

Comments on the draft Hungarian Partnership Agreement on EU Funds from an environmental perspective

1. Introduction

The comments set out below are in line with the provisions of the 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 Instrument¹ (hereinafter referred to as CPR). The comments have been made on the basis of the draft Partnership Agreement on EU Funds (hereinafter: PA)² dated on 12th May 2021, published on the website of the Hungarian government.). In this document, it is assessed whether the PA complies with the CPR and other relevant EU legislation in view of attaining the EU's climate and environmental targets.

2. General remarks

The draft PA describes most of the main challenges faced by Hungary and partly responds to the main country-specific issues highlighted in the recommendations. At the same time, in the case of several objectives (e.g., tourism, increasing the employment capacity of companies), financing should be provided primarily from private sources instead of the Funds. This was also noted by the comments of European Commission concerning the Partnership Agreement for the 2014-2020 period (point 1 (5), or 2 (15)³. We also consider it very relevant that the objectives and programs chosen by the PA are too general, more specification and detailed analysis would be needed. The overly general nature of the text makes it impossible to judge whether the requirements of the CPR are met under the draft PA. There is not even one case where a concrete numerical figure would demonstrate what targets would be achieved in a given period of time. Generally, we consider it indispensable to include concrete and ambitious targets to the policy objectives (see p. 4 of this paper).

The draft PA does not contain any information required by several points of Article 11 of the CPR, e.g., pp. 1(c) and 1(d).

3. Shortcomings of the draft PA – in more detail

3.1. The draft PA states the following: *“The competitiveness of the Hungarian economy can be improved by increasing electronization and automation and moving towards higher value-added products”* We consider this to be only partially true, and we recommend to supplement the PA by

¹ Regulation (EU) 2021/1060, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32021R1060>

² Magyarország Partnerségi Megállapodása a 2021-2027 időszakra vonatkozó kohéziós források felhasználásáról. Tervezet, 2021. május 12. <https://www.palyazat.gov.hu/partnersegi-megallapodas>

³ Észrevételek a Magyarországgal kötendő partnerségi megállapodás vonatkozásában, Ref. Ares(2014)1500169 - 12/05/2014, https://ec.europa.eu/info/sites/default/files/partnership-agreement-hungary-observations-may2014_hu.pdf

improving local small-scale production, the production of high-quality, traditional handmade and organic products, as well as the promotion of high intellectual value-added services.

3.2. The draft PA does not fully comply with Article 4 (3) of the CPR which states the following:

“3. Member States shall provide information on the support for environment and climate objectives using a methodology based on types of intervention for each of the Funds. That methodology shall consist of assigning a specific weighting to the support provided at a level which reflects the extent to which such support makes a contribution to environmental objectives and to climate objectives. In the case of the ERDF, the ESF+ and the Cohesion Fund weightings shall be attached to dimensions and codes for the types of intervention established in Annex I.”

3.3. The description of Policy Objective 2 (point 2.2 of the draft PA) is incomplete. Among other shortcomings, the part on energy does not focus sufficiently on improving energy efficiency and energy-saving renovation of buildings. The section on air quality lacks steps to reduce emissions from residential heating and focuses too much on new infrastructure elements. It puts the main blame for air pollution on “coal-fired stoves” while it does not mention that the coal used is of the worst quality, lignite, and its sale for residential heating could and should have been banned years ago. It also fails to mention that the air pollution which is most dangerous to human health results from the widespread burning of waste in households⁴, and it is first of all the lack of inaction by the government that makes it possible to continue these illegal activities,

Concerning transport, the PA puts emphasis on the electrification of transport which, albeit necessary, will not ensure in itself the greening of transport.⁵ On the contrary, the situation will continue to deteriorate: for example, each year more than a hundred thousand old second-hand cars are imported to Hungary while less than one thousand electric cars (BEV) are sold.

3.4. Concerning Policy Objective 3 (point 2.1.3), the aim of further development of the “convenient road facilities” runs counter to green objectives and to “the polluter pays” principle. Similarly, the development of ports on rivers may cause loss of biodiversity and may violate the aims of the environmental acquis, especially the Water Framework Directive.

3.5. There are several shortcomings related to the thematic enabling conditions set forth by Annex IV of the CPR. The non-compliance with these conditions also violates Article 15 of the CPR.

The key would be to make progress in the following areas to establish compliance with the thematic enabling conditions:

- Annex IV., point 2.1 of the CPR requires a “Strategic policy framework to support energy efficiency renovation of residential and non-residential buildings”. Although the government recently adopted the Governmental Decision (no. 1343/2021. (VI. 2.))⁶ on the adoption of the national long term renovation strategy to support the renovation of the national stock of residential and non-residential buildings,⁷ neither the Act on the 2022 State Budget, nor any other legislation reflects the aims set forth in the strategy. Just to the contrary, the Hungarian government provides huge support for the construction and renovation of buildings without any meaningful requirements for energy efficiency. (It has been generally characteristic for Hungary that the Parliament, the government, and local governments adopt excellent

⁴ Air pollution may be much more hazardous than follows from official monitoring data.

<https://www.levego.hu/en/campaigns/waste-campaign/>

⁵ Emissions reduction strategies for the transport sector in Hungary,

https://www.transportenvironment.org/sites/te/files/publications/2018_11_HU_EUKI_report_FINAL_0.pdf

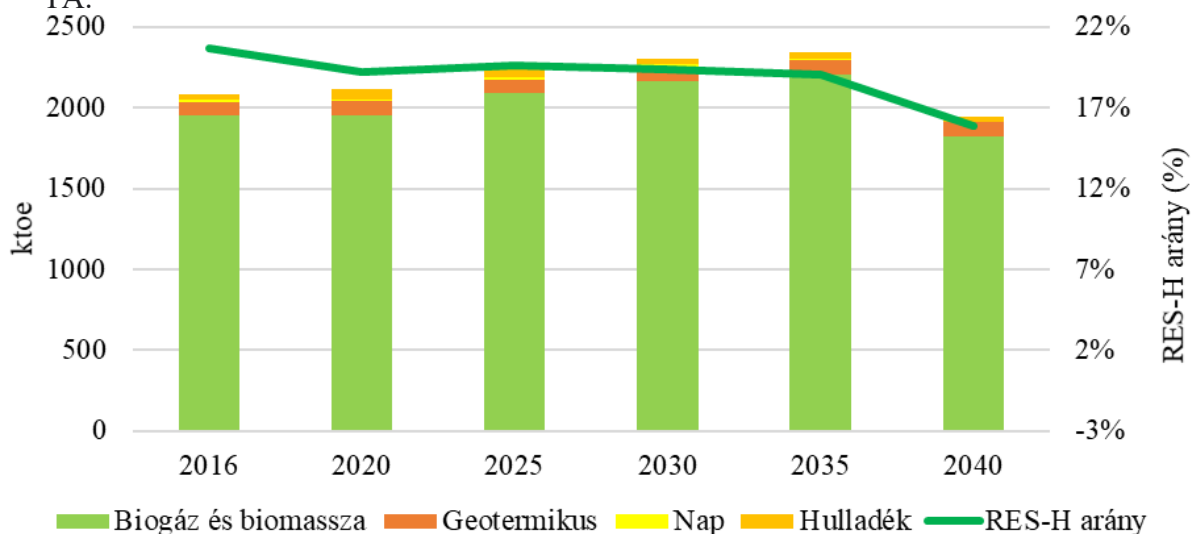
⁶ 1343/2021. (VI. 2.) Korm. határozat az (EU) 2018/844 számú irányelve alapján a 2021–2027 közötti kohéziós célú támogatások kifizetését lehetővé tevő feljogosító feltételek teljesítése céljából szükséges Hosszú Távú Felújítási Stratégia elfogadásáról. <https://njt.hu/jogszabaly/2021-1343-30-22>

⁷ Hosszú Távú Felújítási Stratégia az (EU) 2018/844 számú irányelve alapján a 2021–2027 közötti kohéziós célú támogatások kifizetését lehetővé tevő feljogosító feltételek teljesítése céljából.

https://ec.europa.eu/energy/sites/default/files/documents/hu_2020_ltrs.pdf

strategies which are never implemented; even worse, the concrete measures and investments often contradict these strategies.)

- Annex IV, point 2.2 of the CPR requires the following: “The integrated national energy and climate plan is notified to the Commission, in accordance with Article 3 of Regulation (EU) 2018/1999 and consistent with the long-term greenhouse gas emission reduction objectives under the Paris Agreement, which includes: 1. All elements required by the template set out in Annex I to Regulation (EU) 2018/1999. 2. An outline of envisaged financial resources and mechanisms for measures promoting low-carbon energy.” According to the Commission’s assessment⁸ even the current National Energy and Climate Plan (NECP) of Hungary “shows a very low level of ambition”. Among others, a meaningful „outline of of envisaged financial resources and mechanisms for measures promoting low-carbon energy” is missing. Moreover, with the new EU target of 55% emission reduction, the NECP must be completely revised. In our opinion, the PA cannot be signed before the adoption of a revised NECP which fully aligned with the new EU target and contains, among others, concrete annual deadlines and a detailed description of financial instruments.
- Annex IV, point 2.3 of the CPR requires “Effective promotion of the use of renewable energy across sectors and across the Union”. Hungary will certainly have serious difficulties in complying with this requirement, namely, to increase the share of renewables in the heating and cooling sector by 1 percentage point per year up to 2030. According to the current tendencies and forecasts (see the below figures) the share will be decreasing. Therefore, new measures and roadmap are necessary to meet with this enabling condition before signing the PA.



Share of renewables in the heating and cooling sector
Source: National Energy and Climate Plan

- Annex IV, point 2.4 of the CPR requires “Effective disaster risk management framework”. As far as we know, Hungary does not have detailed national or regional disaster risk management plan, that is consistent with the existing climate adaptation strategies.
- Annex IV, point 2.5 of the CPR requires “Updated planning for required investments in water and wastewater sector”. The PA does not include detailed measures for ameliorating the quality of the surface and groundwater bodies, instead it emphasises irrigation development

⁸ Commission Staff Working Document. Assessment of the final national energy and climate plan of Hungary. Brussels, 14.10.2020 SWD(2020) 916 final, https://ec.europa.eu/energy/sites/default/files/documents/staff_working_document_assessment_necp_hungary_en.pdf

projects. In our view, the PA should focus on Nature-Based Water Retention Measures to improve water retention in Hungary in general – which is essential as the country is facing longer periods of droughts, and more frequent and more extreme rain and flooding events –, and not artificial and unsustainable solutions like irrigation. Furthermore, the PA does not address one of the biggest problems of water management in Hungary: the canalisation system that quickly drains excess water from the country instead of retaining it.

- Annex IV, point 2.6 of the CPR requires “Updated planning for waste management”. The new national Waste Management Strategy is currently under preparation. At this point we cannot evaluate whether it will comply with the relevant enabling condition.
- Annex IV, point 2.7 of the CPR requires “Prioritised action framework for the necessary conservation measures involving Union co-financing.” The PA does not include any details regarding better management of protected areas, or on the role that prioritised action frameworks (PAF) may play in this (apart from its specific connection to an ongoing integrated LIFE project). The PAF has an integral role in identifying priority measures and estimating financing needs for nature conservation.
- Annex IV, point 3 of the CPR requires “Developing and enhancing sustainable, climate resilient, intelligent and intermodal national, regional and local mobility...” The current transport system of Hungary is far from being sustainable and climate resilient. The external costs of road transport (according to the Integrated Transport Operational Programme) equal to 6% of the GDP. As long as these external costs are not internalised, transport cannot become sustainable and climate resilient.⁹ The PA envisages the construction of new roads, including new motorway sections; this would contradict “the polluter/user pays” principle, more road traffic would be generated, natural areas would be damaged, there would be less resources for railways and public transport, and more sustainable transport modes would have to face even greater harmful competition. For these reasons, the PA is non-compliant with this enabling condition.

4. Proposals to decrease the environmental impacts of the future projects

The following amendments should be made in the draft PA in order to fully comply with the objectives of the CPR, particularly the objective to reach “*a greener, low-carbon Europe by promoting clean and fair energy transition, green and blue investment, the circular economy, climate adaptation and risk prevention and management*” (Article 4 1 (b));

4.1. The PA should ensure that the energy efficiency and the reduction of greenhouse gases are important criteria in the selection of every project. Effective steps should be taken in the PA to establish a monitoring system with the help of which the measures should be followed up.

4.2. It is also necessary to apply “the polluter pays” principle and prescribe steps to ensure this¹⁰. In line with this principle the PA should ensure that an external cost analysis is carried out before every decision of the funding of concrete projects over 1 million EUR financial contribution.

⁹ The internalisation of transport external costs, if done properly, would be advantageous not only for the environment but also for the economy and would reduce social inequalities:

Proposal for the Internalisation of the External Costs of Road Transport in Hungary,
http://levego.hu/sites/default/files/internalisation_transport_costs_hungary_final_2020-1.pdf

Car tolls must be implemented urgently – with appropriate compensation,
<http://levego.hu/sites/default/files/kozlekedes-tamogatascdecilisek-en.pdf>

¹⁰ Treaty on the Functioning of the European Union (TFEU), Para 2, Article 191.,
<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12012E%2FTXT>

4.3. The PA should explicitly prescribe the improvement of the application of the preventive action principle as well as the precautionary principle, in particular by the following measures^{11,12}:

- Taking effective steps towards the stricter official practice in environmental licensing procedures.
- Restoring the permit requirement for minor environmental use activities.
- Improving the legal framework of the environmental liability system.

4.4. The text of the PA should include an article that the EU Green public procurement rules must be complied with in projects financed by the European Structural and Investment Funds (ESIF).

4.5. The PA should also include an explicit prescription to ensure that the compliance with the relevant environmental acquis regulation shall be maintained throughout the financial period^{13,14}. (including project selection criteria, which ensure the dissolving of current infringements and the avoiding of future infringements). The above also makes it necessary to carry out a general revision of the national legislation.

4.6. The PA should include a provision that Hungary shall significantly increase the efficiency of the work of environmental authorities, in particular by the following measures¹⁵:

- Restoring the autonomous environmental authorities.
- Significantly increasing the human and financial resources of the environmental authorities
- Providing the necessary training for governmental and local staff in charge of environmental issues. There shall be an effective training strategy developed (training sessions, online training, etc.), with quantitative indicators, where possible. Moreover, appropriate technical assistance (e.g., guidelines, guidance documents, external experts) shall be provided to all the authorities applying EIA/SEA Directives.
- Introducing stricter sanctions in frequent or serious environmental non-compliance cases. The deterrent effect of the current administrative fines shall be assessed, and the economic benefits of non-compliance should be eliminated.

4.7. The PA should include the introduction of the following condition: In order to ensure the full compliance with the sustainable development principle any project funding decision exceeding 10 million EUR shall be proceeded by obtaining the prior opinion of the National Council for Sustainable Development on the sustainability of the project¹⁶.

4.8. The PA should explicitly prescribe that managing authorities shall ensure the mandatory application of BAT as well as the compliance with the BAT conclusions for every project funded by at least 10 million EUR.

4.9. The PA should envisage the setting up of the legal framework to ensure that the government

¹¹ TFEU, Para 2, Article 191.

¹² Liability for Environmental Damage in Eastern Europe, Caucasus and Central Asia (EECCA): Implementation of good international practices, OECD, 2012, <http://www.oecd.org/env/outreach/50244626.pdf>

¹³ Charter of Fundamental Rights of the European Union, Article 37. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12012P%2FTXT>

¹⁴ TFEU, Article 11.

Exploring qualitative and quantitative assessment tools to evaluate the performance of environmental inspectorates across the EU, Final report: 30 March 2012, The European Union Network for the Implementation and Enforcement of Environmental Law (IMPEL), https://www.impel.eu/wp-content/uploads/2016/09/Adopted-Final-Report_Exploring-Assessment-Tools_2012-03-30.pdf

¹⁶ TFEU, Article 11.

Charter of Fundamental Rights of the European Union, Article 37.

conduct preliminary environmental assessments before any significant changes in the public finance (state budget, taxations system). Ex-post impact assessments (similarly to those set forth by the Act CXXX of 2010 on law-making) shall also be properly conducted following the changes in public finance.

4.10. In order to fully comply with Article 6 of the CPR, the PA should envisage the improvement of the current regime and fully ensure that the public (including partners and other relevant NGOs) is given early and effective opportunities to participate in the preparation and modification of the programmes as well as in every relevant decision-making procedure concerning the ESI Funds¹⁷. In the framework of the above, Hungary shall fully ensure

- timely disclosure of and easy access to relevant information;
- sufficient time for the partners to analyse and comment on preparatory documents and draft programmes;
- available channels through which partners may ask questions, may provide contributions, and will be informed of the way in which their proposals have been taken into consideration;
- the dissemination of the outcome of the consultation.

4.11. The text of the PA should ensure the significant improvement of the transparency and efficiency of the monitoring committees. In the framework of the above the Hungarian Government shall ensure that every monitoring committee has a two-thirds majority of members independent from the government¹⁸. Otherwise, the PA will violate Article 6 of the CPR.

4.12. According to Article 6 of the CPR, the PA should ensure that relevant stakeholders take part in the preparation of the progress reports on the implementation of the PA, in particular concerning the assessment of the role of partners in the implementation of the PA and the overview of the opinions given by the partners during the consultation, including, where appropriate, the description of the way in which the opinions of partners have been taken into account¹⁹. This provision should be included in the PA.

4.13. According to Article 6 and 12 of the CPR, the text of the PA should ensure that the partners, within the framework of the monitoring committees and their working groups may assess the performance of the programme, including the conclusions of the performance review, and in the preparation of the annual implementation reports on the programmes²⁰.

4.14. The PA should envisage a system which monitors the need of support for the strengthening of the institutional and/or financial capacity of partners. Where such support is needed, the Hungarian Government shall provide the necessary resources in order to enable the partners to effectively practice their participation rights (e.g., in the framework of the Technical Assistance)²¹.

4.15. The PA should ensure that Hungary breaks down all barriers to disclosure procedures for environmental information as soon as possible, in particular, the unjustified confidentiality of certain relevant data and the unfounded application of unreasonable costs in connection with data requests²².

¹⁷ Commission Delegated Regulation No. 240/2014 on the European code of conduct on partnership in the framework of the European Structural and Investment Funds (hereafter: Code of Conduct) Article 5, Directive 2003/35/EC of the European Parliament and the council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC, Article 2. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32014R0240>

¹⁸ Code of Conduct, Article 11

¹⁹ Code of Conduct, Article 14

²⁰ Code of Conduct, Article 15

²¹ Code of Conduct, Article 17

²² Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to

4.16. The PA should envisage the establishment of the framework of a system which improves the knowledge of the extent and value of ecosystem services, habitat and soil maps within and outside protected areas. This system shall also continue to share (online) sectoral data and shall improve the accessibility and communication of information to the public²³.

4.17. The PA should address the risk of increased flooding and resulting vulnerability of (urban) infrastructure, the water supply and sanitation systems through improved engineering, water management practices, and establishing early warning systems.

4.19. The PA should ensure that Hungary shall amend the relevant legislation in order to provide the public concerned (including environmental NGOs) access to a review procedure before a court of law to challenge the programmes on environmental grounds²⁴.

4.20. The PA should ensure that Hungary shall not take any legislative or other action that leads to a reduction in the current level of environmental protection²⁵. Hungary shall also ensure that national environmental policies and regulations are not reducing the current level of EU environmental protection regulations and standards. The text of the PA should also ensure that the relevant Hungarian regulation and any new pieces of law shall be assessed from this aspect and regulation shall continue to contribute to environmental and health protection, and shall not worsen pollution or lead to loss of biodiversity. The above principle of non-regression should be applied to substantive, procedural as well as organisational rules.

In line with point (11) of the CPR, biodiversity should be mainstreamed in other policies with adequate funding towards reaching the set EU-level biodiversity objectives, while considering existing overlaps between climate and biodiversity goals. The PA does not explicitly link climate and biodiversity objectives and planned activities, apart from stating the aim to harmonise these areas under the KEHOP Plus (Environmental and Energy Operational Programme Plus) funding framework.

Hungarian environmental civil society organisations have made more detailed concrete proposals for the PA.²⁶ In our opinion, these proposals should be included as an Annex to the Partnership Agreement.

4.21. The PA should provide safeguards and actively build on the principle of partnership with a multi-level governance approach, in accordance with point (14) of the CPR. The active involvement of regional, local, urban, and other authorities, civil society, economic and social partners should be ensured, following the European code of conduct on partnership.

Budapest, 31 August 2021

environmental information and repealing Council Directive 90/313/EEC (hereafter: Access to information Directive), Article 3, 4. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32003L0004>

²³ Access to information Directive, Article 7

²⁴ Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, Article 9. <https://unece.org/fileadmin/DAM/env/pp/documents/cep43e.pdf>

²⁵ The Fundamental Law of Hungary, Article XXI. Para (1).

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

Decision of the Hungarian Constitutional Court No. II/2092/2015.

<http://public.mkab.hu/dev/dontesek.nsf/0/867DF34715E66631C1257E7E002E6667?OpenDocument>

Decision of the Hungarian Constitutional Court No. 17/2018.

[http://public.mkab.hu/dev/dontesek.nsf/0/e8abcc671cb1b7f7c12581fc005e21b5/\\$FILE/17_2018%20AB%20hat%C3%A1rozat.pdf](http://public.mkab.hu/dev/dontesek.nsf/0/e8abcc671cb1b7f7c12581fc005e21b5/$FILE/17_2018%20AB%20hat%C3%A1rozat.pdf)

²⁶ Proposals 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 (by Clean Air Action Group and CEEWeb for Biodiversity),

<http://levego.hu/sites/default/files/Hungarian%20Partnership%20Agreement%20proposal%20Climate%202021apr21.pdf>

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, http://levego.hu/sites/default/files/PA_NRRP_general_conditions_2021-03-11.pdf

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