

Trusting Hungary with Billions of Euros

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It's crunch time for the Conditionality Regulation at the European Commission. In its College meeting on 22 November, the Commission is scheduled to discuss whether Hungary has actually made the [17 changes](#) it proposed in order to avoid cuts to its Cohesion Funds. What the Commission chooses to do will depend on whether it believes that Hungary's anti-corruption program will in fact allow Hungary to be entrusted with billions of Euros without having a sizeable fraction of those Euros pocketed by [cronies](#). The Commission can either keep pressing the Council to make [the proposed cuts](#) or it can say "never mind." The Commission's recommendation will then be taken up at the [ECOFIN Council meeting on 6 December](#), at which time the fate of the proposed cuts under the Conditionality Regulation will probably be decided.

We believe that Hungary's reforms are designed to be ineffective and will not even begin to halt the massive corruption that is the hallmark of [Hungary's kleptocracy](#). In fact, one of the oligarchs closest to the government was [just awarded another €120 million in government contracts this week](#), paid for by EU funds. It doesn't look like the government is working very hard to fight corruption. After all, if the Hungarian government were serious, it could start tackling corruption before the EU makes them do it.

In our blogposts so far assessing Hungary's anti-corruption program, we have shown how the new [Integrity Authority](#), [Anti-Corruption Task Force](#) and new [option for the general public to bring private prosecutions against corruption](#) provide fake solutions to real problems. In the rest of this post, we will explain the finishing touches that the Hungarian government has put on their anti-corruption program before these November and December deadlines, discussing the other legislative measures accepted by the National Assembly in the last several months.

Updating Our Earlier Analyses

First, however, we will update you on developments in the laws we addressed in our first three blogposts.

In our post on [the Integrity Authority](#), we showed how the process of selecting the three members of the Authority's board included political checkpoints that would likely screen out serious critics of the Hungarian government. Now that the three members of the Authority's board have been named, we can say that we were right. Candidates supported by the Hungarian NGO community with substantial experience actually fighting corruption were not selected or even ranked highly in

the process. Of the three candidates finally selected, two have close ties to the government.

According to [Telex.Hu](#), the new president of the authority has had 20 years of experience working in the field of fraud prevention for various international private-sector firms. No one has yet uncovered direct ties between him and the governing party. He looks like a credible figure, though he has no experience with public-sector corruption.

The two vice-presidents who complete the Authority's board, however, appear less convincing as corruption-fighters. One is a high-level employee of EUTAF, the Hungarian agency for auditing EU funds. As we have explained before, [EUTAF is not institutionally autonomous](#), but instead is under the control of the Hungarian Finance Ministry. It is established only by a government decree, without any basis in statute. The head of EUTAF was tasked with starting the process of picking members of the Authority by nominating the members of the Selection Committee. That Selection Committee in turn placed high on the short list one of the underlings of the person who selected them to be on the Selection Committee, so it all looks very circular. What is perhaps most peculiar about this choice, however, is that nothing is known about this new vice-president except her current job, and she does not even have a c.v. to share with the press, [according to the HvG](#).

The other member of the board is a former head of the Budapest Transportation Authority, someone who had been fired from that job by the city mayor at the time (a Fidesz loyalist) for failing to ensure that government contracts for upgrading the system were completed both on time and to the proper specifications. According to [444.hu](#), complaints that he had mismanaged the agency were filed against him after he was fired. He doesn't seem at first glance to be the most qualified person to fight corruption in public contracts. And yet he was ranked more highly than any of the candidates nominated by the anti-corruption civil sector organizations.

While there is little public information about just what happened on the way to choosing the three members of the Integrity Authority board, it appears there were some problems. One Selection Committee member was appointed from the OLAF secretariat and therefore looked like the most EU-friendly member of that committee. But that person apparently dropped out the process without giving reasons before the short list was finalized, according to [444.hu](#). That left the two remaining Selection Committee members with closer ties to the Hungarian government to make the final rankings of candidates. We don't know what happened behind the scenes, but we can see that the board now in place does not inspire confidence overall for its independence from the government.

All Authority decisions are made by majority vote, which means that the government only needs two out of the three board members on its side to ensure favorable decisions. And two of the three have served in high-level political positions either in the Fidesz government or in the Budapest municipal authority when a Fidesz mayor headed it. Perhaps the three together will act in a fully independent manner once the Integrity Authority gets up and running, but the first impressions are not encouraging. In short, the Integrity Authority lacks the appearance of integrity.

With regard to the [Anti-Corruption Task Force](#) that is supposed to contain equal numbers of governmental and non-governmental representatives to make further recommendations on anti-corruption programs, we have seen no public progress so far. According to a [September “normative decision”](#) (which binds state employees without being a formal decree of general application), the deadline to get the Task Force up and running is December 1. So the government still has two weeks to go. The identity of members of this Task Force on the non-governmental side will reveal a great deal about whether the government is serious about reform, but these representatives may not in fact be appointed by the time that that Commission has to determine whether the government’s legal changes are sufficient.

With regard to the new option for members of the general public either to challenge decisions of the public prosecutor when he closes corruption investigations without indictment or to carry on corruption cases through private prosecution instead, we explained that the law had been sent to the Constitutional Court for review, and the Court [had to approve the law before it went into effect](#). The Constitutional Court decided the matter in record time (and even published [its decision in English](#) to make sure that non-Hungarians could read it) and it found the law to be constitutional. Given the obvious conflict in the law with a provision of the constitution permitting only the public prosecutor to bring prosecutions in the public interest, this might be surprising. But we might have guessed that the [packed Constitutional Court](#) would do the government’s bidding. Now that the government wants to appear to be cooperating with Brussels, the law is deemed constitutional, even if the procedure it defines is nearly impossible to use and very expensive for anyone who tries it.

The Hungarian government promised a host of other changes to avoid funding cuts under the Conditionality Regulation procedure. The question is whether these laws actually do what the Commission had hoped. We will review the other changes that the Hungarian government has made next.

Strengthening Asset Declarations

The Hungarian government promised the European Commission that it would install a more rigorous system of asset declarations for state officials. In [Act XXXI of 2022](#), a much larger number of state officials are now subject to more rigorous asset declarations than before and the new asset declarations have been extended to include the assets of close family of these public officials. But there is a catch. The close family that are covered by an official’s asset declaration are only spouses and children *who live in the same household*.

Considering where corruption has been alleged in the Prime Minister’s family, just to take one example, these asset declarations are almost perfectly designed to miss the mark. The [Prime Minister’s father](#) has won tens of millions of EU funds for public works projects, but he is not covered by the asset declaration rules for the Prime Minister because parents aren’t included even if they live with their public-official children. The [Prime Minister’s son-in-law](#) has also been famously enriched by EU funds and would be otherwise required to have his assets declared along with his

father-in-law's, but since the son-in-law lives in a different household than the Prime Minister, the asset declaration requirement doesn't touch him either.

And of course, the various oligarchs who have been at the heart of corruption allegations as EU funds have been transferred to [crony companies](#) are completely exempt from the system because they are not state officials, even though it has long been suspected that many of the Prime Minister's assets are under the control of his childhood friend [Lőrinc Mészáros](#) (no relation either to the Prime Minister or to one of the authors of this blogpost). Mészáros is in fact the very oligarch who won almost €120 million in EU-funded contracts this week. In short, the way that the asset declaration system has been constructed conveniently leaves out everyone close to the Prime Minister whose assets have been rumored to enrich him too.

Improving Coordination with OLAF

The Hungarian government promised a more cooperative relationship with OLAF, the EU anti-fraud agency. And in [Act XXIX of 2022](#), NAV (the National Tax and Customs Office) has been designated as the new liaison office between OLAF and the Hungarian government. NAV has jurisdiction to investigate fraud in payments into or out of the public budget, so it can look into allegations that public funds are inappropriately spent but it cannot investigate general crimes beyond that. Note that the public prosecutor, who does have a more general jurisdiction, was not specified as the liaison office despite being the logical point of contact if a government wants to prosecute corruption.

Under the new law, the normal powers of NAV are weakened when NAV is cooperating with OLAF. As a result, OLAF doesn't get "full-strength" NAV as its anti-fraud partner; it only get "partial-strength" NAV. If NAV is engaged in a fraud investigation not involving OLAF, NAV has the power to search private residences and other private property looking for incriminating evidence without warning the owner of the property ahead of time. It was under this authority that [NAV conducted a surprise raid of the church of dissident Pastor Gábor Iványi](#) back in February in an act of brazen political intimidation of one of the government's critics.

Under the new law, however, NAV loses the power to search private residences at all if it is running the investigation joint with OLAF (see [new Article 50\(A\)\(3\) of Law CXXII of 2010 on the National Tax and Customs Administration](#)). In addition, if private properties other than homes are searched, the owner of the property has the right to be present during the search, but only when the investigation is joint with OLAF (also under new [Article 50\(A\)\(3\)](#)). Of course that means that the owner will receive advance warning of any search, which investigators generally want to avoid if they believe that the evidence may go missing when the owner sees the search coming. Finally, if a warrant is required for any of these searches, the warrant request must be submitted a minimum of 72 hours ahead of time (new [Article 50\(A\)\(6\)](#)). That, of course, means that new evidence of fraud cannot be acted upon quickly. But that is true only if NAV is operating in cooperation with OLAF; otherwise warrants are speedier. When NAV acts in its normal investigations, without needing to coordinate with OLAF, it operates with none of these restrictions.

Maybe NAV shouldn't have the power to raid homes and other private property without warning and without owners present, and maybe all warrants to search property should be executed with plenty of time to give the target of the warrant the chance to adjust to the incoming search. NAV has surely abused its powers in the past to harass government opponents and its activities might be less abusive if these rules were in place. But if NAV still has these powers in domestic investigations, it is hard to see why NAV shouldn't have the same powers when it investigates cases involving the corruption of EU funds working jointly with OLAF. Unless, of course, NAV isn't really supposed to be cooperating fully with OLAF.

Making Lawmaking Truly Public

The Hungarian government promised that its lawmaking process would become more transparent by encouraging both robust consultation about draft laws and impact assessments of the likely effects of these laws. Of course, it might have been a good start if the set of laws that established the Commission's required anti-corruption program were themselves transparently drafted, open for public input, assessed for their likely effects, and fully debated in the Parliament with the opposition permitted to make amendments to the government's proposals. None of that happened. The laws that the Commission will be assessing were enacted without complying with the very proposal on lawmaking that the Commission insisted that Hungary adopt.

The new [Act XXX of 2022](#), setting out the new procedures, amended two other acts that already mandated robust "social participation" in the lawmaking process by requiring that affected groups be consulted and already required that impact assessments be conducted before laws were passed ([Act CXXX of 2010 on Lawmaking](#) and [Act CXXXI of 2010 on Social Participation Regarding Legislative Drafting](#)). So now, apparently the government really has to do both, neither of which it had routinely done before. The new law adds only that the National Statistical Office shall take the lead in providing statistical data both on the general parameters of lawmaking (e.g. were the relevant groups consulted? were the provisions on social consultation followed?) and on the anticipated effects of the laws (providing data relevant to the impact assessment). (This amendment is inserted into [Act on Lawmaking, new Article 17/B.](#)) It is quite unclear just how this is to increase accountability when the National Statistical Office has absolutely no powers of enforcement.

In addition, the government promised the European Commission that at least 90% of legislative drafts will now go through the regular lawmaking process (a commitment now added as [Article 5/A of the Act on Social Participation](#)) rather than using the fast-track process that bypasses many of these steps. The Hungarian government has become rather famous for using expedited lawmaking for almost all important laws, including the 2011 Fundamental Law itself, as well as most of the constitutional amendments and many of the original and amended "cardinal laws" that require a two-thirds vote to pass and that regulate fundamental aspects of the Hungarian governmental system. Expedited lawmaking has become the norm rather than the

exception, which is presumably why the Commission insisted that the Hungarian government change its ways.

The job of enforcing the new requirement that 90% of the laws go through the regular lawmaking procedure has now been brought directly into the Prime Minister's office. The law lodges this responsibility in the Government Control Office (KEHI), an authority originally set up by Government Decree [355/2011. \(XII. 30.\)](#). In September 2022, however, Decree 355/2011 [was amended](#) so that now KEHI reports directly to the Cabinet of the Prime Minister. That office is now headed by the Prime Minister's right-hand man who until recently was the head of the governing party's public communications office (otherwise known as [the propaganda machine](#)). In short, the enforcement of this new requirement that laws be enacted transparently is now the responsibility of the man who was until recently the Prime Minister's master of spin.

Under the new law, if KEHI discovers that ministries have been violating the new requirements, the offending ministries can be fined. The fine would then be deposited directly into the state budget – so the penalty for violating the law is that the government office pays the fine into the state budget which can, of course, always reallocate that money back to the government office that was fined. This does not seem a terribly dissuasive – or effective – sanction.

And of course, as [one of us has written earlier](#), any numerical target like 90% can be gamed. The government can put everything it cares about ramming through without public notice into one giant “salad law” (so called because many different elements are tossed into one law) and then the government can race that salad law through Parliament with no consultation before it then proposes nine trivial laws that go through the onerous ordinary lawmaking procedure. Such a tactic would meet the 90% target without any real increase in transparency or accountability. The 90% requirement would be far more effective if the government were required to put, for example, all constitutional amendments and cardinal laws through the normal lawmaking procedure.

Restoring the “Public” in the Public Interest Foundations

The Hungarian government promised the Commission that it would reform the so-called [public interest foundations](#), which have exploded in number over the last two years as large amounts of public property were transferred into private hands. In the process, most public universities were privatized so that their formerly public assets were both shielded from public accountability and put at the disposal of the government-appointed boards of directors. Once the European Commission realized that these foundations escaped public procurement, freedom of information, public audit and other public accountability rules, the Commission announced it would allow [no EU funds to flow to these entities](#).

Therefore, [Act XXIX of 2022](#) amended [Act IX of 2021 on Public Interest Foundations](#) to meet some of the Commission's objections. The Hungarian government has now brought these foundations back under public procurement rules, which is an

improvement. In addition, the new [Article 15/3](#) of the Public Interest Foundations Act has created conflict-of-interest rules for the boards of these foundations. But these new conflict rules are so narrow as to be useless. They cover only individual decisions of these boards. So, if a board member has a conflict with regard to a particular decision before the board (e.g. whether the foundation should sell a particular asset), she must recuse. But there is still no provision for removing board members who have – so to speak – a conflict with everything that the foundation does because they came to the board with a particular political agenda.

The new law therefore does not touch the most crucial element of these public interest foundations, which is that they are still controlled by boards of Fidesz loyalists who can use or dispose of the assets of these foundations at will. These are political foundations, hiding in the “private” sector where their decisions still escape serious public scrutiny. Moreover, these boards are self-reproducing so that the current members themselves decide on who fills board vacancies off into the future. Many of these board members still hold positions in the Orbán government. And members of these boards are very well paid. In fact the [very person who is negotiating with the Commission](#) to ensure that Hungary fulfils its anti-corruption promises is herself one of the best paid board members of one of these public interest foundations!

Making the Procurement Process Public

The Hungarian government has promised changes to its administrative systems – introducing a single-bid reporting tool, putting in place an electronic public procurement system and more extensively using the EU platform ARACHNE which allows the EU institutions to see in real time how EU money is being spent in the Member States. All of these changes are designed to make more visible and to better track who is being awarded EU funds. Tracking alone, however, is not enough. If the public procurement office, competition office and audit office are all politically captured, and if recipients of EU money can hide behind various shell companies and complex business arrangements that disguise the ownership of the entities that are awarded public contracts, then mere tracking is unlikely to uncover corruption. Since the use of these new tracking tools require technical changes within government agencies, we cannot see from the outside whether those tools are being used yet. But even if they were, this is not likely to make a big difference.

What would begin to change the corrupt system instead? If the public procurement system were more open to genuine competition and independent of direct government influence, that would be a start. The single-bid reporting tool is designed to measure whether competition has increased, so that is no doubt why the Commission demanded its inclusion in this set of reforms. But, as one of us has previously noted, it is easy to [game the target of having fewer single bids](#) by just making crony companies that submit bids on their own behalf also submit a worse bid from a fake company at the same time. In fact, fake second bids like this are already used extensively in Hungarian public institutions, and it would be easy to simply extend that practice. What the Commission would need to see to track corruption in Hungary is not just a system for determining how many bids there were

and who won the tender in the end, but the Commission would need some system for determining whether the other bids were real.

Hungary under Permanent Emergency

After analysing the laws that the Hungarian government has passed to reassure the EU that it has gotten serious about corruption, we are not convinced that the spending of EU funds will be any less corrupt under these reforms than it has been in the last two MFF cycles when Hungary had the [largest financial corrections](#) of any EU Member State.

In assessing this new framework, we must also add that there is a huge omission that swallows everything else. Hungary is currently in a [state of emergency due to the war in Ukraine](#) which started on the day that the more-than-two-year emergency for handling the pandemic ended. In [these states of emergency](#), the Prime Minister has the power to override any law by decree – without needing to demonstrate that the overridden law has any relationship to the emergency. Because the new anti-corruption legislation does not recognize that the country has been in state of permanent emergency for nearly seven years (because [the state of migration emergency](#), launched in 2015, is still in effect too), we can imagine a situation in which the Parliament now will enact perfectly transparent general laws that go into effect only to be immediately suspended by executive decrees. In the crazy [hyper-legality undermining legal certainty](#) that characterizes present-day Hungary, nothing in this giant package of anti-corruption legislation prevents it all from being suspended in whole or in part by executive decrees at a moment's notice.

In addition, nothing in all of this anti-corruption legislation touches on the problems [one of us has previously noted](#) under [Act LIII of 2006 on the Simplification and Acceleration of the Realization of Developments with National Economic Significance](#). Article 1(A) of that law authorizes the government to declare by decree that a particular publicly funded project has “national economic significance.” The law gives no standards for when such a designation can be made, but once that designation occurs, a 2012 amendment to this law (Article 2(A)) permits the government to then appoint a special director to supervise the project (previously called a “*kormány megbízott*,” renamed in 2022 to “*ispán*”). Once the project has been so designated as being of national economic significance, it can be granted exemptions from otherwise compulsory requirements (e.g. obtaining certain permits, meeting environmental standards, bypassing local municipality regulations and more).

Under this law, then, a discretionary government decree issued after publicly funded projects have been approved can change the authorities responsible for managing the projects and/or can change the terms and conditions under which they operate.

Projects involving EU funds are explicitly referenced in this act as being potentially subject to these decrees. This constant possibility of arbitrary change after the projects have been approved heightens the risk of corruption in all publicly funded projects. Nothing in the current anti-corruption framework touches on this risk or the risk that comes from the extensive use of emergency decrees more generally that

are now legally permitted to override any legal provision that the government wishes to ignore.

If the Commission recommends to the Council that the reforms recently undertaken by the Hungarian government are sufficient for Hungary to avoid funding cuts under the Conditionality Regulation, then the Commission will have settled for appearances over reality, [appeasing an autocratic government yet again](#). And if the Council agrees that the Hungarian government has done enough to fight corruption, then everything will go back to business as usual in Hungary and EU funds will continue to be at serious risk of being diverted for private gain.

