

Opinion

on Hungary's draft Partnership Agreement concerning compliance with the horizontal enabling conditions

I. Introduction

The European Union's Common Provisions Regulation (CPR)¹ sets out the enabling conditions for the use of European Structural and Investment Funds by Member States for the financial period of 2021-2027. Annex III of the CPR lists the horizontal enabling conditions, which are:

- Effective monitoring mechanisms of the public procurement market
- Tools and capacity for effective application of State aid rules
- Effective application and implementation of the Charter of Fundamental Rights²
- Implementation and application of the United Nations Convention on the rights of persons with disabilities (UNCRPD) in accordance with Council Decision 2010/48/EC

In this paper, we examine the extent to which the draft Partnership Agreement³ (hereafter: the PA) published by the Government of Hungary for public consultation meets the first three of the above enabling conditions. For this purpose, we have used, among others, the European Commission's Country Reports 2019 and 2020 on Hungary⁴ and the Rule of Law

¹ Regulation No 2021/1060 of the European Parliament and of the Council (EU) laying down common provisions on the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund, the European Fund for a Just Transition and the European Maritime, Fisheries and Aquaculture Fund and laying down financial rules applicable to the former and to the Asylum, Migration and Integration Fund, the Internal Security Fund and the instrument for financial support for border management and visa policy <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32021R1060>

² Charter of Fundamental Rights of the European Union, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012P/TXT>

³ <https://www.palyazat.gov.hu/partnersegi-megallapodas#>

⁴ Commission Staff Working Document. 2019 Country Report - Hungary, accompanying document. Communication from the Commission to the European Parliament, the European Council, the Council, the European Central Bank and the Eurogroup. 2019 European Semester: assessment under Regulation (EU) No 1176/2011 of progress made in structural reforms, the prevention and correction of macroeconomic imbalances and the results of the in-depth review {COM(2019) 150 final}, Brussels, 27.2.2019, https://ec.europa.eu/info/sites/default/files/file_import/2019-european-semester-country-report-hungary_en.pdf

European Commission Staff Working Document: Country Report - Hungary 2020. Country Report for Hungary - National Indicative Programme for 2020 {COM(2020) 150 final}, Brussels, 26.02.2020. SWD(2020) 516 final, Explanatory Memorandum (33), https://ec.europa.eu/info/sites/default/files/2020-european-semester-csr-comm-recommendation-hungary_en.pdf

Report 2021⁵. The Implementation Operational Programme Plus⁶ is closely related to this topic and will therefore be examined, too.

In our view, the PA does not meet the above-mentioned enabling conditions in a number of respects, such as the absence of any provision to comply with Articles 11, 21 and 47 of the EU Charter of Fundamental Rights, and the absence of any provision to remedy the situation of damages to the EU's financial interests as described in the Rule of Law Report.

Because of the non-conformities pointed out in this document, in our view, the **PA should only be accepted by the European Commission under the conditions set out below. These conditions must be fulfilled before the Partnership Agreement between the European Commission and the Hungarian Government can be signed.**

In our view, **Hungary can only meet the EU's environmental and climate protection requirements if it meets, among others, the conditions set out below.** This opinion of the Clean Air Action Group is supported by our 32 years of experience and numerous national and international publications on the subject⁷.

⁵ Commission Staff Working Document. Rule of Law Report 2020 Country Chapter - The State of the Rule of Law in Hungary, accompanying the Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. Rule of Law Report 2020, The State of the Rule of Law in the European Union. Brussels, 30.9.2020, SWD(2020) 316 final, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020SC0316&from=EN>

⁶ Implementation Operational Programme Plus (IOP Plus). draft submitted for public consultation on 04.06.2021, https://www.palyazat.gov.hu/vegrehajtas_operativ_program_plusz#

⁷ See for example:

Korrupció a környezetvédelemben (Corruption in environmental protection)

<https://www.levego.hu/kapcsolodo-anyagok/korrupcio-a-kornyezetvedelemben/>

A jog- és intézményrendszer módosításának lehetséges irányai a zöld gazdaságélénkítés érdekében (Possible ways to change the legal and institutional framework for a green recovery)

<https://www.levego.hu/sites/default/files/17-jog-gszt2010.pdf>

Csapás a gazdaságra és a környezetre (Blow to the economy and the environment)

<https://www.levego.hu/hirek/2012/02/csapas-a-gazdasagra-es-a-kornyezetre/>

Erős zöld ombudsmant (A strong green ombudsman!)

<https://www.levego.hu/hirek/2012/01/eros-zold-ombudsmant/>

Mud disaster: the price of cheap authority

<http://levego.hu/kapcsolodo-anyagok/iszapkatasztrofa-az-olcso-hatosag-ara/>

Corruption, Environment And The United Nations Convention Against Corruption

https://www.unodc.org/documents/corruption/Publications/2012/Corruption_Environment_and_the_UNCAC.pdf

The environmental cost of corruption. Allianz Global Corporate & Specialty, August 03, 2020,

<https://www.agcs.allianz.com/news-and-insights/expert-risk-articles/esg-risk-briefing-3-2020.html>

Corruption, Hidden Economy and Environmental Pollution: A Spatial Econometric Analysis Based on China's Provincial Panel Data. US National Library of Medicine, August 2019,

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6719902/>

II. Compliance with the provisions of the CPR on the Charter of Fundamental Rights

The CPR lays down common provisions for seven EU funds under shared management, including a list of enabling conditions⁸ that must be met to ensure the efficient and effective use of funds.

Part 6 of the preamble to the CPR underlines that the provisions of the Charter of Fundamental Rights of the European Union must also be respected⁹ when using the funds covered by the Regulation.

Article 9 (1) of the CPR states: *“Member States and the Commission shall ensure respect for fundamental rights and compliance with the Charter of Fundamental Rights of the European Union in the implementation of the Funds “*

In order to give effect to these provisions, Annex III of the CPR mentions, among the horizontal enabling conditions set out in Article 15 (1) of the CPR, the obligation to apply effective mechanisms to ensure compliance with the EU Charter of Fundamental Rights.

II.1. Assessment of compliance with the Charter of Fundamental Rights of the European Union

In accordance with Annex III of the CPR, we have assessed the PA's compliance with the following provisions of the Charter of Fundamental Rights of the EU.

II.2.1 Freedom of expression and information

Article 11 of the Charter of Fundamental Rights provides: *“1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.*

2. The freedom and pluralism of the media shall be respected.”

⁸ CPR Preamble „(21) To ensure the necessary prerequisites for the effective and efficient use of Union support granted by the Funds, a limited list of enabling conditions as well as a concise and exhaustive set of objective criteria for their assessment should be established. Each enabling condition should be linked to a specific objective and should be automatically applicable where the specific objective is selected for support. Without prejudice to the rules on decommitment, where those conditions are not fulfilled, expenditure related to operations under the related specific objectives should not be reimbursed by the Commission. In order to maintain a favourable investment framework, the continued fulfilment of the enabling conditions should be monitored regularly. At the request of a Member State, the EIB should be able to contribute to the assessment of the fulfilment of enabling conditions. It is also important to ensure that operations selected for support are implemented consistently with the strategies and planning documents in place underlying the fulfilled enabling conditions, thus ensuring that all co-financed operations are in line with the Union policy framework.”

⁹ CPR Preamble „(6) Horizontal principles as set out in Article 3 of the Treaty on European Union (TEU) and in Article 10 TFEU, including the principles of subsidiarity and proportionality as set out in Article 5 TEU, should be respected in the implementation of the Funds, taking into account the Charter of Fundamental Rights of the European Union...”

The Hungary 2020 Country Report concludes that restricting access to information hinders the prevention of corruption and that charging fees for access to public information acts as a deterrent to citizens and NGOs exercising their constitutional rights. This right is particularly important to ensure the efficient and effective use of the funds covered by the CPR.

However, the commitment to take measures to ensure the fulfilment of this fundamental right is not included in the PA and therefore, in our view, the draft text cannot be accepted in its current form, as it does not provide the mechanisms to ensure the enforcement of Article 11 of the Charter of Fundamental Rights.

The Commission's 2020 Rule of Law Report states: *“The shrinking possibilities of civic oversight in the context of restrictions to media freedom, a hostile environment for civil society organisations and constant new challenges in the application of the transparency and access to public information rules further weaken the anti-corruption framework.”*

II.2.2. Administration of justice

Article 47 of the Charter of Fundamental Rights provides: *“Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article. Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented. Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice.”*

The European Commission's 2020 Country Report for Hungary states: *„Developments of checks and balances in the Hungarian courts system have however continued to raise concerns. This has been confirmed by a statement of the Group of States against Corruption (GRECO), a report of the European Association of Judges and by a report of the Council of Europe Human Rights Commissioner.”*

Today, the justice system in Hungary is subject to much domestic¹⁰ and international¹¹ criticism, clearly demonstrating that Hungary needs to take urgent steps to review its justice system, taking into account the findings of the "Contribution of Hungarian NGOs to the

¹⁰ See for example:

Helsinki File: Independence of the Judiciary

<https://helsinki.hu/en/akta/independence-of-the-judiciary/>

Ákos Hadházy: The Hungarian Supreme Court now led by 3 de facto criminals

<https://hungarianspectrum.org/2021/07/02/akos-hadhazy-the-hungarian-supreme-court-now-led-by-3-de-facto-criminals/>

¹¹ See for example:

Hungary feels the heat in EU court hearing

<https://www.politico.eu/article/miklos-feher-hungary-feels-the-heat-eu-court-hearing/>

Freedom House: Nations in Transit 2021

<https://freedomhouse.org/country/hungary/nations-transit/2021>

European Commission's Rule of Law Report¹² and the recommendations of Amnesty International Hungary (AI Hungary) and the Hungarian Helsinki Committee (HHC)¹³, as well as the European Commission's 2020 Rule of Law Report on Hungary. According to the findings of these documents, the role and competences of the National Office for the Judiciary need to be reviewed and its President should be vetted in order to ensure the professional integrity of the organisation and the independence of judges and courts in Hungary. Measures need to be taken to ensure that administrative decisions (including staffing and financial management) are not used as a tool for centralisation and the extension of government influence to the courts. In addition, the transparency of the judiciary must be increased in order to make the work of the courts more accessible.¹⁴ All means and measures must be used to restore the authority and original jurisdiction of the Constitutional Court¹⁵ and thus the institutional role and power of the Court. The system of selection and criteria for the Constitutional Court of Hungary must be designed in such a way as to guarantee the professional autonomy of the members of the Board and their full independence from any government influence¹⁶.

The Commission's 2020 Rule of Law Report also explains that in recent years, the EU institutions have repeatedly and explicitly expressed their concerns about judicial independence in Hungary, including formally through the procedure initiated by the European Parliament under Article 7 (1) of the Treaty on European Union (TEU)¹⁷. The 2020 Report on the Rule of Law also makes detailed findings on inadequacies in the independence of the judiciary.

The PA does not include the scope or detail of measures that would ensure compliance with Article 47 of the Charter of Fundamental Rights and ignores the findings of the 2019 and 2020 Country Reports. In view of the above, in our opinion, the draft in its current form therefore does not meet the Charter of Fundamental Rights eligibility criterion set out in Annex III of the CPR Regulation.

¹² Contribution of Hungarian civil society organisations to the European Commission's Rule of Law Report. https://www.helsinki.hu/wp-content/uploads/HUN_NGO_contribution_EC_RoL_Report_2020.pdf

¹³ Recommendations to restore the independence of the judiciary in Hungary. 2019, https://www.helsinki.hu/wp-content/uploads/Hungary_rec_judiciary_AI-HHC_01122019.pdf

Legislative proposals at the invitation of the President of the National Council of the Judiciary, https://www.helsinki.hu/wp-content/uploads/OBT_jogalkotasi_javaslatok_AIHU_MHB_EKINT_20200831.pdf

¹⁴ Courts, prosecutions changes damaging..., <https://hclu.hu/en/articles/courts-prosecution-changes-damaging-1>

¹⁵ See in more detail: Nóra Chronowski - The fundamental transformation of constitutional justice. MTA Legal Working Papers 2014/8., http://jog.tk.mta.hu/uploads/files/mtalwp/2014_08_Chronowski.pdf

¹⁶ Venice Commission Opinion 2013/720 (CDL-AD(2013)012), [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=cdl-ad\(2013\)012-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=cdl-ad(2013)012-e) (ref 87., 91., 96., 113., 126., 144.)

¹⁷ Consolidated version of the Treaty on European Union <https://eur-lex.europa.eu/legal-content/HU/TXT/?uri=CELEX%3A12012M%2FTXT>

II.2.3. Public procurement

Annex III of the CPR also identifies the enabling conditions that ensure **effective monitoring mechanisms for public procurement markets**. It is necessary that Member States compile effective, reliable and exhaustive data and indicators within a single IT system or network of interoperable systems to fulfil the data and reporting obligations.¹⁸

In addition to ensuring user-friendly traceability of public procurement by national authorities, particular attention should be paid to the country-specific specificities that have developed and spread in the Hungarian public procurement system in previous years. We consider this particularly important because public procurement procedures in Hungary are a hotbed of corruption. The proportion of single bidder procedures above EU thresholds is one of the highest in the EU.¹⁹ Public procurement tenders are regularly tailored to pre-selected bidders and competition is often rigged through bid rigging. The selection criteria for public procurement processes are often based on the lowest price for a project or the most experience for a company, rather than the highest quality of implementation. Selection criteria should, on the contrary, give new entrants a chance and avoid favouring the experience of bidders from previous public procurement.²⁰

To eradicate corruption, a broader approach is also needed, whereby press reports, public whistleblowers and citizens' statements on public procurement violations should be taken into account and investigated successfully and thoroughly. In addition, and considering the findings of the 2019 and 2020 Country Reports, urgent action is needed to correct systemic irregularities²¹ in the public procurement control system, in particular, the discriminatory or restrictive selection or award criteria and unequal treatment of bidders.²²

The 2020 Country Report highlights that *“The lack of competition in public procurement remains an important concern, since wider opening to competition is a key solution to face the crisis, revive the small business sector and help the economy to restart.”*

¹⁸ To facilitate reporting obligations under Article 83(3) of Directive 2014/24/EU in line with e-procurement requirements and to facilitate reporting obligations under Article 84 of Directive 2014/24/EU.

¹⁹ European Commission Working Document: Country Report - Hungary 2020 {COM(2020) 150 final}, Brussels, 26.02.2020. SWD(2020) 516 final, Brussels, Belgium. <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1584543810241&uri=CELEX%3A52020SC0516>

²⁰ Assessment of the responses from the questionnaire and conclusions drawn from them. Supplement to the Synthesis Report “Climate Change and the EU Budget 2021-2027”, <https://eeb.org/publications/183/eu-governance/100291/supplement-to-the-climate-change-and-the-eu-budget-report-by-clean-air-action-hungary.pdf>

²¹ “Several Commission audits on public procurement carried out in 2017-2018 identified systemic irregularities, in particular related to discriminatory or restrictive exclusion, selection or award criteria, and unequal treatment of bidders. In 2019, the Commission imposed around €1 billion of financial corrections due to deficiencies in the public procurement related management and control system. This has been the highest financial correction in the EU in the 2014- 2020 period.” Country Report, Hungary 2020, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020SC0516&from=EN>

²² European Commission, European Semester Report - Country Report Hungary, 2019, https://ec.europa.eu/info/sites/info/files/file_import/2019-european-semester-country-report-hungary_en.pdf.

In our opinion, the **PA does not comply** with the CPR and the 2019 and 2020 Country Reports, as it does not contain a commitment on how transparency in public procurement, fairness and wider opening of public procurement competition, mechanisms to correct systemic irregularities in public procurement, prevention of corruption and fraud will be ensured in the framework of projects to be implemented in the programming period 2021-2027.

III. Rule of law

With Regulation 2020/2092 (EU) (the Rule of Law Regulation)²³, new rules on the protection of the EU budget entered into force on 1st January 2021. The Regulation underlines that respect for the rule of law is an essential prerequisite for compliance with the principle of sound financial management as set out in Article 317 of the Treaty on the Functioning of the European Union (TFEU)²⁴. The rule of law regulation therefore introduces a new mechanism to protect the EU budget against financial risks arising from generalised weaknesses in the rule of law in the Member States. These rules reinforce and broaden the EU's existing rules on suspending access to EU funds, reducing or tightening aid to an extent proportionate to the nature, severity and scope of the rule of law failures.

From our understanding, in addition to the procedure applicable under the Rule of Law Regulation, it is essential that the **Partnership Agreement with Hungary should include specific rule of law criteria** in order to ensure the proper safeguarding of the Union's financial interests, given the specific situation currently prevailing in Hungary. Our position is also supported by the fact that the condition under Article 4(1) of the Rule of Law Regulation²⁵ can already be established at this stage, in view of the findings of Hungary's 2021 Rule of Law Report.

On the basis of the above, we consider it appropriate to include the following eligibility criteria in the PA with Hungary, with the proviso that **in order for Hungary to be eligible for any EU funding in the period 2021-2027, it must first (i.e., before signing the Partnership Agreement) fulfil these eligibility criteria.**

²³Regulation (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, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32020R2092>

²⁴ Consolidated version of the Treaty on the Functioning of the European Union, <https://eur-lex.europa.eu/legal-content/HU/TXT/?uri=celex%3A12012E%2FTXT>

²⁵ Rule of Law Regulation, Article 4 (1) „*Appropriate measures shall be taken where it is established in accordance with Article 6 that breaches of the principles of the rule of law in a Member State affect or seriously risk affecting the sound financial management of the Union budget or the protection of the financial interests of the Union in a sufficiently direct way.*”

IV. Detailed proposals on the eligibility conditions

Enabling Conditions	Fulfilment Criteria	Justification
<p>I. Hungary shall set up a legal framework to ensure that the monitoring of the enabling conditions of the PA is continuous and carried out by bodies independent of the government.</p>	<p>The leader of the Monitoring Body shall be nominated by the government and the appointment will have to be approved by the European Commission.</p> <p>When the national monitoring body identifies non-compliance, necessary and immediate measures shall be planned and adopted by the Hungarian government in order to comply with the regarded condition.</p>	<p>It is very important that Hungary continuously monitors the conditions laid down in the PA and takes the necessary steps to avoid irregularities and the freezing of EU funds in case of non-compliance. A continuous, systemic monitoring system can help to avoid shortcomings in the Member State's fulfilment of its obligations and help to take immediate action to avoid more serious financial consequences.</p>
<p>II. Hungary shall strengthen the rule of law.</p>	<p>Institutional regulations shall be revised to ensure the rule of law instead of "rule by law" by especially considering the implementation of the following suggestions, based on several studies</p>	<p>The system of democratic checks and balances is broken in Hungary, the weakening of controls resulted in less transparency and accountability of the government.</p>

	of Hungarian NGOs, ²⁶ the reports of GRECO. ²⁷	
II.1.	The professional and organisational autonomy of public administration bodies/departments shall be guaranteed by revising related regulations, specifically ensuring that the heads of these bodies and departments are independent of any governmental influence. ²⁸	Separation of powers and the clear division of responsibilities in distinction of different branches of government are essential in order to provide checks and balances, to prevent over-centralisation of state power and to restore rule of law in Hungary.

²⁶ Including, but not limited to:

The Corruption Perception Index and the characteristics of corruption in Hungary in 2016, <https://transparency.hu/wp-content/uploads/2017/01/A-Korruptio-Erzekeseles-Index-es-a-korruptio-jellemzoi-Magyarorszagon-2016-ban-1.pdf>

Democratic Backsliding and Economic Performance – ‘Building Unity and Support for Democratic and Free Market Values in Central and Eastern Europe’ – Country Report on Hungary. <https://transparency.hu/wp-content/uploads/2017/05/democratic-backsliding-country-report.pdf>

Joint Submission to the UN Universal Periodic Review 25th Session of the UPR Working Group. <https://transparency.hu/wp-content/uploads/2015/09/Joint-Submission-to-the-UN-Universal-Periodic-Review.pdf>

Martin, József Péter and Miklós Ligeti: The Lobbying Context: Party State Capture and Crony Capitalism, in: Bitonti, A. and P. Harris (eds.): *Lobbying in Europe*. Palgrave Macmillan, 2017; pp. 177-193, https://www.academia.edu/34176541/Chapter_16_Hungary_Lobbying_State_Capture_and_Crony_Capitalism

Ligeti, Miklós: Corruption, in: Jakab, András and György Gajduscek: *State of the Hungarian legal system*. MTA TK JTI, 2016; pp. 727-757, https://transparency.hu/wp-content/uploads/2018/01/transparency_int_jogallam_korruptio_tanulmany_kivonat_angol_nyelven.pdf

Bartha, Attila: Lifting the Lid on Lobbying: National Report of Hungary – Lobbying in an Uncertain Business and Regulatory Environment, <https://transparency.hu/wp-content/uploads/2016/03/Lifting-The-Lid-On-Lobbying-National-Report-of-Hungary.pdf>

Corruption, Economic Performance and the Rule of Law in Hungary – Results of the 2019 Corruption Perceptions Index, Transparency International Hungary <https://transparency.hu/wp-content/uploads/2020/02/Korruptio%20B3-gazdas%C3%A1gi-teljes%C3%ADtm%C3%A9ny-%C3%A9s-jog%C3%A1llamis%C3%A1g-Magyarorsz%C3%A1gon-CPI-2019-EN-1.pdf>

Contributions of Hungarian NGOs to the European Commission’s Rule of Law Report. May, 2020, https://www.helsinki.hu/wp-content/uploads/HUN_NGO_contribution_EC_RoL_Report_2020.pdf

Proposals to reduce corruption in Hungary (Executive Summary), [transparency_int_jogallam_korruptio_tanulmany_kivonat_angol_nyelven_2.pdf](https://transparency.hu/wp-content/uploads/2018/01/Javaslatok-a-korruptio%C3%B3-visszaszor%C3%ADt%C3%A1s%C3%A1ra-Magyarorsz%C3%A1gon.pdf) (Full version in Hungarian: <https://transparency.hu/wp-content/uploads/2018/01/Javaslatok-a-korruptio%C3%B3-visszaszor%C3%ADt%C3%A1s%C3%A1ra-Magyarorsz%C3%A1gon.pdf>)

²⁷ GRECO concludes in its latest report that Hungary has still only implemented satisfactorily or dealt with in a satisfactory manner five of the eighteen recommendations contained in the Fourth Round Evaluation Report. Fourth Evaluation Round – Corruption prevention in respect of members of parliament, judges and prosecutors, Second Interim Compliance Report Hungary (2020GrecoRC4(2020)10) <https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/1680a062e9>

²⁸ Corruption, Economic Performance and the Rule of Law in Hungary, Results of the Corruption Perceptions Index in 2018, Report of the Transparency International Hungary Foundation https://transparency.hu/wp-content/uploads/2019/01/CPI_2018_narrativ_en_20190208.pdf

II.2.	<p>Hungary shall restore the original competence of the Hungarian Constitutional Court²⁹, specifically but not limited to</p> <ul style="list-style-type: none"> • The Constitutional Court's jurisdiction shall be revised and its competence vis-à-vis laws on social contributions, taxes and state revenues shall be reinstated. • Citizens shall be enabled to turn to the Constitutional Court in seek of ex-post annulment of perceivably unconstitutional regulations (<i>actio popularis</i>). 	<p>The restoration of original competences of the Hungarian Constitutional Court will strengthen its institutional role and power, in order to reinstate and protect rule of law in Hungary.</p>
II.3.	<p>Hungary shall revise the election and criteria system for members of the Hungarian Constitutional Court to guarantee total independence of any governmental influence and the protection of the professional autonomy of the Court.³⁰ In the framework of a profound revision of the election / appointment process of Constitutional Court Judges a fair and balanced system shall be introduced to prevent party political influence. Therefore, any solution that empowers Parliamentary parties to unilaterally select and appoint Constitutional Court Judges shall be avoided. Instead, a more open and inclusive approach shall be implemented, where Constitutional Court candidates will publicly apply in the framework of a public application scheme with openly accessible and pre-fixed evaluation criteria, and with a fully transparent evaluation process. The Constitutional Court judges' mandatory retirement age shall be lowered to 70 years, and more stringent conflict of interest requirements shall be introduced to prevent members and employees of political parties, members of government and senior government employees as well as any lawyers who</p>	<p>Without the revision of election and criteria system, the independence of the Hungarian Constitutional Court cannot be guaranteed</p>

²⁹ See in more detail: Chronowski Nóra - Az alkotmánybíráskodás sarkalatos átalakítása. MTA Law Working Papers 2014/8., http://jog.tk.mta.hu/uploads/files/mtalwp/2014_08_Chronowski.pdf

³⁰ Venice Commission Opinion 720/2013. (CDL-AD(2013)012), [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=cdl-ad\(2013\)012-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=cdl-ad(2013)012-e) (ref 87., 91., 96., 113., 126., 144.)

	receive regular remunerations from political parties or from organisations directly or indirectly controlled by political parties from being candidates for Constitutional Court judges.	
II.4.	Hungary shall revise its judicial system , taking into account the findings of <i>“Contribution of Hungarian NGOs to the European Commission Rule of Law Report”</i> ³¹ and the recommendations of Amnesty International Hungary (AI Hungary) and the Hungarian Helsinki Committee (HHC) ³² , as well as Commission’s Rule of Law Report ³³ on Hungary. The role and competence of National Judicial Office and its president shall be revised in order to ensure full professional integrity, independence of judges and courts in Hungary. Administrative (i.e. personnel and financial management) decisions shall not be the means of centralisation and the extension of government influence to the courts. Transparency of the judiciary shall be increased to make the work of the courts more accessible ³⁴ .	The present application system is distorted and for systemic reasons it is not guaranteed that the most qualified persons become judges. The recent election of the new President of the Curia and the related problems are reflecting the level constitutional crisis of the Hungarian judiciary system, the crises of the internal independence of judges and the clear threat to the separation of powers and the protection of fundamental rights in Hungary.
II.5.	The jurisdiction of the Curia to review final court decisions should be reviewed in its entirety. The right of public bodies and government institutions to lodge constitutional complaints with the Constitutional Court should be repealed.	Any proceedings to ensure the uniform application of the law can only be brought if the parties to the original dispute enjoy all the rights they enjoyed in the proceedings to be reopened. The protection of fundamental rights is, by definition, a matter for private individuals, not for public bodies.

³¹ Contributions of Hungarian NGOs to the European Commission’s Rule of Law Report, https://www.helsinki.hu/wp-content/uploads/HUN_NGO_contribution_EC_RoL_Report_2020.pdf

³² Recommendations Aimed at Restoring the Independence of the Judiciary in Hungary. 2019, https://www.helsinki.hu/wp-content/uploads/Hungary_rec_judiciary_AI-HHC_01122019.pdf

Jogalkotási javaslatok az Országos Bírói Tanács elnökének felhívására, https://www.helsinki.hu/wp-content/uploads/OBT_jogalkotasi_javaslatok_AIHU_MHB_EKINT_20200831.pdf

³³ Commission Staff Working Document. 2020 Rule of Law Report Country Chapter on the rule of law situation in Hungary Accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 2020 Rule of Law Report The rule of law situation in the European Union, SWD/2020/316 final, <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1602582109481&uri=CELEX%3A52020SC0316>

³⁴ Courts, prosecutions changes damaging..., <https://hclu.hu/en/articles/courts-prosecution-changes-damaging-1>

<p>II.6.</p>	<p>Hungary shall amend the rules governing the prosecutor's office in Hungary, revising the electoral rules and the scope of the prosecutor general's powers. Hungary shall put into practice the GRECO recommendations on the transfer and reallocation of cases to subordinate prosecutors.³⁵</p> <p>Revise and add appropriate checks and balances to the high level of independence of the Prosecutor General, which is currently reinforced by his strong hierarchical control over all other prosecutors.³⁶</p> <p>The right of the Prosecutor General to appoint and dismiss subordinate prosecutors at will and to employ and dismiss prosecutor ex gratia shall be withdrawn. The right of senior prosecutors to transfer cases and thus the right to separate the prosecutor originally responsible for the case file from the case file shall be repealed.³⁷</p>	<p>Appropriate steps shall be taken to restore the independence of the prosecution service in Hungary. The Prosecutor General has become so politically manipulable that accountability has been completely lost and the level of corruption is unmanageable.</p> <p>GRECO recommends that "the possibility of the Attorney General remaining in office after the expiry of his mandate, with the election of his successor in parliament being blocked by a minority group, should be reviewed".³⁸</p> <p>(This was already criticised by the Venice Commission in 2012 and noted in the 2018 GRECO report, as well as in the latest GRECO report, for its lack of compliance).</p>
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³⁵Council of Europe Group of States against Corruption (GRECO), Fourth round evaluation - Preventing corruption among parliamentarians, judges and prosecutors. Interim Compliance Report - Hungary, GrecoRC4(2018)<https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/1680969483> 23–26. szakasz and Fourth Round Evaluation - Prevention of Corruption of Members of Parliament, Judges and Prosecutors. Second Interim Compliance Report Hungary (2020GrecoRC4(2020)10<https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/1680a062e9> pages 8-9

³⁶CDL-AD(2012)008-e: Opinion on Act CLXIII of 2011 on the Public Prosecutor's Office of Hungary and Act CLXIV of 2011 on the Status of the Prosecutor General, Prosecutors and other Prosecutorial Staff and on the Careers of Prosecutors, 91st Plenary Session of the Venice Commission (Venice, 15-16 June 2012), [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2012\)008-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2012)008-e) (See V. Conclusions 87.)

³⁷ The Commission's Rule of Law Report 2021 states: „Concerns persist as regards some elements of the organisation of the prosecution service. As the 2020 Rule of Law Report noted, the prosecution service is organised in a strictly hierarchical structure. While the independence of the prosecution service is enshrined in law, certain elements of the legal framework led GRECO to issue recommendations to review the rules for appointment of the Prosecutor General in order to safeguard the office from political influence. Whereas most recommendations of GRECO related to the prosecution service have been implemented, some remain unaddressed. This is the case as regards the recommendation to remove the possibility to maintain the Prosecutor General in office after the expiry of his/her mandate. It is also the case as regards GRECO's recommendation that situations in which a superior prosecutor takes over a case from a subordinate prosecutor be guided by strict criteria and that such decisions be justified in writing. GRECO also recommended to enhance accountability and transparency of disciplinary proceedings against prosecutors; GRECO remains concerned that it is still the direct superior prosecutor who decides on the merits of the case, rather than an impartial body. The full implementation of these recommendations would have a positive impact on the anti-corruption framework.”

³⁸Council of Europe Group of States against Corruption (GRECO), Fourth round evaluation - Preventing corruption among parliamentarians, judges and prosecutors. Evaluation Report - Hungary, Greco Eval IV Rep (2014) 10E,

<p>II.7.</p>	<p>Hungary shall participate in the enhanced cooperation on the European Public Prosecutor's Office.</p>	<p>As an independent, and decentralized prosecution office, the European Public Prosecutor's Office can investigate, prosecute and bring to judgment crimes against the EU budget, such as fraud, corruption or serious cross-border VAT fraud.</p>
<p>II.8.</p>	<p>Hungary shall immediately withdraw all discriminatory and unjustified regulations against civil society organisations that has been introduced since 2010.</p>	<p>Such discriminatory measures undermine the legitimacy and operation of NGOs, putting their functionality and important role in society at high risk and also jeopardies citizens by leaving them without help in sectors where governmental support is not available or sufficient. The list of discriminatory measures that should be corrected, are available on a timeline made by the Eötvös Károly Institute, the Hungarian Civil Liberties Union, the Hungarian Helsinki Committee and Transparency International Hungary.³⁹</p>
<p>II.9.</p>	<p>Hungary shall take appropriate measures to make the National Budget transparent. Measures shall be based on the results and recommendations of Open Budget Index 2019, assessing the transparency of the budgeting systems of Hungary in 2019.⁴⁰</p>	<p>Public access to central government budget information should be easily accessible, just as formal opportunities should be made for the public to participate in the national budget process.</p>
<p>III. Hungary shall eliminate institutionalised corruption and</p>	<p>Hungary shall set up an anti-corruption framework, in accordance with the recent reports of GRECO,⁴¹ Transparency International⁴² and the study of</p>	<p>Corruption remains an area of concern. Hungary's CPI (Corruption Perceptions Index) score decreased from 55 points to 44 points between</p>

<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806c6b9e> 177.

³⁹ Timeline of governmental attacks against Hungarian civil society organisations. 17 November 2017, https://www.helsinki.hu/wp-content/uploads/Timeline_of_gov_attacks_against_HU_NGOs_short_17112017.pdf

⁴⁰ Open Budget Survey, 2019, Hungary, <http://kfib.hu/uploads/OBS2019/open-budget-survey-hungary-2019-en.pdf>

⁴¹ Fourth Evaluation Round - Corruption prevention in respect of members of parliament, judges and prosecutors, Second Interim Compliance Report Hungary (2020GrecoRC4(2020)10), <https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/1680a062e9>

⁴² Corruption, Economic Performance and the Rule of Law in Hungary – The results of the 2019 Corruption Perceptions Index, <https://transparency.hu/wp-content/uploads/2020/02/Korrupci%C3%B3-gazdas%C3%A1gi->

strengthen the accountability of public power.	Transparency International and K-Monitor ⁴³ and Commission's Rule of Law Report on Hungary ⁴⁴ :	2012 and 2019, making it the worst performer among the CEE members of the EU in terms of the perception of anti-corruption performance over the past eight years. In the latest Corruption Perceptions Index by Transparency International, the country scores 44/100 and ranks 19 th in the EU and 70 th globally. ⁴⁵ While some high-level cases have been prosecuted, there is a general perception of impunity among the business community. Hungary reports relatively few cases, while OLAF finds much more in Hungary than in other countries. ⁴⁶ Az OLAF-ajánlás alapján alapuló vádemelések aránya Magyarországon 47 %, ami meghaladja az uniós átlagot (az OLAF 2019. évi jelentése, 7. táblázat).
III.1.	Appropriate measures shall be introduced in the <i>Whistle-blower Protection Act</i> in order to protect whistle-blowers from discriminatory measures. Among others, prohibiting the legal prosecution of whistle-blowers is the minimum requirement for efficient whistle-blower protection.	The current regulation does not meet the minimum requirement of effective protection of whistle-blowers. In the absence of specific rules (legal support, protection of family members, etc.), their protection remains a mere declaration.

[teljes% C3% ADtm% C3% A9ny-% C3% A9s-jog% C3% A1llamis% C3% A1g-Magyarorsz% C3% A1gon-CPI-2019-EN-1.pdf](#),

Corruption prevention in respect of members of parliament, judges and prosecutors. Interim Compliance Report, Hungary. Adopted by GRECO at its 81st Plenary Meeting (Strasbourg, 3-7 December 2018), <https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/1680969483? ga=2.95434975.253241133.1564645474-1236409032.1514897104>

⁴³ Op. cit. https://www.helsinki.hu/wp-content/uploads/HUN_NGO_contribution_EC_RoL_Report_2020.pdf (Chapter II)

⁴⁴ Commission Staff Working Document, 2020 Rule of Law Report, Country Chapter on the rule of law situation in Hungary, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52020SC0316>

⁴⁴ https://www.helsinki.hu/wp-content/uploads/HUN_NGO_contribution_EC_RoL_Report_2020.pdf

⁴⁵ Transparency International (2019), Corruption Perceptions Index, <https://www.transparency.org/en/cpi/2019>

⁴⁶ Commission Staff Working Document. Country Report Hungary 2020. Accompanying the document Communication from the Commission to the European Parliament, the European Council, the Council, the European Central Bank and the Eurogroup. 2020 European Semester: Assessment of progress on structural reforms, prevention and correction of macroeconomic imbalances, and results of in-depth reviews under Regulation (EU) No 1176/2011 results of in-depth reviews under Regulation (EU) No 1176/2011, {COM(2020) 150 final}, Brussels, 26.2.2020 SWD(2020) 516 final <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1584543810241&uri=CELEX%3A52020SC0516>

	Hungary shall follow the specific recommendation of Transparency International ⁴⁷ .	
III.2.	Lobbying , as a legitimate activity shall be made transparent ⁴⁸ in respect of all members of Parliament and decision makers of the public sector. Legislation and adequate institutions shall ensure public access to sufficient information of public interest (lobbying reports). At least the eight recommended measures of Transparency International ⁴⁹ shall be implemented.	Regulation of lobbying in Hungary is incomplete, not sufficient to ensure transparency, Hungary also lacks specific regulation as regards the prevention of ‘revolving doors’. ⁵⁰
III.3.	The regulation regarding conflict of interest in the public sector shall be revised, loopholes shall be eliminated and all adequate measures shall be taken in order to prevent the collusion between oligarchs and the Government (such as the Elios-case) as well as the enrichment of cronies, and clientele. ⁵¹	Although regulations related to public sector employees prohibit certain activities and specify incompatibilities as well as define rules on conflict of interests in the public sector, insufficiency has been proven in the past decade, specific rules are unable to prevent the interlacement between the oligarchs and the Government in certain sectors of the economy and, parallel, the enrichment of cronies and the clientele. There are also some explicit loopholes in the legislative framework of conflict of interests. ⁵²

⁴⁷ Op. cit. [transparency_int_jogallam_korrupcio_tanulmany_kivonat_angol_nyelven_2.pdf](#), page 7

⁴⁸ Op.cit., https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/1680969483?_ga=2.95434975.253241133.1564645474-1236409032.1514897104:

Op. cit., https://www.helsinki.hu/wp-content/uploads/HUN_NGO_contribution_EC_RoL_Report_2020.pdf section 20.

⁴⁹ Op. cit. [transparency_int_jogallam_korrupcio_tanulmany_kivonat_angol_nyelven_2.pdf](#) (pg. 8-9) Studies previously prepared on the subject by TI Hungary. See: Martin, József Péter and Miklós Ligeti: The Lobbying Context: Party State Capture and Crony Capitalism, in: Bitonti, A. and P. Harris (eds.): *Lobbying in Europe*, Pelgrave Macmillan; and Bartha, Attila: Lifting the Lid on Lobbying: National Report of Hungary – Lobbying in an Uncertain Business and Regulatory Environment, <https://transparency.hu/wp-content/uploads/2016/03/Lifting-The-Lid-On-Lobbying-National-Report-of-Hungary.pdf>

⁵⁰ Commission Staff Working Document, 2020 Rule of Law Report, Country Chapter on the rule of law situation in Hungary <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1602582109481&uri=CELEX%3A52020SC0316#footnote68>

⁵¹ Op. cit., https://www.helsinki.hu/wp-content/uploads/HUN_NGO_contribution_EC_RoL_Report_2020.pdf, section 21.

⁵² Op. cit., https://www.helsinki.hu/wp-content/uploads/HUN_NGO_contribution_EC_RoL_Report_2020.pdf section 21.

III.4.	It shall be prohibited for all public service employees (among others, ministers and state secretaries) to occupy any leading position in any non-governmental, civil organisation on national and local level.	Deficient independent control mechanisms and tight interconnections between politics and certain civil organisations are conducive to corruption. ⁵³ When serious allegations arise, there is a systematic lack of determined action to investigate and prosecute corruption cases involving high-level officials or their immediate circle. A civil szervezeteknek egyik alapvető feladata, hogy ellenőrizték, számonkérjék a döntéshozókat, politikusokat, és ez nyilvánvalóan nem valósulhat meg, ha a civil szervezetek vezetőségében az ellenőrizendő politikusok ülnek.
III.5.a.	It shall be prohibited for Members of the Parliament to have any function in any other state administrative body or company.	It is the duty of the Parliament to control the government. If members of the Parliament are at the same time ministers, state secretaries and other public servants, then they are controlling themselves which is incompatible with, and undermines, one of Parliament's most important functions.
III.5.b.	It shall be prohibited for members of the parliament holding any remunerated position in any state-owned company and from accepting any gift, other than items of nominal value, from any company, non-profit or for-profit organisation or person.	One of the keys to ensuring the independence of parliamentarians and their impartiality from economic interests is to ensure that there are no links between them and individual companies.
III.5.c.	Members of Parliament will be required to make a full and effective declaration of all their income and remuneration and of the assets and property rights they own or enjoy. The current rules on declarations of assets and interests of MPs and their family members shall be revised to take account of the proposals of NGOs ⁵⁴ . Declarations of assets and financial interests shall be digitalised, easily accessible by the public, and monitored by the National Tax Office in	Declarations of assets and liabilities of MPs and their family members are a fundamental tool for transparency, not only to monitor the year-on-year growth of MEPs' assets (and, if necessary, to investigate it), but also to create a system whereby public office holders are obliged to declare their outside activities, employment, investments, assets, valuable gifts

⁵³ Scheiring Gábor: A társadalom gyarmatosítása
http://nol.hu/velemeney/20120424-a_tarsadalom_gyarmatositasa-1307287

⁵⁴ Assets declaration. Proposals of Transparency International Hungary,
<https://transparency.hu/en/kozszeaktor/vagyonnyilatkozati-rendszer/>

	order to examine compliance with relevant tax declarations of MP's and their relatives; unjustified assets gains shall be monitored and investigated.	and favours which may give rise to a conflict of interest. The current regime of asset declaration does not ensure transparency and adequate control. ⁵⁵
III.5.d.	A summary of the personal income tax of each citizen (income subject to taxation, amount of tax paid per year) shall be available on the website of the National Tax Administration, on individual request. Requests for this information must not be anonymous, and are unlimited for representatives of NGOs and the press, and limited to 10 times a year for everyone else.	Publicity increases transparency, access to tax return data increases accountability and reduces corruption at national level. The Swedish ⁵⁶ and Norwegian ⁵⁷ approach has been shown to increase trust and a sense of responsibility among taxpayers and to create real accountability for politicians. This kind of tax transparency also helps to reduce social inequalities.
III.5.e.	Every citizen of Hungary shall make a full annual declaration of assets and liabilities. The National Tax Office shall examine the declarations on the basis of a risk analysis. The relevant rules will be amended to provide a solid basis for the necessary asset tests	The annual declaration of residents' assets is essential to enable the authorities to take appropriate action against unlawful acquisitions. Since 2016, the system of wealth assessments has been significantly weakened. ⁵⁸
III.6.	Hungary shall significantly improve the availability of information of public interest.	Restrictions on access to information of public interest hinder corruption prevention. The application of fees for accessing public information has a deterrent effect on citizens and NGOs exercising their constitutional right. ⁵⁹

⁵⁵ The uses and misuses of Europe's "strictest" asset declaration system, https://k.blog.hu/2018/10/05/the_uses_and_misuses_of_europe_s_stricteest_asset_declaration_system

Hungarian asset declarations a joke, <https://budapestbeacon.com/hungarian-asset-declarations-a-joke/>

⁵⁶ Openness shapes Swedish society, <https://sweden.se/society/openness-shapes-swedish-society/>

⁵⁷ Norway, the country where you can see everyone's tax returns, <https://www.theguardian.com/money/blog/2016/apr/11/when-it-comes-to-tax-transparency-norway-leads-the-field;>

In Norway, Tax Returns Are A Matter Of Public Record, <https://www.forbes.com/sites/davidnikel/2020/09/04/in-norway-tax-returns-are-a-matter-of-public-record/?sh=23fbc9347931>

⁵⁸ Megszűntek a vagyonosodási vizsgálatok (*The investigations of enrichments ceased*). Magyar Nemzet, 26.02.2017, <https://magyarnemzet.hu/archivum/gazdasag-archivum/megszuntek-a-vagyonosodasi-vizsgalatok-3909631/>

⁵⁹ Commission Staff Working Document. Country Report Hungary 2020. {COM(2020) 150 final}, Brussels, 26.2.2020 SWD(2020) 516 final <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1584543810241&uri=CELEX%3A52020SC0516>

<p>III.7.</p>	<p>Hungary shall withdraw the rules on "nationally priority investments" set out in Act LIII of 2006, to ensure that no ad hoc exemptions can be applied. Moreover, Hungary shall irrevocably abolish the government's right to exempt the Economic Competition Authority (the antitrust authority) from its supervisory duty in certain individual business cases on the grounds of "national strategic importance". Where appropriate, the ECA shall carry out ex post monitoring of business transactions for which it has previously been exempted.</p>	<p>Decisions on ad hoc exemptions granted by the government and the information on the justification for them are not publicly available, transparency is not ensured, while these investments are often linked to oligarchs and family members of government officials.</p>
<p>III.8.</p>	<p>Fiduciary trusteeship regulation shall insure full access to relevant information and that beneficial (true) owners are required to include their trusteeships in their financial statements.</p>	<p>The new Civil Code (Act V of 2013, Chapter XLIII) introduced the legal institution of trusteeship and guardianship in such a way that the trustee manages the funds under his own name, as owner. One of the risks of setting up such a legal institution, given the requirements for asset management set out in the Government Decree, is that Hungarian law allows information to be hidden. As the confidentiality rules are strict in that the trustee is only obliged to provide information to the authorities, it is possible to hide the information of the true owner of the assets and the true owner from the public. The transparency of the trust and trusteeship is also highly questionable in relation to financial statements. When an asset is transferred into a trust, it is treated separately from other assets that are not transferred, so they do not appear in the financial statements. This can easily lead to situations where the trust and trusteeship hides assets that remain in the possession of the previous owner.</p>

and the "Access to information and public documents" section in Contribution of Hungarian NGOs to the European Commission's Rule of Law Report, May, 2020 (https://www.helsinki.hu/wp-content/uploads/HUN_NGO_contribution_EC_RoL_Report_2020.pdf)

<p>III.9.</p>	<p>The recent addition to the definition of public money in the Hungarian Constitution, Article 39 (3)⁶⁰ shall be revised, making sure that definition is covering all forms of public money.</p>	<p>The Hungarian Parliament has adopted an amendment to Article 39 (3) of the Constitution by a new section that seems as a technical financial term but clearly changing the interpretation of public money, radically narrowing the meaning of public money stating that it <i>“is a is the revenue, expenditure and claim of the state.”</i> By introducing such definition, spending of many economic organizations from public funds will disappear from the spectrum of public money, and it is highly questionable how will public access to be provided to that sort of information.</p> <p>The implementation of this concept will require further changes into legislation, but it seems that the government would limit the concept of public money to government and municipal money and exclude e.g., state-owned companies, sport clubs and associations, entities that are often beneficiary of public funds.</p>
<p>IV. Hungary shall take appropriate measures to correct the systemic malfunctioning of public procurement procedures, and prosecute corruption at high level.</p>	<p>The conditions for competition on the procurement market shall be significantly improved, substantially reducing its vulnerability to anticompetitive and corruption practices.</p>	<p>Public procurement procedures in Hungary are highly prone to corruption. The share of single-bidder procedures above the EU threshold is one of the highest in the EU.⁶¹ Procurement calls are regularly tailored to preselected bidders and competition is often faked through bid-rigging.</p>

⁶⁰ The Fundamental Law of Hungary (Constitution), Article 39

(2) “Every organization managing public funds shall publicly account for the management of those funds. Public funds and national assets shall be managed according to the principles of transparency and of corruption-free public life. Data relating to public funds or to national assets shall be considered to be data of public interest.

(3) Public funds shall be the revenues, expenditures and claims of the State.”

https://njt.hu/translation/TheFundamentalLawofHungary_20201223_FIN.pdf

⁶¹ Commission Staff Working Document. Country Report Hungary 2020., {COM(2020) 150 final}, Brussels, 26.2.2020 SWD(2020) 516 final <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1584543810241&uri=CELEX%3A52020SC0516>

IV.1.	Hungary shall improve data accessibility and the availability of comprehensive statistics.	Data accessibility is highly important to ensure transparency of public procurements.
IV.2.	The Arbitration Board of the Public Procurement Authority and the Public Procurement Authority, as well as any other competent authority shall be obliged by the respective regulations to regularly screen public and press information to establish if any fact or indication relating to an infringement surfaced. Such screenings shall be documented in publicly accessible reports that give account on conclusions derived from the screened information and on ex officio processes commenced based on such screenings.	Selection criteria in public procurement processes have been often based on the cheapest price for a project or the longest time experience of a company, and not the best quality of implementation. Selection criteria shall give a chance to newer actors and avoid preferring bidders experience that was gained from previous procurements. ⁶²
IV.3.	Systemic irregularities of the public procurement control system shall be corrected, in particular related to discriminatory or restrictive selection or award criteria, and unequal treatment of bidders. ⁶³	The selection criteria for public procurement processes are often based on the lowest price for a project or the most experience for a company, rather than the highest quality of implementation. The selection criteria shall give new entrants a chance and avoid favouring the experience of bidders from previous procurements. ⁶⁴
IV.4.	Competition level in public procurements in Hungary shall be increased, the ratio of the so-called single-bidder procurement procedures in Hungary shall converge to the EU average. ⁶⁵ The use of the negotiated procedure without prior call for competition shall be reviewed. ⁶⁶	Procurement calls are regularly tailored to preselected bidders and competition is often faked through bid-rigging. The European Semester Report formulated similar concerns, stating that obstacles of competition are related to systemic irregularities in the tendering processes, in particular related to inadequate

⁶² Supplement... Op.cit., <https://eeb.org/publications/183/eu-governance/100291/supplement-to-the-climate-change-and-the-eu-budget-report-by-clean-air-action-hungary.pdf>

⁶³ Ibid.

⁶⁴ Európai Bizottság, Európai Szemeszter Jelentés - Országjelentés Magyarország, 2019, https://ec.europa.eu/info/sites/info/files/file_import/2019-european-semester-country-report-hungary_en.pdf

⁶⁵ Corruption, Economic Performance and the Rule of Law in Hungary, Results of the Corruption Perceptions Index in 2018, Report of the Transparency International Hungary Foundation (pg.18) https://transparency.hu/wp-content/uploads/2019/01/CPI_2018_narrativ_en_20190208.pdf

⁶⁶ Op.cit. https://www.helsinki.hu/wp-content/uploads/HUN_NGO_contribution_EC_RoL_Report_2020.pdf (pg. 27)

		selection and award criteria and unequal treatment of tenderers. ⁶⁷
IV.5.	Steps shall be taken to correct systemic irregularities due to weaknesses in the management and control system of public procurement procedures identified in the European Commission's public procurement audit 2017-2018.	A number of European Commission public procurement audits carried out in 2017-2018 revealed systemic irregularities, in particular discriminatory or restrictive selection or award criteria and unequal treatment of bidders. In 2019, the European Commission imposed financial corrections of around €1 billion for weaknesses in Hungary's public procurement management and control system. This was the largest financial correction in the EU for the period 2014-2020. ⁶⁸
IV.6.	A general review of the Public Procurement Act shall be carried out. The amendment which inter alia lifted the requirement that churches must also implement public procurement processes when using public funds shall be repealed. ⁶⁹	Sections of the Public Procurement Act that can aggravate the risk of corruption in procurement procedures and changes that are likely to be in violation of EU law in more than one respect shall be revised.
IV.7.	Digital transformation of public procurement supporting transparency shall be further developed for new functionalities, in particular, a functionality allowing bulk export for contract award notices shall be implemented.	Improving data accessibility and the availability of comprehensive statistics will increase transparency.
V. Hungary shall thoroughly change the media regulation to restore the freedom of press in Hungary.	Hungary shall take specific regulatory action to restore the freedom of press , taking into account the recommendation of independent organisations such as Transparency International, the Mérték Media Monitor Company (Mérték Mediaelemző Műhely) and the	The restoration of the independence and autonomy of the media authority and public media from the government is essential to create a diverse media environment and ensure press freedom.

⁶⁷ European Commission, European Semester Report – Country Report Hungary, 2019, https://ec.europa.eu/info/sites/info/files/file_import/2019-european-semester-country-report-hungary_en.pdf

⁶⁸ Country Report Hungary 2020. Op. cit-

⁶⁹ According to the established jurisprudence of the European Court of Justice (see for instance Case No. C-74/16 <https://www.jstor.org/stable/26694187>), with the exception of purely religious activities, the operations of churches are also considered to be economic activities and therefore are also covered by the EU rules concerning public procurement, competition, state aid and other laws.

	Independent Media Centre (Független Médiaközpont). ⁷⁰	
V.1.	A comprehensive review of current media legislation shall be implemented concerning ownerships rules to eliminate (possible) governmental influence.	The transparency and competitive neutrality of media ownership should be fully guaranteed, otherwise media pluralism and freedom of speech stays at high risk.
V.2.	Self-regulating organisations and an ombudsman-like institution shall be introduced to monitor the implementation of rules. The heads of these organisations will be appointed by the Hungarian Parliament with 75% majority. The Media Council shall be reformed in a way to make it more inclusive and to ensure that all Parliamentary parties have proportionate representation in the council. To avoid potential abuse by a future dominant party in Parliament, crucial decisions shall be made by a 75 % majority of council members.	The independence and effectiveness of the Media Council has not been ensured during recent years.
V.3.	Conditions for creating a diverse media space shall be ensured. ⁷¹	Media concentration via the creation of the Central European Press and Media Foundation (KESMA) conglomerate substantially reduced media pluralism. "Independent media outlets face systematic obstruction and intimidation, while a trend of economic takeover of such over the media outlets raises additional concern." ⁷²
V.4.	Public advertisement in the media shall be strictly based on the number and sphere of interest of the readers.	Significant amounts of state advertising have been channelled to pro-government outlets have permitted the Government to exert indirect political influence while independent media have received

⁷⁰ Újragondolt nyilvánosság – Médiaszabályozási koncepció. Mérték Médiaelemző Műhely, 2014. február 25., <https://mertek.eu/2014/02/25/ujragondolt-nyilvanossag-mediaszabalyozasi-koncepcio/>

⁷¹ Corruption, Economic Performance and the Rule of Law in Hungary – Results of the Corruption Perceptions Index in 2018, https://transparency.hu/wp-content/uploads/2019/01/CPI_2018_narrativ_en_20190208.pdf

⁷² Rule of Law Report 2021, Hungary, <https://eur-lex.europa.eu/legal-content/EN-HU/TXT/?from=EN&uri=CELEX%3A52020SC0316>

		only an insignificant amount of state advertisement. ⁷³
VI. Hungary shall restore freedom of information .	Freedom of information shall be restored , all legal restrictions which make the access to information of public interest difficult or impossible shall be lifted, with very few, well defined exceptions. In order to increase accessibility of information of public interest, the minimum requirements for the freedom of information devised jointly by Átlátszó.hu, K-Monitor, the Hungarian Civil Liberties Union [Társaság a Szabadságjogokért] and Transparency International Hungary ⁷⁴ shall be implemented.	In order to ensure accountability of the government and transparency of the national budget, it is key to restore the freedom of information that has been severely impaired in Hungary in the recent years.
VII. Hungary shall ensure fair competition and regulatory predictability.	Hungary shall take effective measures to ensure that EU funding shall not discourage competition and distort the markets. Discretionary funding to companies shall be reduced by 75% (not including public service companies, e.g, public transport companies). The remaining 25% shall be used primarily to support R&D and innovation. This requirement does not concern public procurement.	EU funds are often distributed to companies in a way that seriously distorts the market in an undesirable way. Many companies make an enormous effort to receive as much EU money as possible in order to gain a competitive advantage, instead of improving their products or services. All this has had a very negative effect on business; among others, it makes businesses unpredictable, if competitors might receive public money. When only public money is at stake, businesses often do not evaluate properly risks. The private sector has been closely following the agenda of the operational programmes and not the market needs. This put them on life-support provided by EU funds which

⁷³ State advertising spending in Hungary – an unlawful form of state aid

<https://mertek.atlatszo.hu/state-advertising-spending-in-hungary-an-unlawful-form-of-state-aid/>

Grafikonokon és diagramokon mutatjuk, hogyan alakult át a magyar média az elmúlt tíz évben

<https://atlatszo.hu/2020/08/07/grafikonokon-es-diagramokon-mutatjuk-hogyan-alakult-at-a-magyar-media-az-elmult-tiz-evben/>

This is how Fidesz reintroduced one-party rule over the media system in Hungary

<https://english.atlatszo.hu/2019/11/11/this-is-how-fidesz-reintroduced-one-party-rule-over-the-media-system-in-hungary/>

⁷⁴ Minimum of the freedom of information, <https://transparency.hu/wp-content/uploads/2015/10/A-civil-inform%C3%A1ci%C3%B3szabads%C3%A1g-minimumk%C3%B6vetelm%C3%A9nyei.pdf>

		<p>means that they are not competitive on the market.</p> <p>Lobbying interests have pushed for specific selection criteria on project calls, making it easier only for them to get funding. “The room created through lower spending on human capital and social benefits has been allocated to improve the state involvement in the economy and on the category of ‘sport, culture and religion’. Hungary spends the most on economic affairs in the EU and this spending increased by 1.6% of GDP in the last decade. This reflects the increased state involvement in the economy and includes, among others, investment grants for businesses, which amounted to 1.7% of GDP in 2016-2018, against an EU average of 0.6% of GDP.”⁷⁵</p>
<p>VII. Hungary shall require the adoption of robust anti-corruption rules and institutional system by local governments.</p>	<p>Hungary shall accept that EU funding can be provided only to those local governments which have robust anti-corruption regulation and corresponding institutional system.</p>	<p>Local governments are one of the main recipients of EU funding. However, the use of EU money at that level is also often riddled by corruption. Several civil society organisations have already made detailed proposals for anti-corruption regulation at local level. These proposals should be transposed into practice.⁷⁶</p>
<p>IX. Hungary shall accept that misused EU money will be lost for Hungary.</p>	<p>If EU money is misused, and the government has to repay it, then the same government should not receive it even for other purposes.</p>	<p>If there is a concrete case where OLAF finds an irregular use of EU money, OLAF has the right to recommend to the Commission that the Commission make the national government repay the sum concerned. However, even if this</p>

⁷⁵ Commission Staff Working Document. Country Report Hungary 2020. Accompanying the Document Communication from the Commission to the European Parliament, the European Council, the Council, the European Central Bank and the Eurogroup. 2020 European Semester: Assessment of progress on structural reforms, prevention and correction of macroeconomic imbalances, and results of in-depth reviews under Regulation (EU) No 1176/2011 results of in-depth reviews under Regulation (EU) No 1176/2011, {COM(2020) 150 final}, Brussels, 26.2.2020 SWD(2020) 516 final, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020SC0516&from=EN>

⁷⁶ Ez a minimum! az önkormányzatokban, <http://ezaminimum.hu/> Átláthatósági Mintaszabályzat települési önkormányzatok számára. Transparency International Magyarország, K-Monitor, Átlátszó.hu, <https://transparency.hu/wp-content/uploads/2019/12/%C3%96nkorm%C3%A1nyzati-%C3%A1tl%C3%A1that%C3%B3s%C3%A1gi-mintarendelet.pdf>

Mit kívánnak a magyar civilek. Legyen vége a korrupciónak! <http://stopkorrupcio.hu/>

		takes place, it will not affect the further behaviour of the national government concerned, because it has the right to use the repaid sum again for other projects. As far as the culprits are concerned, on many occasions none of them are charged with a crime or misdemeanour, so they will live happily ever after with the stolen EU money.
X. Political discrimination shall be abolished.	Hungary shall eliminate political discrimination in all areas, especially (but not exclusively) in the media, local government, civil society organisations, and employment.	Although EU and Hungarian law and other international treaties strictly prohibit discrimination on political grounds, since 2010 the Hungarian government has regularly discriminated severely against those who do not necessarily share its views. ⁷⁷

⁷⁷ See, for example:

Political discrimination in Hungary. Policy Solutions, 2017,
https://www.policysolutions.hu/userfiles/elemzes/265/political_discrimination_in_hungary.pdf

Igazságos, pártfüggetlen finanszírozást a településeknek!
<https://szabad.ahang.hu/petitions/igazsagos-partfuggetlen-finanszirozast-a-telepuleseknek>

(In English on the topic:)

https://kelleszegyesulet.hu/site/assets/files/1099/press_release_kellesz_22sept2021.pdf

Nem tartották be az Orbán-szabályt, elbukták a gyáraikat,
<https://444.hu/2021/07/13/nem-tartottak-be-az-orban-szabalyt-elbuktak-a-gyaraikat>

A járvány alatt elintézték, hogy más ne maradjon a pályán
https://www.youtube.com/watch?v=e6B6_BNBRj0

Short video about the the ruining of the whole life's work of Professor József Ángyán:
<https://www.youtube.com/watch?v=CGRQjRWPbIs>

A Norvég Alap politikailag „elfogult”, de a fideszes szervezeteknek állami alapból osztott 4 milliárd rendben van
<https://merce.hu/2021/08/11/a-norveg-alap-politikailag-elfogult-de-a-fideszes-szervezeteknek-allami-alapbol-osztott-4-milliard-rendben-van/>

Organizations run by Fidesz politicians win Hungarian NGO grants set up to replace Norway NGO Grants,
<https://english.atlatszo.hu/2021/08/11/organizations-run-by-fidesz-politicians-win-hungarian-ngo-grants-set-up-to-replace-norway-ngo-grants/>

PA's Cabinet Office finances government organized NGO through secretive foundation,
<https://english.atlatszo.hu/2021/03/12/PAs-cabinet-office-finances-government-organized-ngo-through-secretive-foundation/>

State-owned lottery company gives €219,000 to NGO favored by the government,
<https://english.atlatszo.hu/2019/03/27/state-owned-lottery-company-gives-e219000-to-ngo-favored-by-the-government/>

State-owned Hungarian energy group gave €1,7 million to NGO favored by Orbán to 'improve public thinking'
<https://english.atlatszo.hu/2018/05/20/state-owned-hungarian-energy-group-gave-e17-million-to-ngo-favored-by-orban-to-improve-public-thinking/>

V. Opinion on the Implementation Operational Programme Plus

In order to ensure the regular, effective and efficient use of EU funds, Hungary must ensure implementation (management, monitoring, control, evaluation and information provision) rules and institutional functioning in accordance with EU standards.

Based on the principle of partnership, the implementation of the use of the EU Funds should be based on a multi-level and layered approach, involving civil society and other economic and social partners, as well as research organisations and universities where appropriate⁷⁸, but this principle is absent in Hungary today.

The draft text of the Implementation Operational Program Plus (IOP Plus) aims to ensure the involvement of the above-mentioned actors by providing for the possibility of social debate and interactive consultation in the context of the partnership, which technically means a one-way communication and lacks any legal guarantee that the social partners will be involved in a meaningful way, given that the government is under no obligation to take into account and examine the proposals made by them in the social consultation. In practice, these “consultations” are just empty, formal props. The remedy for this shortcoming could be to ensure legal guarantees of partnership, to ensure that civil, social, economic and citizens’ comments are properly investigated and taken into account, and to ensure that the government’s commitment is enshrined in the PA.

In addition, based on the experience of the previous programming period, it is proposed to include the following implementation aspects in the provisions of the Implementation Operational Programme Plus.

<p>I. Hungary shall take appropriate measures to make the management of EU Funds transparent, professional autonomy of the management bodies and eliminate any corruption related to the</p>	<p>Hungary shall ensure the separation of powers amongst organizations responsible for allocating, controlling, monitoring, auditing EU funds and implementing entities. Hungary shall set up legal guarantees of independence to avoid any conflict of interests at national level. The separation of powers shall be maintained and monitored for the entire MFF.</p>	<p>The utilisation of EU funds in Hungary poses several additional systemic corruption risks. State institutions are unable to guard against these risks. Hungary has so far failed to ensure that the use of funds is strictly controlled and that EU funds are used in a transparent, accountable and efficient way.</p>
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Itt a civil támogatások listája: a kormány mellett demonstrálni menő

<https://atlatzso.hu/2012/10/22/itt-a-civil-tamogatások-listaja-a-kormány-mellett-demonstrálni-menő/>

⁷⁸ Regulation (EU) 2021/1060 of The European Parliament and of the Council of 24 June 2021, laying down common provisions on the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund, the Just Transition Fund and the European Maritime, Fisheries and Aquaculture Fund and financial rules for those and for the Asylum, Migration and Integration Fund, the Internal Security Fund and the Instrument for Financial Support for Border Management and Visa Policy (<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32021R1060>), (12);(14)

management of EU Funds.		
I.1.	Hungary shall ensure that by applying appropriate means, national bodies carrying out the monitoring and auditing of EU funds are independent and free of any influence of entities making decisions on the allocation of EU Funds. The professional autonomy and independence of these bodies shall be guaranteed. Entities deciding about the beneficiaries of EU funds and controlling the use of funds and implementation of projects shall not be subordinated to the same managing authority.	The separation of power is crucial to ensure transparency and accountability.
I.2.	Hungary shall re-introduce a development office , as an EU managing authority, solely based on professional work. The top leaders of this office shall be appointed by the Hungarian Parliament with a 75% majority.	Institutional independence combined with sufficient regulation on conflicts of interest can substantially reduce the risk of corruption.
I.3.	For the entire time of the MMF, an appropriate, effective monitoring framework shall be established to ensure test of key attributes .	Effective monitoring framework is essential for reducing the risk of corruption, achieving sufficient program periods by correcting irregularities.
I.4.	Appropriate measures shall be taken by Hungary to guarantee effective institutional independence by setting up an independent body to control and monitor public procurement procedures related to implementing EU funds . ⁷⁹	There are many examples showing that the institutional guarantees of effective independence are strongly questionable on both the organisational and personal levels.

Budapest, 30 October 2021

⁷⁹ Corruption, Economic Performance and the Rule of Law in Hungary, Results of the Corruption Perceptions Index in 2018, Report of the Transparency International Hungary Foundation (pg.17-21) ; https://transparency.hu/wp-content/uploads/2018/01/transparency_int_jogallam_korrupcio_tanulmany_kivonat_angol_nyelven.pdf

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