

Commission assessment of the implementation of remedial measures submitted by Hungary

State of play - 7 December 2022

Changes in relevant legal texts communicated by Hungary to the Commission since 19 November 2022 – impact on the outstanding issues listed in the Communication from the Commission to the Council of 30 November 2022

On 6 December, Hungary's State Secretary Boka sent a letter (with 14 annexes) to the Director General of DG Budget, outlining the amendments that were tabled to the bill T2032, scheduled for adoption by the Hungarian Parliament on 7 December 2022. On 7 and 8 December, Hungary communicated to the Commission the final text of the legislation adopted on 7 December. In the information provided, Hungary also refers to certain milestones agreed in Hungary's NRRP, which according to Hungary would solve the related issue under the conditionality procedure. It must be noted that the text of a milestone is a commitment to be met for the future. However, it cannot be considered enough to correctly and fully implement a remedial measure under the conditionality procedure, as Hungary has not communicated any related legal text that would implement such milestone. On 7 December, Hungary has confirmed that the text adopted by the Hungarian Parliament is identical to that sent to the Commission services the day before. The table below shows whether such amendments have any impact on the Commission assessment of the weaknesses and risks that remain in the implementation of the remedial measures submitted by Hungary. As shown in the table, only few material changes are introduced in the legal texts in comparison with the previously submitted versions of the documents as annexed to the letter from Minister Varga of 19 November 2022 (that formed the basis of the Commission assessment on 30 November), notably on the data fields to be covered for the Central Register and on the administrative procedure for transparency – both changes are related to the remedial measure on enhanced transparency of public spending.

Paragraph in the Communication of 30 November 2022	New elements since 19 November 2022	Impact on the Commission assessment
Paragraph 153		
(i) the possibility that the	No new element introduced in the relevant legal texts	No change in the Commission's assessment.

Paragraph in the Communication of 30 November 2022	New elements since 19 November 2022	Impact on the Commission assessment
Integrity Authority may not automatically retain its competence once a project is withdrawn from Union financing	<p>after 19 November.</p> <p>Hungary agreed on 25 November to a milestone¹ under the RRP that, if and when implemented, would address this issue.</p>	The text of a milestone is a commitment to be met for the future but it is not enough to consider that the remedial measure has been correctly and fully implemented under the conditionality procedure. The milestone is a condition for future payments under the RRP but it is not adopted legal text and cannot be considered as implementing the remedial measure.
(ii) the weaknesses of the system for the judicial review of the decisions of contracting authorities that do not follow the recommendations of the Integrity Authority	No new element introduced in the relevant legal texts after 19 November.	No change in the Commission's assessment.
(iii) the weaknesses of the dismissal procedure for members of the Integrity Authority	<p>The dismissal procedure as it currently stands was included in Hungary's report of 19 November and entered into force on 24 November. This was already taken into account in the November Communication.</p> <p>No new element introduced in the relevant legal texts after 19 November.</p>	No change in the Commission's assessment.

¹ Text of the milestone: Hungary committed to provide the Integrity Authority with 'unequivocal and unlimited powers to continue to exercise its powers even in cases where the affected projects or procedures initially envisaged for Union support were subsequently withdrawn from Union support'.

Paragraph in the Communication of 30 November 2022	New elements since 19 November 2022	Impact on the Commission assessment
(iv) the absence of the transfer of competence to the Integrity Authority for the verification of asset declarations of senior political executives (i.e. Prime Minister, Ministers, the Prime Minister's political director, Secretaries of State, as covered by Section 183 of Act CXXV of 2018 on Government Administration) and the lack of clarity in the legal text as regards the power of the Integrity Authority to verify public asset declarations of all high risk officials	<p>No new element introduced in the relevant legal texts after 19 November.</p> <p>Hungary agreed on 25 November to a milestone² under the RRP that, if and when implemented, would address this issue.</p>	<p>No change in the Commission's assessment.</p> <p>The text of a milestone is a commitment to be met for the future but it is not enough to consider that the remedial measure has been correctly and fully implemented under the conditionality procedure. The milestone is a condition for future payments under the RRP but it is not adopted legal text and cannot be considered as implementing the remedial measure.</p>
(v) the possibility that judicial decisions setting aside prosecutorial decisions would	No new element introduced in the relevant legal texts after 19 November.	No change in the Commission's assessment.

² Text of the milestone: "The Integrity Authority [...] shall be endowed with extensive powers, including the following: [...] (viii) the exclusive competence to verify asset declarations of persons who fall under the scope of Section 183 of Act CXXV of 2018 (including the Prime Minister, ministers, state secretaries, political director of the Prime Minister), the power to directly verify public asset declarations of all high-risk officials (including the President, members of Parliament, heads of central executive authorities, other political officials, staff of private offices of political officials, regional governors, mayors of large cities, judges, prosecutors, members of the judicial and prosecutorial governance bodies, anti-corruption investigators and senior executives of state-owned enterprises), and for non-public asset declarations of high-risk officials at least the power to request the competent bodies to carry out the verification of those declarations and obtain the result of that verification, as of 31 March 2023."

Paragraph in the Communication of 30 November 2022	New elements since 19 November 2022	Impact on the Commission assessment
not be binding on the prosecutor		
(vi) the inclusion of an unnecessary step by the trial court ('filtering'), in the context of the new procedure for the judicial review of the decision of the prosecution service or the investigating authority to dismiss a crime report or terminate the criminal proceedings, and the absence of clear rules confirming the possibility to apply the new procedure also to (non-time-barred) criminal offences committed before 1 January	<p>No new element introduced in the relevant legal texts after 19 November.</p> <p>Hungary agreed on 25 November to a milestone³ under the RRP that, if and when implemented, would address this issue.</p>	<p>No change in the Commission's assessment.</p> <p>The text of a milestone is a commitment to be met for the future but it is not enough to consider that the remedial measure has been correctly and fully implemented under the conditionality procedure. The milestone is a condition for future payments under the RRP but it is not adopted legal text and cannot be considered as implementing the remedial measure.</p>

³ Text of the milestone: "Before the submission of the first payment request under the recovery and resilience plan, an amendment of Act XC of 2017 on the Code of Criminal Procedure shall enter into force which shall be applicable as of 1 January 2023, also to (non time-barred) criminal offences committed before that date [...]Following a repeated motion for revision, the investigating judge shall establish whether there is a person who can reasonably be suspected of having committed a crime. In that case, the procedure shall open the right to file an indictment to the competent court which shall decide on the merits of the case after having heard evidence. In cases where a motion for prosecution may be filed, a preliminary examination of the ground for the motion for prosecution by the trial court shall not be envisaged. [...]The existence of a decision dismissing a crime report or a decision terminating the proceedings, adopted before 1 January 2023 (related to crimes which are not time-barred due to the statute of limitations) shall not remove the obligation of the investigating authority or the prosecution service to adopt a new decision on the crime report under Section 379 of the Criminal Procedure Code, which decision may be subject to a motion for revision under the new procedure. [...]".

Paragraph in the Communication of 30 November 2022	New elements since 19 November 2022	Impact on the Commission assessment
2023.		
(vii) the lack of an obligation for all contracting authorities to publish information in the absence of data on the 'responsible body' for public expenditure, contracting authority or service providers, suppliers, and capacity providers in the minimum set of data to be uploaded in the central register	<p>The relevant rules on this point were included in Hungary's report of 19 November and entered into force on 24 and 29 November. This was already taken into account in the November Communication.</p> <p>On 6 December, Hungary sent to the Commission an amended draft Government Decree laying down detailed rules for the Central Information Register of Public Data. The Decree was adopted on 8 December 2022.</p> <p>The amendment concerns the inclusion of information as regards the suppliers in Annex 1 to the draft Government Decree (Content elements of the Data Sheet). The current version of the draft data sheet lists the name of designated suppliers, in addition to the name of designated subcontractors.</p>	<p>The change would address only partially the issue.</p> <p>While information on suppliers is now explicitly to be provided in the central register, there is no other change that would address the issues of lack of obligation for all contracting authorities to publish information/ absence of data on contracting authority service providers and of capacity providers in the central register (for which the remedial measure explicitly requires for their publication in the central register – so a link to another database, in the Commission's view is in principle not sufficient).</p> <p>Based on the provisions in the legal text, for instance, the National Bank and entities founded and managed by it, mostly foundations, as well as public interests trusts, have no obligation to publish in the central register their public expenditure, that public expenditure is not published in the central register by other entities either.</p>
Paragraph 154		
(i) the lack of clarity and legal certainty relating to the	On 30 November, Hungary clarified that properties outside Hungary are covered by asset declarations	No change in the Commission's assessment.

Paragraph in the Communication of 30 November 2022	New elements since 19 November 2022	Impact on the Commission assessment
disclosure obligations for real estate including outside the jurisdiction of Hungary	<p>because no exception is foreseen in this regard.</p> <p>No new element introduced in the relevant legal texts after 19 November.</p>	<p>In the Commission view, what Hungary explained is not evident for the declarants and the Hungarian government has not taken up the suggested explicit inclusion in the asset declaration forms despite repeated COM requests. The COM objections focus therefore on the lack of clarity and remain valid in the absence of any change in the relevant legal text.</p>
(ii) the lack of clarity on the personal, material and temporal scope of the declaration of assets, income and economic interests of certain executives, officials and Members of the National Assembly, and for their spouses or cohabitants and child(ren) living in the same household	<p>No new element introduced in the relevant legal texts after 19 November.</p>	<p>No change in the Commission's assessment.</p>
(iii) the electronic submission and publication of asset declarations of members of the National Assembly and persons entrusted with senior political functions in a publicly searchable database (whose access must be free of charge	<p>No new element introduced in the relevant legal texts after 19 November.</p> <p>The relevant rules on this point were included in Hungary's report of 19 November and are scheduled for adoption on 7 December. This was already taken into account in the November Communication. The Commission insisted that wording be added to the</p>	<p>No change in the Commission's assessment.</p>

Paragraph in the Communication of 30 November 2022	New elements since 19 November 2022	Impact on the Commission assessment
and without the need of registration)	relevant provisions to bring them in line with the remedial measure.	
(iv) the lack of a clear commitment for a review on the functioning of the procedure of judicial review of prosecutor decisions by 31 December 2023, and, if necessary, to provide for the adoption of amendments to the legislative framework following consultations with the Commission by 30 June 2024	<p>No new element introduced in the relevant legal texts after 19 November.</p> <p>On 30 November, Hungary explained that this commitment is in the remedial measures submitted on 22 August and it does not require a legal norm.</p>	No change in the Commission’s assessment.
(v) provisions on an ‘administrative procedure for transparency’, whose purpose is to ensure the enforcement of the requirements of transparency and correctness of the data to be published pursuant to the remedial measure on the enhanced transparency of public spending, and their adoption on	<p>The relevant amendments to Act CXII of 2011 on the right to informational self-determination and on the freedom of information were included in Hungary’s report of 19 November as well as on the letter from Hungary to the Commission on 6 December and included:</p> <ul style="list-style-type: none"> • New Section 63/A “Administrative procedure for transparency” • New Section 63/B describing the new procedure, including the administrative time 	The Commission checked the text proposed to the National Assembly on 15 November and now adopted on 7 December and it can confirm that the issues raised on this are fully addressed .

Paragraph in the Communication of 30 November 2022	New elements since 19 November 2022	Impact on the Commission assessment
6 December 2022, for entry into force on 28 February 2023	limit and the possibility to impose a fine.	
(vi) the further facilitation, after the Commission's September assessment of the proposed remedial measure, of the presence of top-level officials on boards of public interest management foundations whose purpose it is to disburse large amounts of public funds	No new element introduced in the relevant legal texts after 19 November.	No change in the Commission's assessment.

The Commission services were also provided with additional information on certain steps that were taken by Hungary for certain remedial measures after 19 November. These steps are outlined below. While these are welcome and they are in line with the agreed implementation of the remedial measures, they have no impact on the Commission's assessment of the weaknesses and risks identified in paragraph 153 and 154 of the Communication to the Council of 30 November 2022.

Remedial measure No 1 – Reinforcing prevention, detection and correction of illegalities and irregularities concerning the implementation of EU funds through a newly established Integrity Authority

- Hungary informed the Commission on 24 November 2022 that on 18 November 2022 the organisational and operational regulations of the Integrity Authority was adopted and its organisational chart was published.
- Hungary informed the Commission on 24 November 2022 that on 23 November 2022 the Integrity Authority published a press release in which it informed the public that the Authority does not maintain personal customer service (but reports are to be submitted in writing by mail or

electronically), that reports received are being processed, and that calls for applications for open positions will become soon available on the Authority's website.

- Hungary informed the Commission on 6 December that some positions have already been filled (including the positions of the financial director, HR director, legal director, the director responsible for quality control, the director responsible for methodological affairs, the head of unit responsible for analysis, the director responsible for security affairs, secretary, director responsible for investigations, and the head of unit responsible for investigations).
- Hungary informed the Commission on 9 December that a Government Decision was adopted for “the provision of central budget resources necessary for the establishment and operation of the IT infrastructure and application services that ensure the basic conditions for the operation of the Integrity Authority and the Internal Audit and Integrity Directorate”.

Remedial measure No 2 – Anti-Corruption Task Force

- Hungary informed the Commission on 2 December 2022 that the President of the Integrity Authority announced on 1 December that the Anti-Corruption Task Force was established on 1 December 2022 and that it will hold its constituent meeting on 13 December 2022.
- Ten members out of the twenty-one members were selected following a call for applications among non-governmental actors.

Remedial measure No 3 – Strengthening the Anti-Corruption Framework

- Hungary informed the Commission on 6 December that the draft outline of the new National Anti-Corruption Strategy has been prepared and that the work on the elaboration of the draft strategy continues.
- Regarding the implementation of the current National Anti-Corruption Strategy, Hungary informed that the last training event of judges, prosecutors and police officers will take place on 7 December 2022.

Remedial measure No 6 – Strengthening audit and control mechanisms to guarantee the sound use of EU support

- Hungary informed the Commission on 2 December 2022 that the organisational and operational rules of the DIAI were adopted and that the detailed rules of procedure and guidelines of the DIAI, including rules on case allocation and sequencing were issued on 16 November 2022; on 30 November 2022, the Mission and Strategy of the DIAI was adopted.
- Hungary informed the Commission on 2 December 2022 that, after the Integrity Authority approved the documentation for call for applications of the DIAI, the calls for applications were published. The selection of the director, the members of the Board, professional managers and administrators is ongoing.

Remedial measure No 7 – Reducing the share of tender procedures with single bids financed from EU funds

- Hungary informed the Commission on 6 December 2022 that as of 1 December 2022, the share of single-bid public procurements financed from EU funds from 1 January 2022 fell to 14.09%.

Remedial measure No 8 – Reducing the share of tender procedures with single bids financed from the national budget

- Hungary informed the Commission on 6 December 2022 that as of 1 December 2022, the share of single-bid public procurements financed from the national budget from 1 January 2022 fell to 31.38%.

Remedial measure No 10 – Development of the Electronic Public Procurement System (EPS) to increase transparency

- Hungary informed the Commission on 6 December 2022 that the first structured subcontractor data will be published in the next update of the database planned for 7 December 2022.

Remedial measure No 11 – Development of a performance measurement framework assessing the efficiency and cost effectiveness of public procurements

- Hungary informed the Commission on 2 December 2022 that the working group involving the selected NGOs and experts was set up and held its first meeting on 15 November 2022.
- Hungary also informed the Commission on 2 December 2022 that the draft of the core indicators of the framework was sent to the working group members for comments, and was discussed in the second working group meeting, held on 28 November 2022.
- The performance measurement framework has been finalized and was published on the EPS website on 30 November 2022.

Remedial measure No 15 – Application of ARACHNE

Hungary informed the Commission on 2 December 2022 that the second package of data for Arachne was transmitted on 30 November 2022.