

POLICY BRIEF

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EU Dispute with Hungary: What's Next? An Overview

Initiated by Prime Minister Viktor Orbán and his Fidesz party, the fundamental restructuring of the political system has had a tangible impact on the functioning of Hungarian democracy, raising concerns and criticism. In this context, it is not only about how different stakeholders in Hungary perceive the ongoing reform processes, but also about whether the regulatory and political role of the European Union (EU) needs to be taken into account. The European Parliament (EP) believes that Hungary is in breach of EU values, thereby posing a threat to the existence of the union. For this reason, the Article 7 case against Hungary was opened in September 2018, which may in the extreme case lead to the restriction of EU membership rights. The overarching question is: how will this conflict develop - both for Hungary as a EU Member State as well as the future of the EU?

Hungary after 2010

Hungary is one of the most successful “new” Member States in addition to Slovenia, Estonia or Poland. In general, Hungary seems to have handled the socio-political transformation towards democracy and market economy after 1989 well. Nonetheless, in 2010, Fidesz – Hungarian Civic Alliance won the parliamentary elections with 52.73% of the vote, along with its junior coalition partner KDNP, the Christian Democratic People’s Party. Since then Fidesz has enjoyed great approval in Hungarian society. Although the 2014 election result was not as clear as the previous one, the recent election campaign has proved effective enough to allow Viktor Orbán to win for the third consecutive time

in 2018¹. This again gave Fidesz enough seats in the National Assembly to achieve a two-thirds majority. This means, among other things, that Fidesz can change not only laws but also the constitution of the country. In 2011, the Fidesz Party used this power to adopt and sign a new and controversial fundamental law.

During the last eight years of the Fidesz government, Hungary has developed well economically, but not without

¹ “It’s official: All the votes have been counted and verified from last Sunday’s general election and Fidesz-KDNP has secured a two-thirds majority”, About Hungary, 16.04.2018, <http://abouthungary.hu/news-in-brief/its-official-all-the-votes-have-been-counted-and-verified-from-last-sundays-general-election-and-fidesz-kdnp-has-secured-a-two-thirds-majority/>

hurdles, such as currency problems or over-indebtedness of consumers. However, there are other tendencies that cause concerns both in Hungarian society and for the international community. Much attention has been given to a new comprehensive media law and other regulations that discriminate against foreign-owned educational institutions. The latter applied in particular to the Central European University (CEU), which ultimately relocated from Budapest to Vienna. Fidesz's reform efforts went the furthest with changes in the judicial system: after systemic reforms, such as the amendment of the retirement age for judges, institutional changes followed, which affected the Supreme Court (Kúria) and the Constitutional Court. These reforms have been increasingly criticized by the international community and European institutions. The European Commission, for example, has opened several infringement cases against Hungary.

Critics accuse the Hungarian government of acting neither in accordance with democratic principles nor European practices and of not preventing political corruption and state capture by certain interest groups. Sympathizers and government officials claim that the new legislation not only complies with EU standards but also refers to existing legal norms in other European countries. Comprehensive discussions on specific measures are often linked to purely political interests, but nonetheless, it is an indisputable fact that Hungary is in violation of EU rules and regulations. Meanwhile, Poland appears to be following the path taken by Hungary and has implemented similar, however, not identical measures. Such political support, as well as the visible powerlessness of the EU, has encouraged Viktor Orbán and his cabinet to pursue the reconstruction of the state in line with its vision of democracy and justice. But every action triggers a reaction: an answer from Brussels was therefore inevitable.

EU's response: Article 7

The amendments implemented by the Fidesz government in recent years raised concerns about the state of democracy, press freedom and the rule of law in Hungary. This was followed by investigations and, finally, interventions by institutions at the European level, such as the involvement of the Venice Commission and legal action by the European Court of Human Rights (ECtHR – *Baka v. Hungary*) and the European Convention on Human Rights (ECHR). The most controversial measure was the triggering of the Article 7 procedure of the Treaty on European Union, based on the Country Report by Judith Sargentini (Greens/EFA) in September 2018. The "Report on a proposal calling on the Council to determine, pursuant to Article 7(i)

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of the Treaty on European Union, the existence of a clear risk of a serious breach by Hungary of the values on which the Union is founded"² explains why action by the EU is necessary. The arguments cover a wide range of phenomena, such as corruption and conflicts of interest, judicial independence, freedom of expression, academic freedom, and the fundamental rights of migrants and minorities. The Sargentini report concludes that "there is a clear risk of a serious breach by Hungary of the values referred to in Article 2 TEU"³. Therefore, on 12 September 2018, the European Parliament decided to ask the Council to take action against the proceedings of the Hungarian government⁴.

Article 7 of the EU Treaty states that the European Council can either identify a threat to common EU values by a majority of four-fifths of its members, or unanimously determine the existence of a breach of those values. The values are listed in Article 2 of the treaty and include the rule of law and democracy. If a violation of these values is established, a member state may lose certain rights, in particular voting rights in the Council.

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2 Report on a proposal calling on the Council to determine, pursuant to Article 7(i) of the Treaty on European Union, the existence of a clear risk of a serious breach by Hungary of the values on which the Union is founded (2017/2131(INL)), Committee on Civil Liberties, Justice and Home Affairs, Rapporteur: Judith Sargentini (Initiative – Rule 45 and 52 of the Rules of Procedure), European Parliament, Brussels 2018, http://www.europarl.europa.eu/doceo/document/A-8-2018-0250_EN.html

3 Ibidem

4 "Rule of law in Hungary: Parliament calls on the EU to act", Press Release, European Parliament, Brussels, 12.09.2018, <http://www.europarl.europa.eu/news/en/press-room/201809061PR12104/rule-of-law-in-hungary-parliament-calls-on-the-eu-to-act>

448 votes in favour, 197 against and 48 abstentions⁵. The vote united the pro-European centre-left and – right parties. However, it also revealed a deep division of the European People's Party group (EPP) in the European Parliament as well as the mobilisation potential of the Eurosceptic Group of the European Conservatives and Reformers (ECR) and its small satellites, such as Europe of Nations and Freedom (ENF). In summary, the Article 7 procedure not only showed the complexity of the overall situation in Hungary, but also reflected the fierce political dispute over principles and values within the European Union.

The decision to launch Article 7 against the Hungarian government was much more controversial than in the case of Poland in December 2017. In Poland, thirteen new laws and amendments were adopted within a short period of about two years, triggering an immediate reaction. In the case of Hungary, the EU reacted after a great delay, although in the eyes of many, at least since 2011, problems with keeping democratic standards had been repeatedly piling up. In Poland, Article 7(1) was used by the European Commission as a direct response to judicial reforms threatening the rule of law⁶. On the contrary, the Sargentini report does not deal exclusively with the rule of law of Hungary but covers many questions and issues. Some of these allegations are not direct results of the Fidesz government's policies (e.g. paramilitary groups that violently targeted Roma before 2010), which then made the document vulnerable to criticism.

The reaction of the Hungarian authorities was also confrontational and unyielding. Prime Minister Viktor Orbán struck back: "Hungary is being denounced because the people of Hungary have decided that we will not be an immigrant country (...) Hungary shall not bow to blackmail: Hungary shall continue to defend its borders, stop illegal immigration and defend its rights – against you, too, if necessary (...) We Hungarians stand ready for the elections next May when the people will finally have the chance to decide the future of Europe"⁷.

Unchanged enthusiasm in Hungarian society

Budapest throws vociferous accusations against the "Brussels dictate" and speaks about an alleged disrespect for the traditional (Eastern) European values⁸. The current Fidesz government emphasizes that their concerns and resistance are not targeting the European Union as such, but rather the ostensible left-liberal political elites in Brussels. In particular, the current Hungarian government is suspicious of the ideas of multiculturalism and the enforced federalism of the EU, instead advocating traditional values and a Europe of strong nation-states⁹.

This division is also visible in the Hungarian society and is particularly evident in a discrepancy between the liberal capital city Budapest and the rest of the country, in which Viktor Orbán undoubtedly triumphs¹⁰. Fidesz is still the main actor dominating the Hungarian political scene, with three times the support of his closest rival – the far-right Jobbik party, not to mention the opposition¹¹. The majority of citizens (55%) are satisfied with the way democracy works in Hungary. However, as far as the future is concerned, there is a slight polarization of opinions: public opinion is split whether the country is developing in the right or wrong direction (47% and 40%, respectively). At the same time, according to the latest Eurobarometer report, Hungarian society is invariably Euro-enthusiastic: a strong majority consider Hungary's membership in the EU a good thing (61%) and are convinced that Hungary has generally benefited from EU membership (78%). Despite the application of Article 7, the European Parliament retains a positive image (76%) and more than half of Hungarians are satisfied with the state of democracy in the EU (58%)¹².

5 "Rule of law in Hungary: Parliament calls on the EU to act", Press Release, European Parliament, Brussels, 12.09.2018, <http://www.europarl.europa.eu/news/en/press-room/20180906IPR12104/rule-of-law-in-hungary-parliament-calls-on-the-eu-to-act>

6 "Rule of Law: European Commission acts to defend judicial independence in Poland", Press release, European Commission, Brussels, 20.12.2017, http://europa.eu/rapid/press-release_IP-17-5367_en.htm

7 "Address by Prime Minister Viktor Orbán in the debate on the so-called 'Sargentini Report'", The Prime Minister's Speeches, Website of the Hungarian Government, 11.09.2018, <http://www.miniszterelnok.hu/hungary-is-being-denounced-because-the-people-of-hungary-have-decided-that-we-will-not-be-an-immigrant-country/>

8 "Viktor Orbán's 'State of the Nation' address", The Prime Minister's Speeches, Website of the Hungarian Government, 19.02.2018, <http://www.kormany.hu/en/the-prime-minister/the-prime-minister-s-speeches/viktor-orban-s-state-of-the-nation-address>

9 Gyürk, András "The hope for EU's future is found in a Europe of strong nation states", Fidesz-KDNP delegation in the European Parliament, 15.03.2017, <http://fidesz-eu.hu/en/the-hope-for-eus-future-is-found-in-a-europe-of-strong-nation-states/>

10 "It's official: All the votes have been counted and verified from last Sunday's general election and Fidesz-KDNP has secured a two-thirds majority", News in Brief, About Hungary, 16.04.2018, <http://abouthungary.hu/news-in-brief/its-official-all-the-votes-have-been-counted-and-verified-from-last-sundays-general-election-and-fidesz-kdnp-has-secured-a-two-thirds-majority/>

11 All polls for the Hungarian Election, Poll of Polls, <https://pollofpolls.eu/HU>

12 "Democracy on the move – European Elections: One year to go. Part 2: Complete survey results. Eurobarometer Survey 89.2 of the European Parliament", European Union 2018, S. 2, 37, 38, 39, 51, <http://www.europarl.europa.eu/at-your-service/files/be-heard/eurobarometer/2018/eurobarometer-2018-democracy-on-the-move/top-results/en-one-year-before-2019-eurobarometer-results-annex.pdf>

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To sum up, Hungarian society seems to clearly understand the difference between the idea of a united Europe as such and current politics. Not only does this paradox prove the complexity of the situation in the country – it also highlights the contradictions faced by the European Union. Clear support for the concept of a united Europe of citizens clashes with the dissatisfaction with its implementation: a critique of common values, different understanding of democratic governance and objections of some Member States to partially give up sovereignty in exchange for further integration. Nevertheless, for sure there will be no “Hunexit”. Taking all the pros and cons into account, the Hungarian citizens seem to recognize the great strategic importance of EU membership.

Defending European integrity

The Article 7 procedure took the conflict between the Hungarian government and the European administration to a new level. In the current circumstances, however, it is unlikely that the scenario of voting restrictions will be implemented in the European Council, neither for Hungary nor for Poland. For the sake of European interest, the introduction of Article 7 against two Member States seems to be a risky step, as the prospects for full enforcement of the article are very unrealistic. Not only did some Bulgarian, Romanian and Croatian MEPs defend Hungary in the vote on the triggering of Article 7 – expressions of solidarity also came from the Governments of the Czech Republic and Poland¹³. Because of such support, any attempts to enforce this measure could expose the EU as a toothless tiger that cannot exercise the rules through sanctions. Political pragmatism suggests that when there is no community of values, it is necessary to let the money speak. In Hungary, European transfers contributed greatly

to improving living conditions and rising prosperity. EU funding accounts for 4% of annual GDP.

Therefore, alternative disciplinary solutions that link the financial benefits of EU membership with the respect for Community rules and the rule of law are discussed. This concept, proposed also by Martin Schulz, was discussed in 2015 in the midst of migration influx, as a response to the refusal of a compulsory quota system by the so-called Visegrád Group. In May 2018, the Commission published the “Proposal for a Regulation of the European Parliament and of the Council on the protection of the Union’s budget in case of generalized deficiencies as regards the rule of law in the Member States”¹⁴. This proposal provides that the purpose of the measure is to prevent damage to the Union budget through general shortcomings of the rule of law in a Member State that could affect the sound financial management or protection of the Union’s financial interests¹⁵. Generalized deficiencies as regards to the rule of law include the threat to the “independence of the courts”, the failure to prevent, correct and sanction “unlawful and arbitrary decisions by public authorities” and “limiting the availability and effectiveness of legal remedies”¹⁶. As much as the financial leverage is attractive, there are concerns about possible side effects of such a measure. It might backfire by negatively affecting living conditions of local populations and increasing the financial dependence of municipalities and regional authorities on the central government.

In the long run, the Hungarian opposition welcomes the launching of the European Public Prosecutor’s Office (EPPO) with great hope¹⁷. The new body, which is expected to be fully operational by 2020, will “work closely with and complement the European Judicial Office Eurojust and the European Anti-Fraud Office (OLAF)”. This institutional expansion is intended “to ensure more successful prosecutions and better recovery of defrauded taxpayers’ money”¹⁸. Designed as an EU-wide body, all Member States must join it and have a duty to follow their decisions.

14 Proposal for a Regulation of the European Parliament and of the Council on the protection of the Union’s budget in case of generalized deficiencies as regards the rule of law in the Member States, Brussels, 2.5.2018 COM(2018) 324 final 2018/0136 (COD), <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52018PC0324&from=EN>

15 5. Weitere Angaben, Ibidem.

16 Artikel 3, Pkt. 2c, Ibidem.

17 European Public Prosecutor’s Office, European Commission Official Website, https://ec.europa.eu/info/law/cross-border-cases/judicial-cooperation/networks-and-bodies-supporting-judicial-cooperation/european-public-prosecutors-office_en

18 “EP green light for setting up EU Prosecutor to fight fraud against EU funds”, Press release, European Parliament, 05.10.2017, <http://www.europarl.europa.eu/news/de/press-room/201710021PR85127/eu-staatsanwaltschaft-soll-betrug-zulasten-von-eu-mitteln-bekampfen>

13 “The European Leaders Who Support Orbán in the Article Seven Debate”, Hungary Today, 20.09.2018, <https://hungarytoday.hu/the-european-leaders-who-support-orban-in-the-article-seven-debate/>

So far, Sweden, the Netherlands, Malta, Hungary, Poland, the United Kingdom, Ireland and Denmark are not participating in this initiative. The possible accession of Hungary to the EPPG would imply institutional cooperation. Recently, reports on the embezzlement of EU funds have been published, including family members of the Prime Minister and his circles. Joining the EPPG would therefore not only be a chance to prevent such cases in the future but also – if linked to the access to European funds – it could help promote the transparency and integrity of state institutions: an issue often addressed by the opposition and advocacy groups in Hungary¹⁹.

Certainly, any EU action will consolidate the sympathizers of the Hungarian government, but in the long run, financial resources are the only external lever to hinder further backsliding processes. At present, however, it is not possible to conclusively decide whether a reduction of funding in the conflict between the EU and Hungary is even possible: not only because the proceedings against Poland and Hungary are a kind of experiment, but also because of the forthcoming European elections. The mandate of the Juncker Commission ends in October this year and therefore it cannot pursue any long-term policy. Ultimately, everything depends on the European vote: the distribution of seats and the behaviour of the political groups in the EP. However, these results will only arrive in May 2019.

Conclusion: The solution must come from within

In the case of Hungary, we observe a consistent rebuilding of the state and its institutional foundations according to a very clear agenda. Viktor Orbán is a highly skilled and charismatic politician with a coherent illiberal view of the state, which he consequently implements with the support of an able-bodied cabinet. At the same time, most people are interested in policies that make life easier – or at least not hinder it. In this context, for example, the refugee topic was exploited and exaggerated in Hungary by constructing a communication strategy for the local audience based on slogans that emphasize the necessity to defend the country against the allegedly “irresponsible” EU²⁰. Such images and language constructs are far more digestible

for the majority of society than abstract expert debates. Meanwhile, critics of the government point out that the attempts to curtail the EU’s influence on the country aim at protecting the interests of Fidesz party elites. They refer to the status quo in Hungary as “state capture” – a seizure of the state, the linking of existing control institutions with the political will of the present government²¹. More radical diagnoses include a “mafia state”: a system where the state applies “mafia methods”²². For that reason, many observers believe that introducing the rule-of-law conditionality of structural funds is perhaps not optimal but necessary to stop the democratic backsliding in Hungary. Nevertheless, the EU is not a watchdog organization that can control the governments of the Member States. Ultimately, the real change must come from the inside of Hungarian society – from a consensus of citizens on their common future, with or without the EU. ●

Nevertheless, the EU is not a watchdog organization that can control the governments of the Member States. Ultimately, the real change must come from the inside of Hungarian society – from a consensus of citizens on their common future, with or without the EU.

¹⁹ “Corruption risk of EU funds in Hungary”, Transparency International Hungary, Budapest 2015, <https://transparency.hu/wp-content/uploads/2016/05/The-Corruption-Risks-of-EU-Funds.pdf>; “Safeguarding EU funds”, Transparency International Hungary, Budapest 2014, <https://transparency.hu/en/kozszektor/kozbeszerzes/integritasi-megallapodas/civil-ellenorzes-eu-s-beruhazasokban/>

²⁰ Münch, Peter “Früchte des Zauns”, Der Bund, 07.09.2017, <https://www.derbund.ch/ausland/europa/Fruechte-des-Zauns-/story/12511953>

²¹ “Attacking public interest: state capture in Hungary”, Transparency International Hungary, Budapest 2012, <https://transparency.hu/wp-content/uploads/2012/06/Attacking-Public-Interest-State-Capture-in-Hungary.pdf>

²² Z.B. Magyar, Bálint (2016) Post-Communist Mafia State. The Case of Hungary, Central European University Press, http://ceupress.com/books/html/Post-Communist_Mafia_State.htm

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