DRAFT OPINION

of the Committee on Constitutional Affairs

for the Committee on Civil Liberties, Justice and Home Affairs

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 (2018/0902R(NLE))

Rapporteur for opinion: Włodzimierz Cimoszewicz
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 and by hampering freedom of expression; highlights that these trends have substantially worsened since the triggering of Article 7(1) TEU and have been severely amplified by the COVID-19 crisis;

2. 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, with no or limited public consultation, in a very expedient manner, without any effective involvement of the opposition or civil society; highlights that such a trend is contrary to the rule of law, to constitutional traditions and to principles common to Member States and has been a source of open and consistent criticism by the EU and by the Council of Europe institutions; denounces the excessive use of extraordinary powers with the declaration of the state of danger at the outset of the COVID-19 pandemic;

3. Underlines that several recently adopted provisions in fundamental law or in cardinal acts aimed to curb the operational functioning of civil law institutions such as universities or to increase obstacles for political parties to be able to run a national list of candidates in the parliamentary elections; recalls that the OSCE decided to send a full-scale election observation mission to the 2022 Hungarian parliamentary elections because campaign finance legislation has remained largely unchanged and the latest amendments thereto have not addressed the recommendations of the ODIHR and GRECO;

4. 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, which damages mutual trust in the EU, as national judges are judges of first instance of EU law and guarantee equality between EU citizens; highlights, furthermore, that the Hungarian Government increasingly relies 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;

5. 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; insists that in all proceedings related to Article 7 TEU, Parliament and the Commission should be treated equally; calls on the Council to systematically provide the Member State concerned with recommendations, and to oversee the implementation thereof on a regular basis, following the hearings under Article 7 TEU;
6. Welcomes the judgment of the CJEU in cases C-156/21 and C-157/21 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;

7. Insists that legitimacy of the EU’s action on the rule of law needs to be underpinned by a coherent, effective and visible EU annual rule of law monitoring cycle, which should also integrate procedures under Article 7 TEU and under the Rule of Law Conditionality Regulation; calls on the Council and the Commission to respond without delay to Parliament’s requests to negotiate an interinstitutional agreement under Article 295 TFEU framing such a mechanism;

8. Takes note of the recent parliamentary elections in Hungary and insists that any Hungarian government elected remains responsible for eliminating the risk of serious breaches of EU values.