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<Commission>{AFCO}Committee on Constitutional Affairs</Commission>

<RefProc>2018/0902R</RefProc><RefTypeProc>(NLE)</RefTypeProc>

<Date>{19/05/2022}19.5.2022</Date>

<TitreType>OPINION</TitreType>

<CommissionResp>of the Committee on Constitutional Affairs</CommissionResp>

<CommissionInt>for the Committee on Civil Liberties, Justice and Home Affairs</CommissionInt>

<Titre>on the proposal for a Council decision determining, pursuant to Article 7(1) of the Treaty on European Union, the existence of a clear risk of a serious breach by Hungary of the values on which the Union is founded</Titre>

<DocRef>(2018/0902R(NLE))</DocRef>

Rapporteur for opinion: <Depute>Włodzimierz Cimoszewicz</Depute>

PA\_Consent\_Interim

SUGGESTIONS

The Committee on Constitutional Affairs calls on the Committee on Civil Liberties, Justice and Home Affairs, as the committee responsible, to incorporate the following suggestions into its report:

1. Expresses deep concern about the deliberate and systematic efforts of the Hungarian Government to undermine the founding values of the Union enshrined in Article 2 TEU, in particular through the removal of the constitutional checks and balances, by the limitation of the independence of the judiciary, by intentional alterations of the national electoral system, by hampering fundamental rights, such as freedom of expression, education and academic freedoms, university autonomy, media pluralism and media independence, and by challenging the right to equal treatment, as well as rights of migrants and asylum seekers; highlights that these trends have substantially worsened since the triggering of Article 7(1) TEU and have been amplified by the COVID-19 crisis;

2. Insists on the need to avoid establishing a de facto hierarchy of EU values; stresses that it is important to ensure that not only the rule of law, but also other Union values, including a wider spectrum of fundamental rights and democracy, are properly assessed;

3. Recalls that the rule of law does not mean rule by law but is underlined by the principle of legitimacy resulting in a transparent, accountable, democratic and pluralistic process of enacting laws; deplores the fact that the constitutional balance in Hungary has continued to be significantly altered by a deliberately broad and instrumental use of cardinal laws and constitutional amendments aiming to entrench the issues which are to be regulated by ordinary legislation, through amendments of constitutional level, with no or limited public consultation, in a very expedient manner and without any effective involvement of the opposition or civil society; highlights that such a trend of locking in issues at the constitutional level is problematic with regard to both the Constitution and ordinary laws, is a threat to the rule of law, is contrary to constitutional traditions and to principles common to Member States and has been a source of open and consistent criticism by the EU, the Council of Europe, the United Nations and the Organization for Security and Co-operation in Europe Office for Democratic Institutions and Human Rights (OSCE/ODIHR); denounces the excessive use of extraordinary powers with the declaration of the state of danger at the outset of the COVID-19 pandemic without limitation and with full discretionary powers granted to the government to extend or terminate it, which included a possibility for the government to set aside any law by a simple executive decree; insists that any such measures should remain necessary and proportionate and with relevant constitutional guarantees for their legislative oversight;

4. Underlines that several recently adopted provisions in fundamental law or in cardinal acts aimed at curbing the operational functioning of civil law institutions such as universities or introduced unnecessary hurdles for making changes needed for an effective administration of elections; insists that, moreover, the Hungarian Government has, without any consultation, pushed for expedient amendments to several ordinary laws which have had a far-reaching negative impact on fundamental rights and the right of equal treatment; insists that the introduction of provisions with regard to elections led in particular to increased obstacles for parties in being able to run in a national list of candidates, the main effect of which is to favour the incumbents[[1]](#footnote-1); highlights that the practice of adopting such laws shortly before the election is contrary to established practice and the recommendations of the Venice Commission in its rule of law checklist; recalls that the OSCE/ODIHR decided to send a full-scale election observation mission to the 2022 Hungarian parliamentary elections because of concerns regarding a general deterioration of conditions for democratic elections, and concerns over the independence of the judiciary and freedom of the media; recalls that the recommendations issued by OSCE/ODIHR following the 2018 parliamentary elections as well as by GRECO, in particular those related to campaign finance, remain largely unaddressed, which negatively affected the transparency and accountability of campaign finances; recalls that new concerns have been raised by the election observation mission on 4 April 2022;

5. Stresses that in its Statement of Preliminary Findings and Preliminary Conclusions[[2]](#footnote-2), the OSCE election observation mission to the 2022 Hungarian parliamentary elections found that while the elections offered voters distinct alternatives and were well run, the process was marred by the pervasive overlapping of government information and ruling coalition messaging that blurred the line between state and party, as well as by media bias and opaque campaign funding;

6. Expresses concern about the steps the Hungarian Government has taken to further limit the independence of the judiciary, in particular by weakening the powers of the National Judicial Council through the modification of appointment procedures, and by increasing the administrative powers of the president of the Supreme Court, which took place entirely without judicial involvement; recalls that the integrity and independence of the judicial system is an essential source of mutual trust in the EU and a lack of such qualities in the judicial system leads to irreparable damage to the EU, as national judges are judges of EU law and guarantee equality between EU citizens through its uniform application; highlights, furthermore, that the Hungarian Government relies increasingly on the Hungarian Constitutional Court to avoid compliance with the judgments of the Court of Justice of the European Union (CJEU), thereby undermining the primacy of EU law;

7. Regrets the lack of proper follow-up to its reasoned proposal calling on the Council to determine, pursuant to Article 7(1) TEU, the existence of a clear risk of a serious breach by Hungary of the values on which the Union is founded; stresses the high thresholds needed for the activation and use of this provision in the Council and the political considerations influencing the procedure; recalls that pursuant to Article 7(1) TEU only a qualified majority of four fifths, under conditions established pursuant to Article 354 TFEU is necessary to determine that there is a clear risk of a serious breach by a Member State of the values referred to in Article 2; notes that the Council’s failure to make effective use of this procedure enables continued divergence from the values enshrined in Article 2 TEU, which has the effect of undermining those values and mutual trust between Member States, as well as the credibility of the EU as a whole; urges the presidency of the Council to take the appropriate steps in order to proceed with the procedure under Article 7(1) TEU; calls on the Commission to make full use of the tools available to address a clear risk of a serious breach by Hungary of the values on which the Union is founded, in particular expedited infringement procedures and applications for interim measures before the Court of Justice;

8. Insists that the Council’s constitutional obligation to organise hearings, enshrined in Article 7(1) TEU, should be implemented in an open, regular and structured manner; regrets that so far this has not been the case and that the Council, citing the COVID-19 pandemic, and the impossibility to hold physical Council meetings, has only organised two hearings under Article 7(1) TEU since December 2019; insists that in all proceedings related to Article 7 TEU, Parliament and the Commission should be treated equally; insists that Parliament should be able to present its reasoned proposal to the Council and to attend Article 7 hearings when it is Parliament that initiated the procedure, respecting the prerogatives of each of the three institutions and the principle of sincere cooperation pursuant to Article 13(2) TEU; reiterates its call on the Council to keep Parliament promptly and fully informed at every stage of the procedure with due regard to Parliament’s role in providing its consent; calls on the Council to systematically provide the Member State concerned with recommendations including deadlines and to oversee their implementation on a regular basis, following the hearings under Article 7(1) TEU; urges the Council to immediately address such recommendations to Hungary; recalls that the Council has the obligation to regularly reassess the situation in the Member State concerned and may lift a determination if it finds that the grounds no longer apply;

9. Takes the view that the latest developments in the ongoing hearings under Article 7(1) TEU once again underline the imminent need for an EU mechanism on democracy, the rule of law and fundamental rights (DRF), as proposed by Parliament, in the form of an interinstitutional agreement, including a coherent, effective and visible EU annual DRF monitoring cycle, which should also take into account procedures under Article 7 TEU and under the Rule of Law Conditionality Regulation; reiterates that the mechanism must complement and reinforce, rather than substitute, the ongoing and future proceedings under Article 7 TEU; calls on the Council and the Commission to enter without delay into negotiations on an interinstitutional agreement under Article 295 TFEU framing such a mechanism;

10. Takes note of the conclusions of the Conference on the Future of Europe, in particular those contained in proposal 25 on ‘Rule of Law, democratic values and European identity’, which include extending the scope of the conditionality mechanism to cover all violations of the rule of law;

11. Strongly believes that the Treaties should be revised in order to improve the efficiency of the Article 7 procedures under both its preventive and corrective arms;

12. Welcomes the judgment of the CJEU in cases C-156/21[[3]](#footnote-3) and C-157/21[[4]](#footnote-4) of 16 February 2022, which confirms the validity of the Rule of Law Conditionality Regulation, as it is based on an appropriate legal basis and is compatible with the procedure laid down in Article 7 TEU; welcomes the decision of Commission President Ursula von der Leyen to launch the Rule of Law Conditionality Mechanism against Hungary; regrets, however, that this decision was taken with significant delay; calls on the Commission to apply it as soon as possible on all the grounds addressed in the letter sent to Hungary by the Commission on 19 November 2021; underlines that application of the Conditionality Regulation is a tool complementary to the Article 7 procedure, is directly applicable in all Member States and has been enforceable since January 2021, and calls on the Commission to undertake all necessary steps for its effective enforcement; points with concern to the recent amendments to laws narrowing the scope of application of public procurement rules in Hungary and leading to reduced scrutiny and increased risk of corruption; points furthermore to a clear lack of cooperation with the European Anti-Fraud Office (OLAF), as well as failures to recover amounts due from economic operators that committed irregularities or fraud;

13. Expresses deep concern about the systemic misuse of public funds from the national and EU budget to the benefit of members of the government and affiliated circles; deplores the extremely high ratio of irregular payments under the European Structural and Investment Funds, including the European Agricultural Fund, in Hungary; notes that in 2019 the Commission imposed on Hungary the highest financial correction in the EU; notes the limited track record of investigations into allegations concerning corruption involving high-level officials; reiterates that the approval of the national plans under the Recovery and Resilience Facility should be made conditional on the fulfilment of all criteria set in the Recovery and Resilience Facility Regulation; expects the Commission to exclude any risks of programmes under cohesion policy contributing to the misuse of EU funds or to breaches of the rule of law before approving the partnership agreements and cohesion policy programmes; calls on the Commission to apply the Common Provisions Regulation and the Financial Regulation more stringently in order to tackle any misuse of EU funds for political motives;

14. Takes note of the recent parliamentary elections in Hungary and insists that the Hungarian Government remains responsible for eliminating the risk of serious breaches of EU values;

15. Calls attention to the impact of the war in Ukraine and the need for immediate responses from the Member States; calls on the Commission to ensure that the circumstances do not lead to a relaxing or delaying of the effective application of instruments for upholding the rule of law in the Union, such as Article 7 TEU and the Rule of Law Conditionality Regulation;

16. Fully condemns the criticism expressed by the Prime Minister of Hungary towards the President of Ukraine and deplores the reinforcement of ties between Hungary and Russia, given the invasion of Ukraine by the latter.

INFORMATION ON ADOPTION IN COMMITTEE ASKED FOR OPINION

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| **Date adopted** | 17.5.2022 |  |  |  |
| **Result of final vote** | +:  –:  0: | 19  7  1 | | |
| **Members present for the final vote** | Gerolf Annemans, Gabriele Bischoff, Damian Boeselager, Włodzimierz Cimoszewicz, Gwendoline Delbos-Corfield, Pascal Durand, Daniel Freund, Charles Goerens, Sandro Gozi, Brice Hortefeux, Laura Huhtasaari, Victor Negrescu, Giuliano Pisapia, Paulo Rangel, Antonio Maria Rinaldi, Domènec Ruiz Devesa, Jacek Saryusz-Wolski, Helmut Scholz, Pedro Silva Pereira, Antonio Tajani, László Trócsányi, Guy Verhofstadt, Loránt Vincze, Rainer Wieland | | | |
| **Substitutes present for the final vote** | Jorge Buxadé Villalba, Seán Kelly, Nikolaj Villumsen | | | |

FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

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| **19** | **+** |
| PPE | Seán Kelly, Paulo Rangel, Antonio Tajani, Rainer Wieland |
| Renew | Pascal Durand, Charles Goerens, Sandro Gozi, Guy Verhofstadt |
| S&D | Gabriele Bischoff, Włodzimierz Cimoszewicz, Victor Negrescu, Giuliano Pisapia, Domènec Ruiz Devesa, Pedro Silva Pereira |
| The Left | Helmut Scholz, Nikolaj Villumsen |
| Verts/ALE | Damian Boeselager, Gwendoline Delbos-Corfield, Daniel Freund |

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| **7** | **-** |
| ECR | Jorge Buxadé Villalba, Jacek Saryusz-Wolski |
| ID | Gerolf Annemans, Laura Huhtasaari, Antonio Maria Rinaldi |
| NI | László Trócsányi |
| PPE | Loránt Vincze |

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| **1** | **0** |
| PPE | Brice Hortefeux |

Key to symbols:

+ : in favour

- : against

0 : abstention

1. [Hungary Joint Opinion on the 2020 Amendments to Electoral Legislation approved by the Council for Democratic Elections at its 72nd meeting (Venice and online, 14 October 2021) and adopted by the Venice Commission at its 128th Plenary Session (Venice and online, 15-16 October 2021), Opinion No 1040/2021, 18 October 2021, paragraph 32](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2021)039-e). [↑](#footnote-ref-1)
2. [International Election Observation Mission, Hungary – Parliamentary Elections and Referendum, 3 April 2022, Statement of Preliminary Findings and Conclusions.](https://www.osce.org/files/f/documents/4/6/515111.pdf) [↑](#footnote-ref-2)
3. *Hungary* v *European Parliament and Council of the European Union*, ECLI:EU:C:2022:97. [↑](#footnote-ref-3)
4. *Republic of Poland* v *European Parliament and Council of the European Union*, ECLI:EU:C:2022:98. [↑](#footnote-ref-4)