asset management foundation) to take over the Senate's roles in adopting the institution's statutes, budget, and institutional development plans and the announcement of the proposal for the position of the rector (head of the Senate). Section 94(6a) allows the maintainer of private universities to diminish the Senate's role of selecting the candidate for rector to a merely consultative role.

As a result, Sections 94(6) and 94(6a) deprive private universities – including former state universities which have undergone the model change to be maintained by public interest asset management foundations – from institutional autonomy. Section 94(6) was referred to constitutional review by the Budapest-Capital Regional Court<sup>129</sup> in 2021 (in a judicial proceeding regarding the infamous case of the model change<sup>130</sup> of the University of Theatre and Film Arts), however, the Constitutional Court dismissed<sup>131</sup> the motion referring to the meantime announced Act IX of 2021 on Public Interest Asset Management Foundations which in Section 22(4) holds that at least consultative competence has to be given to the Senate in the aforementioned powers. However, a consultative competence does not imply a substantive power and is entirely reliant upon the maintainer's good faith to ensure its effect utile, thus current legislation leaves the Senate dependent on the maintainer in the exercise of its already diminished powers.

Section 22(4) of Act IX of 2021 on Public Interest Asset Management Foundations confirms the institutional powers given to the maintainer by declaring the possibility of providing only consultative competence to the Senate. However, consultation in this regard is a clear derogation from the autonomous decision-making powers which the Senates of state universities had. Thus, Section 22(4) of Act IX of 2021 along with the aforementioned exceptional sections of the Higher Education Act jointly derogate the autonomy of universities maintained by public interest asset management foundations from the standard set in the Higher Education Act.

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<sup>127</sup> Act CCIV of 2011 on the National Higher Education, Section 1(1)

<sup>128</sup> Section 3 of Article X of the Fundamental Law: “Hungary shall protect the scientific and artistic freedom of the Hungarian Academy of Sciences and the Hungarian Academy of Arts. Higher education institutions shall be autonomous in terms of the content and the methods of research and teaching; their organisation shall be regulated by an Act. The Government shall, within the framework of the Acts, lay down the rules governing the management of public institutes of higher education and shall supervise their management.”

<sup>129</sup> The Budapest-Capital Regional Court's constitutional review motion is available here:

[http://public.mkab.hu/dev/dontesek.nsf/0/2b2471adfoaegf5ec1258709005bb84b/\\$FILE/III\\_384\\_o\\_2021\\_ind%C3%ADtv%C3%A1ny.anonimpdf.pdf](http://public.mkab.hu/dev/dontesek.nsf/0/2b2471adfoaegf5ec1258709005bb84b/$FILE/III_384_o_2021_ind%C3%ADtv%C3%A1ny.anonimpdf.pdf).

<sup>130</sup> The “model change” of the University of Theatre and Film Arts demonstrates how public interest asset management foundations can take away the autonomy of a university. Upon the takeover in 2020, the Board of Trustees announced a new statute and new organizational and operational rules which took away the democratically elected Senate's powers. The students demonstrated against the takeover with occupation of the university and members of the student government launched lawsuits against the Board of Trustees. The Board of Trustees then decided to shut down the university three consecutive times in the fall semester of 2020/2021, against which the student government turned to the court; some lawsuits are still continuing. According to the current law, any public interest asset management foundation could do these arbitrary violations of academic freedom at any time as there are no safeguards against them provided by the law.

<sup>131</sup> Decision 21/2021. (VI. 22.) of the Constitutional Court

This legislative imbalance violates the autonomy of higher education institutions both as enshrined in the framework of the Fundamental Law as well as in Article 13 of the Charter.

An example of the infringement of academic freedom at universities managed by public interest asset management foundations is the University of Sopron.<sup>132</sup> There, the Board of Trustees defines the fields of education being taught and the method of education in its statute. The Board of Trustees adopts the university's operational and organisational regulation as well, where the Senate has the right to be consulted. The Senate consists of 15 members of whom only 4 are elected. The rector is chosen and appointed by the Board of Trustees and the Board needs to provide consent to appoint the deputy rectors. Appointing deans (heads of faculties) also requires the approval of the Board of Trustees.

Furthermore, the arbitrary Section 73/A of the Higher Education Act enacted in 2021 under the state of danger conferring a new power to maintainers – the annulment of entire semesters upon vague conditions – is another direct and serious threat to academic freedom. It was used as a reprisal against a university whose Senate and student government resisted the model change.<sup>133</sup>

#### Recommendations:

- 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.
- A potentially once renewable fixed term (no longer than 5 years) is needed to be set for the Board of Trustees' members of the public interest asset management foundations.
- 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

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<sup>132</sup> All official documents cited below are available online on the website of the University of Sopron: <https://www.uni-sopron.hu/dokumentumok>. Very few higher education institutions managed by public interest asset management foundations made these documents publicly available.

<sup>133</sup> The provision was arbitrarily used against the students of the University of Theatre and Film Arts which was occupied by students in 2020 as a resistance to the model change. The amendment – first enacted in a government decree in 2020 – confers a power according to which the maintainer of the institution can annul a semester in "extraordinary situations" in which "requirements for lawful performance of study obligations are not met, cannot be ensured, or cannot be monitored by the maintainer". It also diminishes the student governments' right to a legal remedy with suspensory effect. According to Decision 28/2021. (XI. 5.) of the Constitutional Court, it is a "necessary and proportional" restriction of the right to higher education (in essence, to academic freedom) available only in the state of danger. However, a year later this provision became enacted in the Higher Education Act, applicable without any restriction.

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 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 (organizational 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:<sup>134</sup>

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).<sup>135</sup> 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,<sup>136</sup> before they are able to access the asylum procedures in Hungary ("embassy system").<sup>137</sup> 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,<sup>138</sup> regardless of whether they have the legal right to enter those

<sup>134</sup> 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](https://ec.europa.eu/transparency/documents-register/detail?ref=C(2022)10022&lang=en)

<sup>135</sup> 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 (the Transitional Act)

<sup>136</sup> Government Decree 292/2020. (VI. 17.), Section 1

<sup>137</sup> Act LVIII of 2020 on the Transitional Provisions related to the Termination of the State of Danger and on Epidemiological Preparedness, Sections 267–268

<sup>138</sup> 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.

countries. Only people belonging to the following categories are not required to go through this process:<sup>139</sup>

- those having subsidiary protection status and are staying in Hungary;
- family members<sup>140</sup> of refugees and those having subsidiary protection who are staying in Hungary;
- 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.<sup>141</sup> The embassy system does not ensure an effective and genuine access to the asylum procedure in Hungary.<sup>142</sup> Such view is also expressed by UNHCR<sup>143</sup> and the European Commission, which already referred Hungary to the CJEU in July 2021, arguing that the new embassy procedure is in breach of EU law.<sup>144</sup> According to the European Commission's application to the CJEU, by introducing this system, Hungary has failed to fulfil its obligations under Article 6 of Directive 2013/32,<sup>145</sup> read in conjunction with Article 18 of the Charter of Fundamental Rights.

#### Steps taken by the Hungarian authorities:

No steps have been taken by the Hungarian government or the Parliament to remedy the situation. In fact, the embassy system has been prolonged continuously as a "temporary substitute" for the regular asylum procedure since its introduction in May 2020. At the time of writing, the Transitional Act's relevant section extends the embassy system until 31 December 2023.<sup>146</sup>

#### Recommendations:

- Hungary shall immediately revert to its "regular" asylum system by (a) repealing the asylum-related provisions of the Transitional Act, and (b) 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.<sup>147</sup>

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<sup>139</sup> Section 5(1) of Government Decree 233/2020. (V. 26.) and Section 271(1) of the Transitional Act

<sup>140</sup> 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.

<sup>141</sup> 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>.

<sup>142</sup> 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>.

<sup>143</sup> 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](http://www.refworld.org/docid/5ef5c0614.html)

<sup>144</sup> C-823/21 – Commission v Hungary, see also the press release: European Commission, *Commission refers Hungary to the Court of Justice of the European Union for unlawfully restricting access to the asylum procedure*, 15 July 2021, [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_21\\_3424](https://ec.europa.eu/commission/presscorner/detail/en/ip_21_3424). Factsheet of the case: <https://bit.ly/3T9ue3M>.

<sup>145</sup> Directive of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection

<sup>146</sup> Act LVIII of 2020 on the Transitional Provisions related to the Termination of the State of Danger and on Epidemiological Preparedness, Section 267

<sup>147</sup> 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](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:<sup>148</sup>

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.<sup>149</sup> 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,<sup>150</sup> as well as in Articles 7, 18, 19, 24, and 47 of the Charter.<sup>151</sup> 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,<sup>152</sup> the Commission decided to refer Hungary back to the CJEU based on Article 260 TFEU, requesting the Court to impose fines for not implementing the judgment.<sup>153</sup> 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.<sup>154</sup>

#### 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. According to official police data, in 2022 alone, over 158,000 such measures have taken place.<sup>155</sup>

#### Recommendations:

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

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<sup>148</sup> 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](https://ec.europa.eu/transparency/documents-register/detail?ref=C(2022)10022&lang=en)

<sup>149</sup> 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>

<sup>150</sup> 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

<sup>151</sup> Case C-808/18 – Commission v Hungary, Judgment of the Court (Grand Chamber) of 17 December 2020, ECLI:EU:C:2020:1029, <https://bit.ly/3Myh13m>

<sup>152</sup> For more on the application of the Minister of Justice to the Constitutional Court, and on the Court's decision, see: <https://helsinki.hu/en/the-governments-attempt-at-sabotage-has-failed-and-the-cjeu-decision-must-be-implemented/>.

<sup>153</sup> Case C-123/22. Casefile on the Court'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](https://ec.europa.eu/commission/presscorner/detail/EN/IP_21_5801)

<sup>154</sup> See more on these preliminary reference rulings where the Hungarian Helsinki Committee provided legal representation to the applicants: <https://helsinki.hu/en/hungary-unlawfully-detains-people-in-the-transit-zone/>.

<sup>155</sup> National Headquarters of the Hungarian Police, *General Situation Report on Border Management 2022*, [https://www.police.hu/sites/default/files/HatarrendeszetSK%202022\\_12%20%28ENG%29.pdf](https://www.police.hu/sites/default/files/HatarrendeszetSK%202022_12%20%28ENG%29.pdf), p. 24.

### 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:<sup>156</sup>

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 Court 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.<sup>157</sup> According to the CJEU, this is a restriction on the rights enshrined in Directives 2013/32/EU<sup>158</sup> and 2013/33/EU,<sup>159</sup> which contribute to giving concrete expression to the right enshrined in Article 18 of the Charter.<sup>160</sup>

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 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.<sup>161</sup>

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 European 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.<sup>162</sup>

Recommendations:

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

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<sup>156</sup> 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](https://ec.europa.eu/transparency/documents-register/detail?ref=C(2022)10022&lang=en)

<sup>157</sup> Judgment in Case C-821/19, § 98, <https://bit.ly/4002K2v>

<sup>158</sup> 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

<sup>159</sup> 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

<sup>160</sup> Judgment in Case C-821/19, §§ 99 and 132, <https://bit.ly/4002K2v>

<sup>161</sup> 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](https://helsinki.hu/en/wp-content/uploads/sites/2/2022/12/criminalisation_2022.pdf).

<sup>162</sup> 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](https://ec.europa.eu/transparency/documents-register/detail?ref=C(2022)10022&lang=en), recital 11



## 4. Rights of LGBTQI+ persons

### Description of the issue raised in the Commission implementing decisions:

In June 2021, the Hungarian governing majority 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.<sup>163</sup>

The legislation associates pejorative, negative traits with all members of the LGBTQI+ community, which entails the violation of Article 1 of the Charter as such provisions necessarily portray members of the group concerned as inferior, which is a serious violation of the principle of equal human dignity.

The amendments to the Child Protection Act<sup>164</sup> and the Family Protection Act<sup>165</sup> are not compatible with Article 7 of the Charter – the right to respect for private life – since they do not recognize gender identity as a component of personal identity. The interference with the right to respect for private and family life lies in the fact that parents cannot choose, in this regard the upbringing they give their child. The right of parents to choose education also includes the fact that the state cannot determine indefinitely what kind of education should be provided to the child in public education.

Several provisions of Act LXXIX of 2021 prohibit or limit 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 and for public service advertisement even without any age limit,<sup>166</sup> which violates Article 11 of the Charter. The fact that it is prohibited to “propagate” or “portray” such content to children expressly and unequivocally restricts the right of expression and freedom of the press. The rules introduced restrictions on freedom of expression and freedom of the press without protecting any other fundamental right. By restricting freedom of the press, not only the possibility of expressing opinions and positions is reduced, but also the freedom to acquire opinions, information, new knowledge, and the right to be informed. It acts as a deterrent to both public discourse and private speech creating a chilling effect.

The legislation produces effects of discrimination and stigmatisation which violates Article 21 of the Charter. Discrimination based on sexual orientation and gender identity can be reinforced by excluding objective information about different forms of sexual orientation, gender identity, gender expression and sex characteristics from the curriculum on sex education, thus creating an unsafe and unfriendly environment where LGBTQI+ children can be subject to bullying, harassment and even health related risks.

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<sup>163</sup> Case C-769/22. See also: [https://ec.europa.eu/commission/presscorner/detail/EN/IP\\_22\\_2689](https://ec.europa.eu/commission/presscorner/detail/EN/IP_22_2689).

<sup>164</sup> Act XXXI of 1997 on the Protection of Children and Guardianship

<sup>165</sup> Act CCXI of 2011 on the Protection of Families

<sup>166</sup> Act CLXXXV of 2010 on Media Services and Mass Media, Section 32(4a)

*Commission Implementing Decision approving "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:*<sup>167</sup>

The Commission 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 European Social Fund Plus (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 the above-mentioned legislative act. Concretely, that the legislative act would have a direct impact on the implementation of actions supported by the ESF+ under the specific objective that provides support to types of actions which are subject to compliance with the referred legislation, notably, development of education content and training of teachers.

In particular the application of that law may lead to the rejection of applications for funding for projects to enhance competences and access to content that would portray homosexuality, divergence from self-identity corresponding to sex at birth and gender reassignment. In addition, the development of educational material that would aim at preventing and combating discrimination based on sexual orientation could also be rejected. Moreover, that law may also result in dissuading potential eligible beneficiaries and contractors from submitting projects and tenders under this specific objective.

The Commission therefore considers that horizontal enabling condition "3. Effective application and implementation of the Charter of Fundamental Rights" is not fulfilled.

*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:*<sup>168</sup>

The Commission considers that Act LXXIX of 2021 has a direct impact on the implementation of actions supported by the ESF+ under specific objectives that provide support to types of actions which are subject to compliance with the referred legislation, notably, training of teachers and child protection actions, such as education and training of parents and foster parent networks, provision of mental and psychological support services.

In particular, there is a serious risk that the content of training of teachers and child protection actions, such as education and training of parents and foster parent networks, provision of mental and psychological support services disrespects the Charter as these actions are subject to compliance with the above-mentioned national legislative act. Moreover, that law may also result in dissuading potential eligible beneficiaries and contractors from submitting projects and tenders under these specific objectives.

The Commission therefore considers that horizontal enabling condition "3. Effective application and implementation of the Charter of Fundamental Rights" is not fulfilled.

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<sup>167</sup> European Commission, C(2022) 10009 final, [https://ec.europa.eu/transparency/documents-register/detail?ref=C\(2022\)10009&lang=en](https://ec.europa.eu/transparency/documents-register/detail?ref=C(2022)10009&lang=en)

<sup>168</sup> European Commission, C(2022) 10010 final, [https://ec.europa.eu/transparency/documents-register/detail?ref=C\(2022\)10010&lang=en](https://ec.europa.eu/transparency/documents-register/detail?ref=C(2022)10010&lang=en)

Steps taken by the Hungarian authorities:

Hungary did not repeal the provisions of Act LXXIX of 2021 that prohibit or limit 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.

Assessment of the steps taken, main deficiencies:

Hungary has not committed to remedy the deficiencies concerning the prohibition or limitation of 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. The legislation still violates Article 1, 7, 11 and 21 of the Charter.

Recommendations:

- Repeal the provisions of Act LXXIX of 2021 that prohibit or limit access to content that “propagates” or portrays the so-called “divergence from self-identity corresponding to sex at birth, sex change or homosexuality”.