

## **The 7.5 billion Euro question: Did the Hungarian government implement the necessary reforms to avoid rule of law sanctions?**

*17 November 2022*

For more than a decade, the Hungarian government under Prime Minister Viktor Orban has systematically undermined democracy, the rule of law and fundamental rights. It has cracked down on the independence of judiciary, media freedom and the rights of minorities. This led the EU Parliament to determine in September 2022 that Hungary is no longer a functioning democracy.

When the Rule of Law Conditionality procedure was initiated against the Hungarian government at the end of April, the Commission chose not to make use of the full scope of this instrument. The Commission decided not to address the rule of law shortcomings with this rule of law conditionality procedure. Instead, the 17 measures agreed between the Commission and the Hungarian government focus exclusively on public procurement and the fight against corruption. None of the measures is aimed at effectively restoring the independence of the judiciary or the public prosecution.

We as European Parliament's rule of law negotiators from EPP, S&D, Renew and the Greens/EFA groups provide our assessment of the 17 measures below. Our conclusion: The remedial measures do not seem to be adequate to remedy the limited set of deficiencies that the Commission chose to address in the conditionality procedure. Even their full implementation would not erase breaches of the rule of law affecting or seriously risking to affect the sound financial management of the EU budget in Hungary. Even if all 17 remedial measures were implemented by November 19, many need a longer term monitoring to be effective, as the Commission itself indicates. Therefore, we expect the Commission to ardently keep monitoring the implementation of the 17 measures and to duly inform the European Parliament and Council.



































Given our assessment we expect the Commission to maintain that the risk is still there in its assessment. We further expect the Commission to maintain the need for remedial measures in a way that clears the way for the Council to approve by qualified majority the Commission proposal of September 18 for a Council implementing decision on measures for the protection of the Union budget against breaches of the principles of the rule of law in Hungary.

You can find our assessment on the following pages.

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### Overview

| Measure                                    | Adequacy <sup>1</sup>   | Implementation <sup>2</sup>   |
|--|---|---|
| 1) Integrity Authority                     |    |    |
| 2) Anti-Corruption Taskforce               |    |    |
| 3) Strengthening anti-corruption framework |    |    |
| 4) Public Interest Management Foundations  |    |    |
| 5) Review of prosecutorial decisions       |    |    |
| 6) Strengthened audit & control mechanisms |    |    |
| 7) Single bidder tenders (EU funds)        |    |    |
| 8) Single bidder tenders (national funds)  |  |  |
| 9) Single bid reporting tool               |  |  |
| 10) Electronic Public Procurement System   |  |  |
| 11) Performance measurement framework      |  |  |
| 12) Action Plan on public procurement      |  |  |
| 13) Training on public procurement         |  |  |
| 14) Support scheme for SMEs                |  |  |
| 15) Extended use of ARACHNE tool           |  |  |
| 16) Strengthening cooperation with OLAF    |  |  |
| 17) Freedom of information framework       |  |  |

<sup>1</sup> Adequacy: Is the measure adequate to remedy the identified deficiency?

<sup>2</sup> Implementation: Is the measure to date formally fully implemented?

## Detailed assessment

**Colour code:** adequate/fully implemented partly adequate/implemented/no info to assess  
inadequate/not (yet) implemented

|   | <b>Adequacy of measure</b>  | <b>Formal implementation of measure</b>  |
|---|---|--|
| <b>1) Integrity Authority</b>                         | It has weak powers which it can exert only in cooperation with politically controlled prosecutor and Appeals Courts.  | President and Vice-Presidents were appointed. It has not yet taken up its activities (due to be “set up and running” by 19 Nov).   |
| <b>2) Anti-Corruption Taskforce</b>                   | The Taskforce’s responsibilities are unclear, its outputs are not legally binding. Depending on who will be appointed on the NGO side, the government side could dominate the outcomes of the Taskforce.  | The law setting up the Taskforce passed. But no call for appointment of NGO members published yet, thus no nominations before 19 Nov.  |
| <b>3) Strengthening the anti-corruption framework</b> | <p>1) Introduction of anti-corruption strategies: Adoption of a strategy in itself does not reduce corruption.</p> <p>2) Reform of asset declaration system: effectively re-establishes the “old” rules (criticised by GRECO for years) which prevailed before they were further watered down by the government in July 2022. Countless loopholes persist, e.g. new rules will extend only to family living in same household as statement-maker (meaning Orban’s father, daughter, son-in-law, etc. excluded).</p> | <p>1) Anti-fraud and anti-corruption strategies were adopted for the 2021-27 period.</p> <p>2) The draft legislation on asset declarations entered into force.</p> <p>BUT: All actions of the National Anti-Corruption Strategy for the period 2020-2022 to be fully implemented by 30 June 2023. → No assessment possible until 19 Nov.</p> |
| <b>4) Public Interest Management Foundations</b>      | Positive that foundations from now on clearly fall under obligation to carry out public procurements. But main issue is conflicts of interests: New rules rely on self-declarations, only work on case-by-case basis, do  | The amending Act entered into force.   |

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|---|---|--|
|   | not remove Ministers, MPs and other government actors from foundations' boards and fail to introduce an independent body able to monitor conflicts of interests.  |  |
| <b>5) Review of prosecutorial decisions</b>           | Judicial review process of prosecutorial decisions unlikely to work in reality due to overly tight deadlines, lack of transparency, and possibly high costs for the private prosecutor. Ultimately, cases end up at politically controlled court. | The new law entered into force.  |
| <b>6) Strengthened audit &amp; control mechanisms</b> | Unclear which concrete measures will be implemented under the promise to "strengthen audit and control measures".   | Establishment of Working Group was due 31 August. Establishment of specific Directorate and adoption of amendments was due 30 September. No information on delivery of this measure publicly available.                                      |
| <b>7) Single bidder tenders (EU funds)</b>            | Fake bids can easily give the impression that the share of single-bidder tenders has decreased, as has happened in the past.  | Final assessment on whether share of public procurement tender procedures financed from Union funds and closed in the year of 2022 with single bids were reduced to below 15% is due 31 December 2022 → No assessment possible until 19 Nov. |
| <b>8) Single bidder tenders (national funds)</b>      | See point 7.  | Final assessment on whether share of public procurement tender procedures financed from national funds and closed in a calendar year was reduced to below 15% is due by 31 December 2024. → No assessment possible until 19 Nov.             |
| <b>9) Single bid reporting tool</b>                   | Lack of public information on the tool makes it impossible to assess.   | Tool to be fully functional and operational was due 30 September. No information on delivery of this measure publicly available.   |

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|---|--|---|
| <b>10) Electronic Public Procurement System</b> | Tool is essentially duplication of existing tool which has been criticised for its difficulty to be searched and lack of relevant data.  | The law was adopted. But law stipulates that data only has to be entered into the system by 28 February 2023 → No assessment possible until 19 Nov. |
| <b>11) Performance measurement framework</b>    | No criticism.  | Development of framework by 30 September, but to be operational only by 31 December 2022 → No assessment possible until 19 Nov.                     |
| <b>12) Action Plan on public procurement</b>    | Potentially useful for reducing share of single-bidder tenders, but action plan itself does not improve situation.   | The plan is to be adopted by 31 March 2023 → No assessment possible until 19 Nov.   |
| <b>13) Training on public procurement</b>       | Unclear if training will improve competition in public procurement or reduce corruption.   | To be implemented progressively until June 2026. → No assessment possible until 19 Nov.   |
| <b>14) Support scheme for SMEs</b>              | Potentially useful for reducing share of single-bidder tenders - if implemented correctly. Danger that this will be used to support SMEs linked to Orban.  | To be implemented progressively until July 2026. → No assessment possible until 19 Nov.   |
| <b>15) Extended use of ARACHNE tool</b>         | Data will be entered into EU's risk scoring tool ARACHNE by national authorities - no control over data accuracy.  | The respective government decree was adopted. No information publicly available on whether tool is already being used in practice.                  |
| <b>16) Strengthening cooperation with OLAF</b>  | The OLAF Coordination Office established in 2004 essentially has the same tasks that are now being proposed for the National Tax and Customs Administration (NÁV). Hungarian authorities can continue not to follow up on specific OLAF cases. | The relevant Acts were passed.  |
| <b>17) Freedom of information framework</b>     | No criticism.  | The legislative Act passed Parliament but has not yet been signed into law (as of 14 Nov 22).   |

**For further details, please consult the following documents:**

European Commission: Proposal for a COUNCIL IMPLEMENTING DECISION on measures for the protection of the Union budget against breaches of the principles of the rule of law in Hungary, 2022/09/18

[https://ec.europa.eu/info/sites/default/files/about\\_the\\_european\\_commission/eu\\_budget/com\\_2022\\_485\\_1\\_en\\_act.pdf](https://ec.europa.eu/info/sites/default/files/about_the_european_commission/eu_budget/com_2022_485_1_en_act.pdf)

European Commission: ANNEXES to the Explanatory Memorandum of the Commission proposal for a Council implementing decision, 2022/09/18

[https://ec.europa.eu/info/sites/default/files/about\\_the\\_european\\_commission/eu\\_budget/com\\_2022\\_485\\_1\\_en\\_annex.pdf](https://ec.europa.eu/info/sites/default/files/about_the_european_commission/eu_budget/com_2022_485_1_en_annex.pdf)

Transparency International Hungary; K-Monitor; Hungarian Helsinki Committee: *HALF-HEARTED PROMISES, DISAPPOINTING DELIVERY An Assessment of the Hungarian Government's New Measures to Protect the EU Budget and Related Recommendations*, 2022/10/07

<https://helsinki.hu/en/wp-content/uploads/sites/2/2022/10/Assessment-of-measures-to-protect-EU-budget.pdf>

Mészáros, Gábor; Scheppele, Kim Lane: *How NOT to Be an Independent Agency: The Hungarian Integrity Authority*, *VerfBlog*, 2022/10/06,

<https://verfassungsblog.de/how-not-to-be-an-independent-agency/>, DOI: [10.17176/20221006-110412-0](https://doi.org/10.17176/20221006-110412-0).

Scheppele, Kim Lane; Mészáros, Gábor: *Corrupting the Anti-Corruption Program: Hungary's Offering to the EU, Part II*, *VerfBlog*, 2022/10/12,

<https://verfassungsblog.de/corrupting-the-anti-corruption-program/>, DOI: [10.17176/20221012-230302-0](https://doi.org/10.17176/20221012-230302-0).

Scheppele, Kim Lane, Mészáros, Gábor; Bárd, Petra: *Useless and Maybe Unconstitutional: Hungary's Proposed Judicial Review of the Prosecutorial Decisions*, *VerfBlog*, 2022/10/26,

<https://verfassungsblog.de/useless-and-maybe-unconstitutional/>, DOI: [10.17176/20221026-110341-0](https://doi.org/10.17176/20221026-110341-0).

Ésik, Sándor: *Hungary's Shambolic Anticorruption Proposals: A Practitioner's View*, *VerfBlog*, 2022/10/31,

<https://verfassungsblog.de/hungarys-shambolic-anticorruption-proposals/>, DOI: [10.17176/20221031-220238-0](https://doi.org/10.17176/20221031-220238-0).