

**Proposals
for General Enabling Conditions
for the Hungarian Partnership Agreement on the
European structural and investment funds 2021-2027
and the National Recovery and Resilience Plan
for contributing to a climate-neutral EU**

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A Short General Description of the Partnership Agreements on EU Funds

The partnership agreements (PAs) on the European structural and investment funds are strategic documents, containing a plan of each Member State to outline their objectives and investment priorities. As legally binding documents signed by the European Commission and national governments of EU Member States (MS), PAs define the conditions and ways of using EU Funds for the concerned 7-year financial period (the Multiannual Financial Framework, MFF). In regard to the increasing danger of accelerating climate change, the content of the PAs is of utmost importance for the processes aiming to achieve the EU's climate and environmental targets by 2030.

The main principles of the preparation of the PAs are laid down in the so-called Common Provisions Regulation (CPR). The CPR for the next MFF (2021-2027) is still under negotiation between the European Parliament and the European Council, a proposal¹ by the Commission is available. The proposal is aiming to modernise Cohesion Policy by laying down common provisions for the next Multiannual Financial Framework period for seven shared management funds: Cohesion Fund (CF), European Maritime and Fisheries Fund (EMMF), European Regional Development Fund (ERDF), European Social Fund Plus² (ESF+), Asylum and Migration Fund³ (AMIF), Border Management and Visa Instrument⁴ (BMVI), Internal Security Fund (ISF). The concept of the currently available draft legislation is to deliver this 7-year EU funding through a shared management, create commonly set, simplified and consolidated rules while reducing administrative burdens for authorities and beneficiaries.

One of the main objectives of the proposed regulation is to align the programmes of these Funds more closely with EU priorities and increase effectiveness, setting up more meaningful enabling conditions that need to be maintained throughout the implementation period. In the beginning of December 2020, the political agreement⁵ has been reached between the European Parliament and EU Member States

¹ Proposal for a Regulation of the European Parliament and of the Council laying down common provisions on the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund, and the European Maritime and Fisheries Fund and financial rules for those and for the Asylum and Migration Fund, the Internal Security Fund and the Border Management and Visa Instrument. COM (2018) 375 final, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2018%3A375%3AFIN>

² Except the "Employment and Social Innovation" programme and for health issues.

³ Shared management components only.

⁴ The Integrated Border Management Fund is composed of the instrument for border management and visa and the instrument for customs control equipment.

⁵ The main elements of the compromise include: Channelling public investments at national, regional and local level towards a smarter, greener and more social Europe: Enabling conditions to ensure that the investment environment for the EU support is well prepared upfront. Member States must meet these conditions to be able to invest EU funds and make the most of them. An example is the compliance with the EU Charter of Fundamental Rights. The partnership principle, implying close cooperation between European, national, regional and local levels, as an important element at all stages of the implementation of EU funding. Higher flexibility is given for transfers within cohesion policy funds and also between regions, whilst protecting the allocations of the least developed ones. Key EU co-financing rates are set at 85% for less developed regions (whose GDP is less than 75% of the EU-27 average), 60% for transition regions (whose GDP is between 75% and 100% of the EU average) and 40% for more developed regions (GDP over 100% of the EU average). The de-commitment rule is fixed at n+3 also for 2021-2026. At the beginning of each programming period, funding is allocated to each programme. One-seventh of the funding is then committed to the programme each year. The n+3 rule means that these funds must be spent by the end of the third year after their commitment to the programme. The allocation method takes into account GDP per capita, youth unemployment and migration. Nearly 80 simplification measures, such as heavy reporting being replaced by an automatic and more frequent transmission of

in the Council on the Common Provisions Regulation for shared management funds, including for the EU cohesion policy funds. The CPR provides the policy framework necessary to ensure that shared management funds continue to fulfil the Treaty objective of promoting convergence and supporting the least developed parts of the EU. As the main legal basis for cohesion policy, the CPR ensures the means to address the emerging economic and social challenges through higher flexibility in terms of transferring resources and extended capacity to address future crises.

Enabling conditions of PAs

As fundamental legal documents of the implementation of the MMF, the PAs define enabling conditions (that are the replacement of ex-ante conditionalities of the 2014-2020 period) for Member States in regard to their access to EU Funds.

The new CPR proposal of the Commission states the following: *“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. Where those conditions are not fulfilled, expenditure related to operations under the related specific objectives should not be included in payment applications. In order to maintain a favourable investment framework, the continued fulfilment of the enabling conditions should be monitored regularly. 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.”*

According to the CPR proposal, enabling conditions *“are fewer, more focussed on the goals of the fund concerned and – in contrast to the 2014-2020 period – monitored and applied throughout the period. The principle will be strengthened: Member States will not be able to declare expenditure related to specific objectives until the enabling condition is fulfilled. This will ensure that all co-financed operations are in line with the EU policy framework.”*

In accordance with the CPR proposal and other related legislation, the enabling conditions in the Hungarian Partnership Agreement shall be clear, controllable and in full conformity with the EU’s environmental and climate goals and priorities. Compliance with enabling conditions shall be based on SMART indicators: specific, measurable, attainable, realistic and timely. Enabling conditions shall be accompanied by concise and exhaustive set of objective criteria for their assessment.

The CPR proposal states that *“The Commission shall assess the Partnership Agreement and its compliance with this Regulation and with the Fund-specific rules. In its assessment, the Commission shall, in particular, take into account relevant country-specific recommendations.”* Accordingly, the Hungarian Partnership Agreement shall be in full conformity with the Country-Specific Recommendations (CSRs). Considering the concept of the new CPR that administrative burdens will be simplified and that the number of controls and audits will be significantly reduced, it is crucial to set up clear enabling conditions in PAs, especially in the case of Hungary where Country Reports⁶ reveal no progress or limited progress in regard to compliance with the EU acquis.

comprehensive data. Simplified rules will allow for a greater empowerment of local, urban and territorial authorities in the management of EU funds.

⁶ https://ec.europa.eu/info/publications/2020-european-semester-country-reports_en

3. Enabling conditions for the National Recovery and Resilience Plan

“To help repair the economic and social damage caused by the coronavirus pandemic, the European Commission, the European Parliament and EU leaders have agreed on a recovery plan that will lead the way out of the crisis and lay the foundations for a modern and more sustainable Europe.”⁷ The financial basis for implementing this plan will be “the NextGenerationEU initiative, which is a temporary instrument designed to boost the recovery, will be the largest stimulus package ever financed through the EU budget. A total of €1.8 trillion will help rebuild a post-COVID-19 Europe. It will be a greener, more digital and more resilient Europe.”⁸ The Recovery and Resilience Facility (RRF) is the main instrument to allocate money to the Member States under the Next Generation EU Recovery Package. The basic rules of the use of the RRF are laid down in the Regulation (EU) 2021/241.⁹

This means that in addition to the “normal” MFF, there will be an enormous amount of “recovery money” which, together, could be an unprecedented opportunity for the European Union to help address the many challenges we are all facing and fix some persistent inefficiencies. However, unfortunately, there is also an imminent danger that – as it has often happened in the past – much of this money will be used to maintain and promote unsustainable activities. In order to avert such a tragedy, there shall be very strict enabling conditions for the use of the recovery money, and if these conditions are not met by the MS concerned, then funding shall not begin, or it shall be suspended immediately.

According to the Regulation, *“The recovery and resilience plan should be consistent with the relevant country-specific challenges and priorities identified in the context of the European Semester, as well as challenges and priorities identified in the most recent Council recommendation on the economic policy of the euro area for Member States whose currency is the euro. The recovery and resilience plan should also be consistent with the National Reform Programmes, the National Energy and Climate Plans, the just transition plans, the Youth Guarantee implementation plan and the partnership agreements and operational programmes adopted under the Union funds.”¹⁰* As the Hungarian National Recovery and Resilience Plan (NRRP) will probably be adopted before the PA, in order to ensure the consistency, the NRRP, too, shall contain all the enabling conditions which must be fulfilled to receive EU funding.

⁷ https://ec.europa.eu/info/strategy/recovery-plan-europe_en

⁸ Ibid.

⁹ Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 establishing a Recovery and Resilience Facility, https://eur-lex.europa.eu/legal-content/EN/TXT/?toc=OJ:L:2021:057:TOC&uri=uriserv:OJ.L_.2021.057.01.0017.01.ENG

¹⁰ Ibid.

Proposals for Special Requirements of the Hungarian Partnership Agreement for a Successful Climate-friendly EU budget

As Hungary is one of the countries benefiting most from EU support per capita, EU funds could significantly support structural changes in Hungary, contributing to major transformations of the Hungarian economy as well. Therefore, it is even more important to create and facilitate a fair and transparent environment for receiving funds from MFF and the RRF. Also considering the urgent need to take appropriate measures to fight against fraud, corruption and enforcing rule of law on every possible platform and with every possible tool¹¹, we believe that well defined country-specific PA and NRRP enabling conditions are very strong and effective tools at the disposal of the EU to protect the EU's financial interests.

In the Commission's Communication of 3 April 2019, it is stated that, 'Respect for the rule of law is an essential precondition to comply with the principles of sound financial management and to protect the Union's budget.'¹² President von der Leyen clearly pointed out in her speech at the European Council meeting of 17-21 July 2020 that "The European Council has stated a clear commitment to respecting the rule of law and protecting our financial interests" and that is now "utmost importance with even more public money on the table than ever before with Next Generation EU". Accordingly, a new Regulation on the protection of the EU budget¹³ entered into force on 1st January 2020, which introduces a new mechanism to protect the EU budget from financial risks linked to generalised deficiencies regarding the rule of law in the Member States. These rules reinforce and widen the existing rules of the Union to suspend, reduce or restrict access to EU funding in a manner proportionate to the nature, gravity and scope of the rule of law deficiencies.

In our paper, therefore we specify appropriate general enabling conditions for Hungary and provide the necessary references in order to help implementing them. The purpose of these conditions is to create a supportive and transparent environment for the implementation of the MFF and the RRF.

By including these "General enabling conditions" into the Hungarian PA and NRRP, the protection of the EU budget can be achieved by the reinforcement of the rule of law, while corruption can be significantly reduced and accountability and transparency can be ensured.

In our study we identify "General enabling conditions" linked to the general circumstances of a Member State such as institutional environment, anti-corruption framework, rule of law, that are regarded as prerequisites and determined to be fulfilled by Member States **before** receiving any funding from the 2021-2027 MFF and the NextGenerationEU instrument.

The background of this study

Civil society organisations in all EU member states are putting a lot of effort into influencing the preparation of the PAs and NRRPs so that their final version contains all these necessary measures. As part of the project "An MFF for the Climate"¹⁴, supported by the European Climate Initiative

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¹² Further strengthening the Rule of Law within the Union – State of play and possible next steps. Communication from the Commission to the European Parliament, the European Council and the Council, COM(2019) 163 final, Brussels, 3.4.2019, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52019DC0163&from=EN>

¹³ Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32020R2092>

¹⁴ An EU budget to address the climate crisis, <https://eeb.org/work-areas/climate-energy/an-eu-budget-to-address-the-climate-crisis/>

(EUKI) of the German Ministry for Environment, Nature and Nuclear Safety, the European Environmental Bureau (EEB) together with CAN Europe, Green Budget Germany and Clean Air Action Group (Hungary) has been following the MFF negotiations with the aim of building a bridge between EU institutions, governments and civil society. The project also carried out a survey¹⁵ among civil society experts in almost all EU member countries on their opinion about the implementation of the current EU budget (2014-2020) and their proposals for the next one (2021-2027).

Based on the result of this survey and other studies of prominent Hungarian civil society organisations, this document focuses on the content of the Hungarian Partnership Agreement and the Hungarian NRRP, specifically defining enabling conditions that are crucial to comply with the Country-Specific Recommendations,¹⁶ the findings of the most recent Country Report on Hungary¹⁷ and the Commission's Rule of Law Report.¹⁸ In case the Country Report defines *no* or *limited progress* in addressing the recommendations of previous years' country-specific recommendations¹⁹, an appropriate preconditioning of receiving EU funds can facilitate a significant change and development in the critical areas.

General Enabling Conditions of the Hungarian Partnership Agreement and National Recovery and Resilience Plan

Hungary shall fulfil the following “General Enabling Conditions” **to be eligible to receive any EU funding** during the period 2021-2027.

¹⁵ Supplement to the Synthesis Report “Climate Change and the EU Budget 2021-2027” Assessment of the responses from the questionnaire and conclusions drawn from them. Clean Air Action Group, <https://eeb.org/publications/183/eu-governance/100291/supplement-to-the-climate-change-and-the-eu-budget-report-by-clean-air-action-hungary.pdf>

¹⁶ Council Recommendation on the 2020 National Reform Programme of Hungary and delivering a Council opinion on the 2020 Convergence Programme of Hungary, <https://data.consilium.europa.eu/doc/document/ST-8436-2020-REV-1/en/pdf>

¹⁷ 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, SWD/2020/516 final, <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1584543810241&uri=CELEX%3A52020SC0516>

¹⁸ 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>

¹⁹ The latest *Country Report {COM(2020) 150 final}* states: “Hungary has made limited progress in addressing the 2019 country-specific recommendations (see Table 2.1). Limited progress has been made in integrating vulnerable groups into the labour market. Progress has been limited in reducing the complexity of the tax system, in improving health outcomes and in boosting competition in public procurement. Limited progress has been made in focusing investment-related economic policy on research and innovation, low-carbon energy, transport infrastructure, waste management and energy and resource efficiency, taking into account regional disparities. Limited progress has been made towards increasing the participation of disadvantaged groups in inclusive mainstream education. No progress has been made in improving the adequacy of social assistance and unemployment benefits, the anti-corruption framework, prosecutorial efforts, judicial independence, regulatory environment in services or the quality and transparency of decision-making, including the social dialogue.” <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1584543810241&uri=CELEX%3A52020SC0516>

Enabling condition	Fulfilment Criteria	Justification
<p>I. Hungary shall set up a legal framework to ensure that the monitoring of the enabling conditions of the PA and NRRP 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 essential to monitor the conditions laid down in the PA and NRRP by Hungary and to take the necessary measures in case of non-compliance to avoid infringement and suspension of EU funding.</p> <p>A continuous, systematic monitoring system can avoid failures in fulfilling commitments of the Member State and help to act immediately to prevent more serious financial consequences.</p>
<p>II. Hungary shall strengthen the rule of law during the whole implementation period of the MFF and NRRF.</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 of Hungarian NGOs,²⁰ the reports of GRECO.²¹</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>

²⁰ 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-Korrupcio-Erzekelesi-Index-es-a-korrupcio-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*. Pelgrave 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 Gajdushek: *State of the Hungarian legal system*. MTA TK JTI, 2016; pp. 727-757, https://transparency.hu/wp-content/uploads/2018/01/transparency_int_jogallam_korrupcio_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/Korrupci%C3%B3-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_korrupcio_tanulmany_kivonat_angol_nyelven_2.pdf](https://transparency.hu/wp-content/uploads/2018/01/Javaslatok-a-korrupci%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-korrupci%C3%B3-visszaszor%C3%ADt%C3%A1s%C3%A1ra-Magyarorsz%C3%A1gon.pdf>)

²¹ 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>

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. ²²	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.
II.2.	Hungary shall restore the original competence of the Hungarian Constitutional Court ²³ , specifically but not limited to <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>). 	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.
II.3.	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. ²⁴ 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 receive regular remunerations from political parties or from organisations directly or indirectly controlled	Without the revision of election and criteria system, the independence of the Hungarian Constitutional Court cannot be guaranteed

²² 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

²³ 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

²⁴ 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.)

	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> ” ²⁵ and the recommendations of Amnesty International Hungary (AI Hungary) and the Hungarian Helsinki Committee (HHC) ²⁶ , as well as Commission’s Rule of Law Report ²⁷ 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 ²⁸ . The provisions of a recently adopted legislation that amended the law on judicial careers ²⁹ shall be repealed in order to exclude the appointment of Constitutional Court justices at will to the Curia, Hungary’s highest judicial forum. Constitutional Court judges may only become ordinary judges if they meet the requirements set out in the relevant laws.	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. The new President only became the head of the Curia as a result of recent modifications of the underlying legislation, that has removed a number of constitutional safeguards of judicial independence. ³⁰
II.5.	The Curia’s powers relative to revise judicial decisions of last resort shall be entirely revised. The right of state organs and government institutions to submit a complaint to the Constitutional Court shall be repealed.	Any process to secure the uniform application of laws should only be commenced if parties to the original legal dispute enjoy all the rights they enjoyed in the process to be revisited.

²⁵ 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

²⁶ 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

²⁷ 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>

²⁸ Courts, prosecutions changes damaging..., <https://hclu.hu/en/articles/courts-prosecution-changes-damaging-1>

²⁹ See para 55(2) and 91 pf Act CXXVII of 2019

³⁰ The New President of the Kúria: A Potential Transmission Belt of the Executive within the Hungarian Judiciary. Hungarian Helsinki Committee, 22 October 2020, https://www.helsinki.hu/wp-content/uploads/The_New_President_of_the_Kuria_20201022.pdf

Commissioner urges Hungary’s Parliament to postpone the vote on draft bills that, if adopted, will have far-reaching adverse effects on human rights in the country. Council of Europe, 20.11.2020, <https://www.coe.int/en/web/commissioner/-/commissioner-urges-hungary-s-parliament-to-postpone-the-vote-on-draft-bills-that-if-adopted-will-have-far-reaching-adverse-effects-on-human-rights-in->

		The protection of fundamental rights pertain inherently to private individuals and not to state organs.
II.6.	<p>Hungary shall modify the regulation regarding the Prosecution Service of Hungary and revise the election rules and competence of the Prosecutor General. GRECO recommended that “the possibility to maintain the Prosecutor General in office after the expiry of his/her mandate by a minority blocking of the election in Parliament of a successor be reviewed”.³¹ (This was criticized by the Venice Commission as early as 2012, and failure of compliance was still noted in GRECO report³² in 2018 as well as in the recent report of GRECO³³). Hungary shall implement the GRECO recommendations regarding the removal of cases from subordinate prosecutors; these cases shall be guided by strict criteria and that such decisions are to be justified in writing.³⁴</p> <p>The high level of independence of the Prosecutor General, which is reinforced by his or her strong hierarchical control over all other prosecutors shall be reviewed and complemented by sufficient checks and balances.³⁵</p> <p>To prevent further arbitrary decisions in the Prosecution Service, internal checks and balances shall be reintroduced and existing ones shall be perfected. The right of the Prosecutor General to promote and demote subordinate prosecutors <i>at will</i>, and the possibility to employ and dismiss prosecutors <i>ex gratia</i> shall be withdrawn. The right of</p>	<p>Appropriate measures should be taken in order to restore the independence of Prosecution Service in Hungary. Prosecutor General became politically influenced so much that accountability has been completely diminished, the level of corruption is out of control.</p>

³¹ Group of States against Corruption, Fourth Evaluation Round – Corruption prevention in respect of members of parliament, judges and prosecutors. Evaluation Report – Hungary, Greco Eval IV Rep (2014) 10E, [https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806c6b9e177.](https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806c6b9e177.;);

³² Group of States against Corruption, Fourth Evaluation Round – Corruption prevention in respect of members of parliament, judges and prosecutors. Interim Compliance Report – Hungary, GrecoRC4(2018) <https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/1680969483,section19-22.>

³³ 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> pg. 8

³⁴ Group of States against Corruption, Fourth Evaluation Round – Corruption prevention in respect of members of parliament, judges and prosecutors. Interim Compliance Report – Hungary, GrecoRC4(2018) <https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/1680969483,section23-26.> and 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> pg. 8-9.

³⁵ CDL-AD(2012)008-e: Opinion on Act CLXIII of 2011 on the Prosecution Service and Act CLXIV of 2011 on the Status of the Prosecutor General, Prosecutors and other Prosecution Employees and the Prosecution Career of Hungary, adopted by the Venice Commission at its 91st Plenary Session (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.)

	superior prosecutors to reassign cases and to thus separate a dossier from the prosecutor originally responsible for that dossier shall be withdrawn, and superior prosecutors shall be expected to explain such decisions in writing. The automatic prolongation of the Prosecutor General's mandate beyond his term of office shall be revoked.	
II.7.	Hungary shall participate in the enhanced cooperation on the European Public Prosecutor's Office .	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.
II.8.	Hungary shall immediately implement June 2020 decision of the Court of Justice of the European Union which condemned Hungary for introducing discriminatory and unjustified restrictions on foreign donations to civil society organisations . In addition, all discriminative regulations adopted since 2010 shall be withdrawn.	Such discriminative 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. ³⁶
II.9.	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. ³⁷	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.
III. Hungary shall eliminate institutionalised corruption and	Hungary shall set up an anti-corruption framework, in accordance with the recent reports of GRECO, ³⁸ Transparency International ³⁹ and the study of Transparency	Corruption remains an area of concern. Hungary's CPI (Corruption Perceptions Index) score decreased from 55 points to 44 points between 2012 and 2019,

³⁶ 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

³⁷ Open Budget Survey, 2019, Hungary, <http://kfib.hu/uploads/OBS2019/open-budget-survey-hungary-2019-en.pdf>

³⁸ Fourth Evaluation Round - Corruption prevention in respect of members of parliament, judges and prosecutors, Second Interim Compliance Report Hungary (2020) GrecoRC4(2020)10, <https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/1680a062e9>

³⁹ 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/Korruptci%C3%B3-gazdas%C3%A1gi-teljes%C3%ADtm%C3%A9ny-%C3%A9s-jog%C3%A1llamis%C3%A1g-Magyarorsz%C3%A1gon-CPI-2019-EN-1.pdf>

strengthen the accountability of public power.	International and K-Monitor ⁴⁰ and Commission's Rule of Law Report on Hungary ⁴¹ :	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. ⁴² 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. ⁴³
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. Hungary shall follow the specific recommendation of Transparency International ⁴⁴ .	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.
III.2.	Lobbying , as a legitimate activity shall be made transparent ⁴⁵ 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	Regulation of lobbying in Hungary is incomplete, not sufficient to ensure transparency, Hungary also lacks specific regulation as regards the prevention of 'revolving doors'. ⁴⁷

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

⁴⁰ Op. cit. https://www.helsinki.hu/wp-content/uploads/HUN_NGO_contribution_EC_RoL_Report_2020.pdf (Chapter II)

⁴¹ 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>

⁴² https://www.helsinki.hu/wp-content/uploads/HUN_NGO_contribution_EC_RoL_Report_2020.pdf

⁴³ Transparency International (2019), Corruption Perceptions Index, <https://www.transparency.org/en/cpi/2019>

⁴⁴ 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>

⁴⁵ Op. cit. [transparency_int_jogallam_korrupcio_tanulmany_kivonat_angol_nyelven_2.pdf](https://www.helsinki.hu/wp-content/uploads/HUN_NGO_contribution_EC_RoL_Report_2020.pdf), page 7

⁴⁶ 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.

⁴⁷ 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>

	measures of Transparency International ⁴⁶ shall be implemented.	
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. ⁴⁸	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. ⁴⁹
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 organisation on national and local level.	Deficient independent control mechanisms and tight interconnections between politics and certain national businesses are conducive to corruption. 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.
III.5a.	It shall be prohibited for Members of the Parliament to have any function in any other state administrative body or company. It shall be prohibited for Members of the Parliament to have any remunerated function in any state-owned enterprise and to accept any gifts and presents, except for nominal values items, from any corporation, non-profit or for-profit organisation or individual.	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 raises serious concerns.
III.5b.	Members of Parliament shall be obliged to fully declare all revenues and remunerations as well as belongings and proprietary rights they and their family possess or enjoy. The current regulation on declaration of assets and financial interests of MP's and their relatives shall be revised, taking into account	Declaration of assets and financial interests of MPs and their relatives are a fundamental instrument of transparency, not only ensuring to monitor MPs wealth gain year by year (and investigated if necessary), but also establishing measures and systems

⁴⁶ Op. cit. [transparency_int_jogallam_korrupcio_tanulmany_kivonat_angol_nyelven_2.pdf](https://www.transparency.hu/wp-content/uploads/2016/03/Lifting-The-Lid-On-Lobbying-National-Report-of-Hungary.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>

⁴⁸ Op. cit., https://www.helsinki.hu/wp-content/uploads/HUN_NGO_contribution_EC_RoL_Report_2020.pdf, section 21.

⁴⁹ Op. cit., https://www.helsinki.hu/wp-content/uploads/HUN_NGO_contribution_EC_RoL_Report_2020.pdf section 21.

	relevant suggestions of NGOs ⁵⁰ . Declarations of assets and financial interests shall be digitalised, easily accessible by the public, and monitored by the National Tax Office in order to examine compliance with relevant tax declarations of MP's and their relatives; unjustified assets gains shall be monitored and investigated.	requiring public officials to make declarations regarding, inter alia, their outside activities, employment, investments, assets and gifts or benefits from which a conflict of interest may result with respect to their functions as public officials. Currently, the system of assets declaration does not ensure transparency and appropriate control. ⁵¹
III.5c.	A summary of every citizen's annual tax declaration (taxable income, actual tax paid, and wealth) shall be made available via the website of the National Tax Office, on demand. Inquiries shall not be anonymous and shall be unlimited for demands by representatives of the press and NGOs confirming their public interest and shall be limited to 10 demands a year per person for everyone else.	Openness increases transparency, access to tax declarations and tax return information is increasing accountability and reduces corruption on national level. The Swedish ⁵² and Norwegian ⁵³ approach proved to create trust and responsibility amongst taxpayers and accountability of politicians. Tax transparency contributes towards reducing inequality.
III.5.d.	Every resident in Hungary shall declare their assets, properties and interests in an annual statement. The National Tax Office shall carry out investigation of these statements on the basis of risk analysis. The rules concerned shall be modified so that they provide a robust basis for such investigations.	The annual declaration of assets by all residents is indispensable for the authorities in order to pursue illicit enrichment. The rules on asset investigations have been substantially weakened in 2016. ⁵⁴
III.6.	Hungary shall take appropriate measures to increase accessibility of public interest information.	Restrictions on access to information hinder corruption prevention and the application of fees for accessing public information has a deterrent effect on citizens and NGOs exercising their constitutional right. ⁵⁵
III.7.	Hungary shall withdraw all rules on „priority investments of national importance”	Decisions and information on the justification of granting case by case

⁵⁰ Assets declaration. Proposals of Transparency International Hungary, <https://transparency.hu/en/kozszeaktor/vagyonnyilatkozati-rendszer/> (in Hungarian: <https://transparency.hu/kozszeaktor/vagyonnyilatkozati-rendszer/>)

⁵¹ 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_stricest_asset_declaration_system Hungarian asset declarations a joke, <https://budapestbeacon.com/hungarian-asset-declarations-a-joke/>

⁵² Openness shapes Swedish society, <https://sweden.se/society/openness-shapes-swedish-society/>

⁵³ 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>

⁵⁴ 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/>

⁵⁵ 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>

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)

	(„nemzetgazdaságilag kiemelt beruházások”), introduced by Act LIII of 2006, and shall not introduce new ones, ensuring that no legislation is applied to create case by case exemptions. Moreover, the government’s right to exempt specific individual business dealings from oversight by the Economic Competition Office (‘anticartel authority’) by invoking “relevance of national strategy” shall be irrevocably withdrawn. The Competition Office shall carry an <i>ex post</i> oversight of those business transactions which have been exempted, if applicable.	exemptions by the government are not accessible by public interest, transparency is not ensured, while investments are often connected to oligarchs and family members of the government.
III.8.	Fiduciary trusteeship regulation shall insure full access to information and that true owners are obliged to declare their trusteeship concerned assets in their financial statements.	The legal institution of fiduciary trusteeship was introduced in the new Civil Code (Act V 2013, Chapter XLIII.) in a way that a trustee will manage the assets under his own name, as an owner. One risk of this setup of the institution is, considering the requirements of trusteeship defined in the government decree, that the Hungarian regulation allows the hiding of information, as confidentiality rules are strict, in regard that the trustee is only obliged to disclose information to state authorities so that is possible to hide the information of the true owner of the property and conceal the real property owner from the public. The transparency of fiduciary trusteeship is also highly questionable in relation to financial statements, as once an asset of a property was given into trusteeship it must be regarded separately from the other, non-transferred assets, so that they will not appear in financial statements. This could easily lead to situations in which fiduciary trusteeship can conceal property assets while actually remaining in the possession of the previous owner.
III.9.	The recent addition to the definition of public money in the Hungarian Constitution, Article 39 (3 ⁵⁶ shall be revised, making sure that	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

⁵⁶ 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."

http://njt.hu/translated/doc/TheFundamentalLawofHungary_20201223_FIN.pdf

	definition is covering all forms of public money.	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. 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.
IV. Hungary shall take appropriate measures to correct the systemic malfunctioning of public procurement procedures, and prosecute corruption at high level.	The conditions for competition on the procurement market shall be significantly improved, substantially reducing its vulnerability to anticompetitive and corruption practices.	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. ⁵⁷ Procurement calls are regularly tailored to preselected bidders and competition is often faked through bid-rigging. ⁵⁸
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.	In order to tackle corruption successfully and in depth, a wider approach is needed, so that press reports, public and citizens announcements on public procurement infringements have to be taken into account and investigated.
IV.3.	Systemic irregularities of the public procurement control system shall be corrected, in particular related to discriminatory or	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,

⁵⁷ 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>

⁵⁸ Ibid.

	restrictive selection or award criteria, and unequal treatment of bidders. ⁵⁹	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. ⁶⁰
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. ⁶¹ The use of the negotiated procedure without prior call for competition shall be reviewed. ⁶²	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 selection and award criteria and unequal treatment of tenderers. ⁶³
IV.5.	3. Systematic irregularities due to deficiencies in the public procurement related management and control system shall be corrected.	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 because of 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 ⁶⁴ .
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. ⁶⁵	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.

⁵⁹ Ibid.

⁶⁰ 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>

⁶¹ 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

⁶² Op.cit. https://www.helsinki.hu/wp-content/uploads/HUN_NGO_contribution_EC_RoL_Report_2020.pdf (pg. 27)

⁶³ 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

⁶⁴ 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>

⁶⁵ 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.

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 take appropriate measures to make the management of EU Funds transparent , restore professional autonomy of the management bodies and eliminate any corruption related to the management of EU Funds.	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 and NRRP.	The utilisation of EU funds in Hungary carries several additional systemic corruption risks. State institutions have not been able to evade such risks. So far, Hungary has not ensured that there is a tight control over how funds are used and that EU money is spent in a transparent, accountable and efficient manner.
V.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.
V.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.
V.3.	For the entire time of the MFF and NRRP, 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.
V.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 . ⁶⁶	There are many examples showing that the institutional guarantees of effective independence are strongly questionable on both the organisational and personal levels.

⁶⁶ 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_nyelve.pdf

<p>VI. Hungary shall thoroughly change the media regulation to restore the freedom of press in Hungary.</p>	<p>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 Médiaelemző Műhely) and the Independent Media Centre (Független Médiaközpont)⁶⁷, including the following:</p>	<p>Restoring the autonomy and independence of the media authority and public media from the government is crucial to create diverse media and ensure the freedom of press</p>
<p>VI.1.</p>	<p>A comprehensive review of current media legislation shall be implemented concerning ownerships rules to eliminate (possible) governmental influence.</p>	<p>The transparency and competitive neutrality of media ownership should be fully guaranteed, otherwise media pluralism and freedom of speech stays at high risk.</p>
<p>VI.2.</p>	<p>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 percent majority of council members.</p>	<p>The independence and effectiveness of the Media Council has not been ensured during recent years.</p>
<p>VI.3.</p>	<p>Conditions for creating a diverse media space shall be ensured.⁶⁸</p>	<p>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.”⁶⁹</p>
<p>VI.4.</p>	<p>Public advertisement in the media shall be strictly based on the number and sphere of interest of the readers.</p>	<p>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 only an insignificant amount of state advertisement.</p>
<p>VII. Hungary shall restore</p>	<p>Freedom of information shall be restored, all legal restrictions which make the access to information of public interest difficult or</p>	<p>In order to ensure accountability of the government and transparency of the national budget, it is key to restore the</p>

⁶⁷ Újragondolt nyilvánosság – Médiaszabályozási koncepció. Mérték Médiaelemző Műhely, 2014. február 25., <https://mertek.eu/2014/02/25/ujragondolt-nyilvanossag-mediaszabalyozasi-koncepcio/>

⁶⁸ 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

⁶⁹ The Commission’s Rule of Law Report on Hungary, <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1602582109481&uri=CELEX%3A52020SC0316>

<p>freedom of information.</p>	<p>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 [Transparent.hu], K-Monitor, the Hungarian Civil Liberties Union [Társaság a Szabadságjogokért] and Transparency International Hungary⁷⁰ shall be implemented.</p>	<p>freedom of information that has been severely impaired in Hungary in the recent years.</p>
<p>VIII. Hungary shall ensure fair competition and regulatory predictability</p>	<p>Hungary shall take effective measures so that EU funding shall not discourage competition and distort the market in a harmful way. 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.</p>	<p>EU funds are often distributed to companies in a way that seriously distorts the market in an undesirable way.⁷¹ 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 means that they are not competitive on the market. 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-</p>

⁷⁰ 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>

⁷¹ See, e.g., József Papp: Hungarian Economy is Distorted and Disorientated by Grants, <https://hungarianspectrum.org/2021/03/20/jozsef-papp-hungarian-economy-is-distorted-and-disorientated-by-grants/>

		2018, against an EU average of 0.6% of GDP.” ⁷²
IX. Hungary shall require the adoption of robust anti-corruption rules and institutional system by local governments.	Hungary shall accept that EU funding can be provided only to those local governments which have robust anti-corruption regulation and corresponding institutional system.	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. ⁷³
X. Hungary shall accept that misused EU money will be lost for Hungary.	If EU money is misused, and the government has to repay it, then the same government should not receive it even for other purposes.	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 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.

⁷² 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>

⁷³ <http://ezaminimum.hu/>

Átláthatósági Mintaszabályzat települési önkormányzatok számára. Transparency International Magyarország, K-Monitot, Átlátszó.hu, <https://transparency.hu/wp-content/uploads/2019/12/%C3%96nkorm%C3%A1nyzati-%C3%A1tl%C3%A1that%C3%B3s%C3%A1gi-mintarendelet.pdf>