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INTERIM REPORT

on the proposal for a Council decision determining, pursuant to Article 7(1) 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
(C9-0000/2022 – 2018/0902R(NLE))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Gwendoline Delbos-Corfield

PR_Consent_Interim

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MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

on the proposal for a Council decision determining, pursuant to Article 7(1) 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
(C9-0000/2022 – 2018/0902R(NLE))

The European Parliament,

– having regard to the Treaty on European Union (TEU), in particular Articles 2, 4(3) and 7(1) thereof,

– having regard to the Charter of Fundamental Rights of the European Union,

– having regard to the European Convention on Human Rights and the protocols thereto,

– having regard to the Universal Declaration of Human Rights,

– having regard to the international human rights treaties of the United Nations and the Council of Europe,

– having regard to the Rule of Law Checklist adopted by the Venice Commission at its 106th plenary session in Venice on 11-12 March 2016,

– having regard to the Commission communication of 11 March 2014 entitled ‘A new EU Framework to strengthen the Rule of Law’ (COM(2014)0158),

– having regard to its resolution of 12 September 2018 on a proposal calling on the Council to determine, pursuant to Article 7(1) 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[1],

– having regard to its resolutions of 16 January 2020[2] and 5 May 2022[3] on ongoing hearings under Article 7(1) of the TEU regarding Poland and Hungary,

– having regard to its resolution of 8 July 2021 on breaches of EU law and of the rights of LGBTIQ citizens in Hungary as a result of the legal changes adopted by the Hungarian Parliament[4],

– having regard to the country chapters on Hungary in the Commission’s annual Rule of Law Reports,

– having regard to Rule 105(5) of its Rules of Procedure,

[1] OJ C 433, 23.12.2019, p. 66.
[2] OJ C 270, 7.7.2021, p. 91.
[3] Texts adopted, P9_TA(2022)0204.
[4] OJ C 99, 1.3.2022, p. 218.

– having regard to the opinion of the Committee on Constitutional Affairs,

– having regard to the interim report of the Committee on Civil Liberties, Justice and Home Affairs (A9-0217/2022),

A. whereas the Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities, as set out in Article 2 of the Treaty on European Union (TEU) and as reflected in the Charter of Fundamental Rights of the European Union and embedded in international human rights treaties, and whereas those values, which are common to the Member States, constitute the foundation of the rights enjoyed by those living in the Union;

B. whereas as is apparent from Article 49 TEU, which provides for the possibility for any European state to apply to become a member of the European Union, the European Union is composed of states which have freely and voluntarily committed themselves to the common values referred to in Article 2 TEU, which respect those values and which undertake to promote them, with EU law being based on the fundamental premiss that each Member State shares with all the other Member States, and recognises that those Member States share with it those same values[5];

C. whereas that premiss implies and justifies the existence of mutual trust between the Member States that those values will be recognised and, therefore, that the law of the EU that implements them will be respected[6];

D. whereas compliance by a Member State with the values contained in Article 2 TEU is a condition for the enjoyment of all the rights deriving from the application of the Treaties to that Member State; whereas any violation of EU fundamental values by a Member State government inevitably implies an attack on citizens' personal freedom, political and social rights, as well as their wealth and well-being; whereas Hungary itself has subscribed to the values enshrined in Article 2 TEU;

E. whereas the principle of sincere cooperation in Article 4(3) TEU places an obligation on the Union and the Member States to assist each other in carrying out obligations which arise from the Treaties in full mutual respect, and on Member States to take any appropriate measure, general or particular, to ensure the fulfilment of the obligations arising from the Treaties or resulting from the acts of the institutions of the Union;

F. whereas Article 19 TEU gives concrete expression to the value of the rule of law affirmed in Article 2 TEU and entrusts the responsibility for ensuring the full application of EU law in all Member States and judicial protection of the rights of individuals under that law to national courts and tribunals and to the Court of Justice[7];

G. whereas any clear risk of a serious breach by a Member State of the values referred to in

[5] Judgment of 24 June 2019, *European Commission* v *Republic of Poland*, C-619/18, ECLI:EU:C:2019:531, paragraph 42.
[6] Opinion of the Court of 18 December 2014, Opinion pursuant to Article 218(11) TFEU, 2/13, ECLI:EU:C:2014:2454, paragraph 168.
[7] Judgment of 27 February 2018, *Associação Sindical dos Juízes Portugueses* v *Tribunal de Contas*, C-64/16, EU:C:2018:117, paragraph 32.

Article 2 TEU does not concern solely the individual Member State where the risk materialises but has an impact on the other Member States, on mutual trust between them and on the very nature of the Union and its citizens' fundamental rights under Union law;

H. whereas the scope of Article 7 TEU is not confined to the obligations under the Treaties, as in Article 258 of the Treaty on the Functioning of the European Union (TFEU), and whereas the Union can assess the existence of a clear risk of a serious breach of the common values in areas falling under Member States' competences;

I. whereas for several years the situation in Hungary has not been sufficiently addressed and many concerns remain, and in the meantime many new issues have arisen, which is having a negative impact on the image of the Union, as well as its effectiveness and credibility in the defence of fundamental rights, human rights and democracy globally, and revealing the need to address them through concerted Union action;

J. whereas following the ad hoc delegation of its Committee on Civil Liberties, Justice and Home Affairs to Budapest, Hungary, from 29 September to 1 October 2021, the majority of the members of the delegation still have serious concerns about democracy, the rule of law and fundamental rights in the country; whereas the delegation has concluded that the situation has not improved since 2018, but has instead deteriorated;

K. whereas Hungary's Government disregards the principle of the primacy of EU law as enshrined in the case-law of the Court of Justice, but seeks recourse to the Court of Justice when it comes to bringing actions concerning existing European acts;

L. whereas the peaceful coexistence of different ethnic groups has positive effects on the cultural wealth and prosperity of the nation;

M. whereas blocking restrictive measures against Russia in the Council undermines the Union's efforts to protect the values enshrined in Article 2 TEU within and beyond the EU, and constitutes a security problem for the European Union;

Functioning of the constitutional and electoral system

N. whereas on 20 July 2021, the Commission indicated in the country chapter on Hungary of the 2021 Rule of Law Report that the transparency and quality of the legislative process remain a source of concern, although an amendment to the constitution will limit the powers of government as regards the 'state of danger' regime after July 2023; whereas concerns have been expressed about newly established private trusts receiving significant public funding, managed by board members close to the current government;

O. whereas in its resolution of 17 April 2020 on EU coordinated action to combat the COVID-19 pandemic and its consequences[8], Parliament deemed totally incompatible with European values the Hungarian Government's decision to prolong the state of emergency indefinitely, to authorise itself to rule by decree without a time limit, and to weaken the emergency oversight of the Hungarian Parliament; whereas in its recommendation of 20 July 2020 on the 2020 National Reform Programme of Hungary

[8] OJ C 316, 6.8.2021, p. 2.

and delivering a Council opinion on the 2020 Convergence Programme of Hungary[9], the Council recommended ensuring that any emergency measures be strictly proportionate, limited in time and in line with European and international standards, that they do not interfere with business activities and the stability of the regulatory environment, and the effective involvement of social partners and stakeholders in the policy-making process;

P. whereas in its second interim compliance report adopted on 25 September 2020, the Council of Europe Group of States against Corruption (GRECO) welcomed the amendments to the Act on the National Assembly to make the provisions prohibiting or restricting members of parliament (MPs) from engaging in certain activities more operational by providing for clearer consequences in case these matters are not resolved by the MP in question; whereas, however, the report also found that more determined measures remain necessary to improve the current integrity framework of the Hungarian Parliament, in particular to improve the level of transparency and consultation in the legislative process (including the introduction of rules on interactions with lobbyists), to adopt a code of conduct for MPs (covering in particular various situations that could lead to a conflict of interest), to further develop rules obliging MPs to disclose in an ad hoc manner potential conflicts between their parliamentary work and their private interests, to ensure a uniform format of asset declarations and to review the broad immunity enjoyed by MPs, as well as to ensure the effective supervision and enforcement of rules of conduct, conflict of interest and asset declarations;

Q. whereas in a statement issued on 20 November 2020, the Commissioner for Human Rights of the Council of Europe urged the Hungarian Parliament to postpone the vote on draft bills, fearing that several proposals contained in the complex legislative package, submitted without prior consultation and relating to matters including the functioning of the judiciary, election law, national human rights structures, scrutiny over public funds, and the human rights of LGBTI people, could serve to undermine democracy, the rule of law and human rights in Hungary; whereas in its opinion of 2 July 2021 on the constitutional amendments adopted by the Hungarian Parliament in December 2020, the Venice Commission noted with concern that the constitutional amendments were adopted during a state of emergency without any public consultation, and that the explanatory memorandum consists of only three pages; whereas the Venice Commission also indicated that Articles 6, 9 and 11 of the Ninth Amendment amending the Fundamental Law of Hungary relating to declarations of war, control of the Hungarian defence forces, and the ‘special legal order’ pertaining to the state of war, state of emergency and state of danger mainly leave the specification of most details to cardinal acts, which could eventually raise some serious questions regarding the scope of the powers of the state during states of exception; whereas as regards the abolition of the National Defence Council and the entrusting of its powers to the government, the Venice Commission indicated that, while it is not contrary as such to European standards, it leads to a concentration of emergency powers in the hands of the executive, which cannot be considered an encouraging sign, notably in the absence of any clarification in the explanatory memorandum for the *ratio* or necessity of such a modification;

[9] OJ C 282, 26.8.2020, p. 107.

R. whereas on 12 February 2021, the Congress of Local and Regional Authorities of the Council of Europe noted a generally negative situation in terms of local and regional self-government in Hungary due to a general failure to comply with the European Charter of Local Self-Government, and expressed concerns about a clear trend towards recentralisation, a lack of effective consultation and significant interference by the state in municipal functions; whereas the congress also highlighted certain shortcomings in the situation of local self-government in the country, such as a lack of financial resources available to local authorities and their inability to recruit high-quality staff;

S. whereas changes made to the electoral law over the years through constituency reshaping and winner compensation are disadvantaging opposition parties; whereas in their joint opinion of 18 October 2021 on the 2020 amendments to electoral legislation in Hungary, the Venice Commission and the OSCE Office for Democratic Institutions and Human Rights (ODIHR) stressed that the speed of adoption and lack of meaningful public consultations were particularly worrisome in the case of electoral legislation, which should not be seen as a political instrument; whereas the Venice Commission and the OSCE ODIHR also made the key recommendation to amend Section 3 and Section 68 of Act CLXVII of 2020 on the Amendment of Certain Acts relating to Elections by significantly reducing the number of single-member constituencies and the number of counties in which each party needs to nominate candidates simultaneously in order to be able to run a national list of candidates, as well as a number of further recommendations;

T. whereas democratic elections organised on a level playing field are of the utmost importance to the democratic nature of our societies; whereas in response to concerns over the fairness of the elections and appeals from civil society, the OSCE decided to send a full-scale international election observation mission to the general elections and referendum held on 3 April 2022, which is a rare occurrence for EU Member States; whereas in its subsequent statement of preliminary findings and conclusions published on 4 April 2022, the OSCE international election observation mission found that the elections and referendum had been well administered and professionally managed, but marred by the absence of a level playing field; whereas contestants were largely able to campaign freely, but while competitive, the campaign was highly negative in tone and characterised by a pervasive overlap between the ruling coalition and the government, while the lack of transparency and insufficient oversight of campaign finances further benefited the governing coalition; whereas the manner in which many electoral disputes were handled by electoral commissions and courts fell short of providing effective legal remedy;

U. whereas on 24 May 2022, the Hungarian Parliament adopted the 10th Amendment to the Fundamental Law to enable the government to declare a state of danger in the case of an armed conflict, war or humanitarian disaster in a neighbouring country; whereas it also amended the Disaster Management Act, allowing the government to override acts of parliament via emergency decrees in any area during a state of danger declared due to an armed conflict, war or humanitarian disaster in a neighbouring country, with the potential to suspend or restrict the exercise of fundamental rights beyond the extent permissible in ordinary circumstances; whereas on 8 June 2022, the Hungarian Parliament adopted Act VI of 2022 on Eliminating the Consequences in Hungary of an Armed Conflict and Humanitarian Disaster in a Neighbouring Country, which entered

into force on the same day; whereas this act authorises the government to extend the effect of emergency government decrees until the state of danger has been terminated by the government;

V. whereas the Fundamental Law has been amended 10 times since its adoption; whereas cardinal acts cover 35 subject matters and now amount to more than 300 pieces of legislation that were adopted since 2011, often without public consultation even if fundamental rights have been affected;

W. whereas in a joint statement issued in 2013, the presidents of the Hungarian and Romanian Constitutional Courts emphasised the special responsibility of constitutional courts in countries governed by a two-thirds majority; whereas the Fourth Amendment to the Fundamental Law stipulated that Constitutional Court rulings given prior to the entry into force of the Fundamental Law were to be repealed; whereas the Constitutional Court increasingly relies on the concept of constitutional identity in its decisions; whereas in case-law, the concept of constitutional identity is determined on a case-by-case basis while taking precedence over the Fundamental Law; whereas the Hungarian Government increasingly seeks recourse to the Constitutional Court to avoid having to enforce judgments of the Court of Justice of the EU (CJEU); whereas on 18 May 2022, the Constitutional Court blocked the referendums on the government's plans to construct a campus in Budapest for Fudan University and to extend unemployment benefits to a maximum of nine months from the current three-month period;

X. whereas there is increasing consensus among experts that Hungary is no longer a democracy; whereas according to the University of Gothenburg's V-Dem Democracy Index 2019, Hungary has become the EU's first ever authoritarian Member State; whereas Hungary was identified as a 'hybrid regime', having lost its status as a 'semi-consolidated democracy' in the 2020 Freedom House Nations in Transit Report; whereas Hungary is rated as a 'flawed democracy' and ranks 56th out of 167 countries (one position below its 2020 ranking) in the Economist Intelligence Unit's 2022 Democracy Index; whereas according to the V-Dem Democracy Index 2022, among EU members, Hungary has been one of the world's leading autocratisers over the past decade;

Independence of the judiciary and of other institutions and the rights of judges

Y. whereas on 20 July 2021, the Commission indicated in the country chapter on Hungary of the 2021 Rule of Law Report that the Hungarian justice system performs well in terms of the length of proceedings and has a high level of digitalisation, and that the gradual increase in the salaries of judges and prosecutors continues; whereas, as regards judicial independence, the justice system has been subject to new developments adding to existing concerns: the new rules allowing for the appointment of members of the Constitutional Court to the Supreme Court (Kúria) outside the normal procedure have been put into practice and have enabled the election of the new Kúria President, whose position was also endowed with additional powers and who was elected despite an unfavourable opinion from the National Judicial Council (NJC); whereas the recommendation to strengthen judicial independence, made in the context of the European Semester, remains unaddressed, including the need to formally reinforce the

powers of the independent NJC to enable it to counterbalance the powers of the President of the National Office for the Judiciary (NOJ); whereas the nomination of the new Kúria President was rejected by the NJC with 13 votes against and 1 in favour;

Z. whereas in its judgment of 23 November 2021 in Case C-564/19 *IS* 'Illégalité de l'ordonnance de renvoi', the CJEU ruled that Article 267 TFEU must be interpreted as precluding the supreme court of a Member State from declaring that a request for a preliminary ruling by a lower court is unlawful on the grounds that the questions referred are not relevant and necessary for the resolution of the dispute in the main proceedings; whereas the principle of the primacy of EU law requires the lower court to disregard such a decision of the national supreme court; whereas Article 267 TFEU must be interpreted as precluding disciplinary proceedings from being brought against a national judge on the grounds that he or she has made a reference for a preliminary ruling to the CJEU under that provision;

AA. whereas in a statement issued on 14 December 2018, the Commissioner for Human Rights of the Council of Europe called on the President of Hungary to return the legislative package on administrative courts to the Hungarian Parliament; whereas in its opinion of 19 March 2019 on the Law on Administrative Courts and the Law on the Entry into Force of the Law on Administrative Courts and Certain Transitional Rules, the Venice Commission stated that the major drawback of the organisational and administrative model adopted for the administrative courts is that very extensive powers are concentrated in the hands of a few stakeholders and there are no effective checks and balances to counteract those powers;

AB. whereas in her report of 21 May 2019 following a visit to Hungary from 4 to 8 February 2019, the Commissioner for Human Rights of the Council of Europe noted that a series of reforms to the judiciary in Hungary during the 2010s had drawn concern about their effects on the independence of the judiciary, and that in the ordinary court system, questions about the effectiveness of the supervision exercised by the NJC over the President of the NOJ had been raised following the recent anomalies observed in the relationship between those judicial institutions with reference to appointment procedures; whereas while welcoming the recent amendments made to the original legislation on the administrative courts in response to the Venice Commission's opinion, the Commissioner was not persuaded that the amendments were sufficient to address the serious concerns identified by the Venice Commission;

AC. whereas in 2019 the Hungarian Parliament decided to postpone the entry into force of the legislative package on administrative courts and the government stated that it had abandoned the idea of introducing separate administrative courts; whereas several important elements of the package were introduced through a series of legislative amendments adopted between 2019 and 2021;

AD. whereas in a statement issued on 28 November 2019, the Commissioner for Human Rights of the Council of Europe urged the Hungarian Parliament to modify a bill affecting the independence of the judiciary; whereas the Commissioner considered that the provisions opening up the possibility for administrative authorities to introduce constitutional complaints following unfavourable rulings by the ordinary courts raised concerns about upholding fair trial guarantees for the individual complainant and,

coupled with the proposed changes on the qualifications and appointments of judges and the uniformity of jurisprudence, the legislative measures also run the risk of diminishing the independence of individual judges in their core duties and of creating excessive hierarchies within the judicial system;

AE. whereas in its opinion of 16 October 2021 on the amendments to the Act on the Organisation and Administration of the Courts and the Act on the Legal Status and Remuneration of Judges adopted by the Hungarian Parliament in December 2020, the Venice Commission reiterated the recommendations on the role of the President of the NOJ from its 2012 opinion, which had not been addressed; whereas the Venice Commission also recommended setting up clear, transparent and foreseeable conditions for the seconded judges to be assigned to a higher position after the period of secondment; whereas the Venice Commission made several recommendations related to the allocation of cases, the power of the President of the Kúria to increase the members of adjudicating panels, the uniformity decisions and the composition of chambers in the uniformity complaint procedure; whereas the Venice Commission also observed that the regime for the appointment of the President of the Kúria introduced with the 2019 amendments could pose serious risks of politicisation and have important consequences for the independence of the judiciary, or the perception thereof by the public, considering the crucial role of this position in the judicial system;

AF. whereas in its second interim compliance report adopted on 25 September 2020, GRECO noted that no further progress had been reported in relation to judges and the three remaining non-implemented recommendations thereon, and that its own findings on the powers of the President of the NOJ (both as regards the process of appointing or promoting candidates for judicial positions and the process of re-assigning judges) remained of special significance; whereas with regard to prosecutors, GRECO welcomed the entry into force of legislative amendments making the involvement of a disciplinary commissioner compulsory in disciplinary proceedings, but could not corroborate whether or not its 17th recommendation (disciplinary proceedings in respect of prosecutors) had been complied with; whereas no progress had been achieved regarding the prolongation of the term of the Prosecutor General, the broad immunity enjoyed by prosecutors and the development of criteria to guide the removal of cases from subordinate prosecutors;

AG. whereas in his communication to the Government of Hungary on 15 April 2021, the UN Special Rapporteur on the independence of judges and lawyers opined that the appointment of the President of the Kúria may be regarded as an attack on the independence of the judiciary and an attempt to submit the judiciary to the will of the legislative branch, in violation of the principle of separation of powers; whereas the Special Rapporteur also highlighted the particularly concerning fact that the President of the Kúria was elected in spite of the manifest objection of the NJC, and pointed out that the decision to ignore the negative opinion expressed by the NJC may be interpreted as a political statement by the ruling majority; whereas according to the Special Rapporteur, the main effect – if not the main goal – of the reforms of the judicial system had been to hamper the constitutionally protected principle of judicial independence and to enable the legislative and executive branches to interfere with the administration of justice;

AH. whereas in its decision of 2 December 2021 concerning the pending enhanced supervision of the execution of the judgments of the European Court of Human Rights (ECtHR) in *Gazsó group* v *Hungary*, the Committee of Ministers of the Council of Europe recalled that the group of cases in question concerned the structural problem of the excessive length of civil, criminal and administrative proceedings and the lack of effective domestic remedies; whereas the Committee of Ministers noted with satisfaction the adoption of the bill introducing a compensatory remedy for excessively long civil proceedings, but firmly called on the authorities to ensure that it was compliant with the European Convention on Human Rights; whereas in the light of the importance of the matter, its technical nature and the expiry of the deadline set by the ECtHR in its pilot judgment for 16 October 2016, the Committee of Ministers strongly encouraged the authorities to explore any possible avenue for accelerating their planning;

AI. whereas on 9 March 2022, in its interim resolution concerning the pending enhanced supervision of the execution of the ECtHR judgment in *Baka* v *Hungary*, the Committee of Ministers of the Council of Europe strongly urged the authorities to step up their efforts to find ways, in close cooperation with the Secretariat of the Committee of Ministers, to introduce the required measures to ensure that a decision by the Hungarian Parliament to impeach the President of the Kúria would be subject to effective oversight by an independent judicial body in line with ECtHR case-law; whereas the Committee of Ministers also recalled, once again, the undertaking made by the authorities to evaluate the domestic legislation on the status of judges and the administration of courts, and urged them to present the conclusions of their evaluation, including of the guarantees and safeguards protecting judges from undue interferences, so as to enable the Committee of Ministers to make a full assessment as to whether the concerns regarding the ‘chilling effect’ on the freedom of expression of judges caused by the violations in these cases had been dispelled;

AJ. whereas Hungary ranks 69th out of 139 countries in the World Justice Project 2021 Rule of Law Index (down two places compared to the previous year), and occupies last place (31st out of 31) in the EU, European Free Trade Association and North America region;

Corruption and conflicts of interest

AK. whereas on 20 July 2021, the Commission indicated in the country chapter on Hungary of the 2021 Rule of Law Report that the implementation of the anti-corruption strategy is ongoing, but its scope remains limited, and shortcomings persist as regards political party financing, lobbying and ‘revolving doors’; whereas risks of clientelism, favouritism and nepotism in high-level public administration, as well as risks arising from the link between businesses and political actors, remain unaddressed, independent control mechanisms remain insufficient for detecting corruption, and concerns remain regarding the lack of systematic checks and insufficient oversight of asset and interest declarations; whereas new criminal law provisions aim to address foreign bribery and informal payments in healthcare; whereas while the indictment rate for corruption cases is high, and some new high-level corruption cases have been opened since 2020, the track record for the investigation of allegations concerning high-level officials and their immediate circle remains limited;

AL. whereas in its answers to the written questions to Commissioner Hahn for the hearing of 11 November 2019 on the 2018 discharge to the Commission, the Commission indicated that for 2014-2020, flat-rate financial corrections were accepted and implemented in Hungary following a horizontal public procurement audit that identified serious deficiencies in the functioning of the management and control system in relation to the control of public procurement procedures;

AM. whereas in its recommendation of 23 May 2022 for a Council recommendation on the 2022 National Reform Programme of Hungary and delivering a Council opinion on the 2022 Convergence Programme of Hungary[10], the Commission recommended that Hungary should take action to reinforce the anti-corruption framework, including by improving prosecutorial efforts and access to public information, and strengthen judicial independence, as well as to improve the quality and transparency of the decision-making process through effective social dialogue, engagement with other stakeholders and regular impact assessments, and to improve competition in public procurement;

AN. whereas on 10 June 2021, the European Anti-Fraud Office stated in its 2020 Activity Report that it had recommended that the Commission recover 2.2 % of the payments made under the European Structural and Investment Funds and the European Agricultural Fund for Rural Development for the period 2016-2020; whereas this is the highest percentage of payments to be recovered among all the Member States and is far above the average of 0.29 %; whereas fraud has been committed against EU development funds allocated to Hungary; whereas together with a high level of corruption, there has been an increase in social inequality and poverty, which not only leads to great insecurity among the population but also constitutes a violation of fundamental rights;

AO. whereas in November 2021 the Commission sent a letter to Hungary underlying problems with the independence of the judiciary, ineffective prosecution of corruption, and deficiencies in public procurement which could pose a risk to the EU's financial interests; whereas in its letter, the Commission described systemic problems and a lack of accountability for corruption, posing 16 specific questions to the Hungarian authorities on issues such as conflicts of interest, the beneficiaries of EU funding, and guarantees of judicial review by independent courts; whereas despite these concerns, the Commission delayed the application of the Rule of Law Conditionality Regulation[11] until April 2022;

AP. whereas on 5 April 2022, the Commission President announced that the Commissioner for Budget and Administration, Johannes Hahn, had informed the Hungarian authorities about the Commission's plans to move on to the next step and formally trigger the Rule of Law Conditionality Regulation, mainly over corruption concerns; whereas the Commission finally initiated the formal procedure against Hungary under the Rule of Law Conditionality Regulation by issuing a written notification on 27 April 2022;

AQ. whereas on 6 April 2022, the Commission decided to send Hungary an additional formal notice to ensure the correct transposition of Directive 2014/24/EU on public

[10] COM(2022)0614.
[11] Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget, OJ L 433 I , 22.12.2020, p. 1.

procurement[12], Directive 2014/23/EU on the award of concession contracts[13] and Directive 2014/25/EU on procurement by entities operating in the water, energy, transport and postal services sectors[14]; whereas according to the Commission, Hungarian law allows for more extensive application of exceptions as regards security reasons and for contracts subsidised via tax benefits, and these exceptions lead to a broader exclusion of contracts from the obligations under EU law; whereas in addition, the Commission believes that changes to the Hungarian mining law, which provide for the possibility to award mining concessions without transparent tendering procedures, are against the principle of transparency;

AR. whereas on 19 May 2022, the Commission decided to send Hungary a letter of formal notice regarding the incorrect transposition of Directive (EU) 2017/1371 on the fight against fraud to the Union's financial interests by means of criminal law[15];

AS. whereas in its second interim compliance report adopted on 25 September 2020, GRECO noted that Hungary had still only implemented satisfactorily or dealt with in a satisfactory manner 5 of the 18 recommendations contained in the Fourth Round Evaluation Report and concluded that the overall low level of compliance with the recommendations remained 'globally unsatisfactory';

AT. whereas Hungary has decided not to participate in enhanced cooperation for the establishment of the European Public Prosecutor's Office or take part in strengthened cooperation among EU prosecutors;

AU. whereas in its technical review of the report on the state of conservation for the Hungarian component of the transboundary World Heritage property 'Fertö/Neusiedlersee Cultural Landscape' compiled in May 2021, the UNESCO International Council on Monuments and Sites concluded that the Sopron Fertö Lake Resort project, in its presented size and form, would harm the authenticity and integrity of the transboundary World Heritage property;

AV. whereas Hungary ranks 73rd out of the 180 countries and territories covered by Transparency International's 2021 Corruption Perception Index (down by one place compared to the previous year), and its ranking has been constantly declining since 2012;

Privacy and data protection

AW. whereas in the mission report following the ad hoc delegation of its Committee on Civil Liberties, Justice and Home Affairs to Budapest from 29 September to 1 October 2021, concerns were raised about the lack of safeguards as regards surveillance in the current legislation, with no real checks and balances and remedies; whereas concerns were also raised on the alleged use of the NSO Group's Pegasus spyware and increased surveillance by the state against activists, journalists, lawyers and politicians;

[12] OJ L 94, 28.3.2014, p. 65.
[13] OJ L 94, 28.3.2014, p. 1.
[14] OJ L 94, 28.3.2014, p. 243.
[15] OJ L 198, 28.7.2017, p. 29.

AX. whereas in July 2021, with information obtained through a leaked database, the investigative portal Direkt36 revealed that around 300 Hungarian citizens, including independent journalists, media owners, lawyers, politicians, business people critical of the government and former state officials, were targeted by the Pegasus spyware without their knowledge between 2018 and 2021; whereas in its preliminary remarks on modern spyware published on 15 February 2022, the European Data Protection Supervisor concluded that the widespread use of highly advanced spyware like Pegasus has the potential to cause unprecedented risks and damages not only to fundamental rights and freedoms, but also to democracy and the rule of law, outlined a series of steps and measures as a guarantee against the unlawful use of spyware, and stated that a ban on the development and deployment of spyware with the capacity of Pegasus in the EU would be the most effective option to protect fundamental rights and freedoms; whereas pro-government media in Hungary have hardly ever reported on Pegasus;

AY. whereas in its decision of 9 March 2022 concerning the pending enhanced supervision of the execution of the ECtHR judgment in *Szabó and Vissy* v *Hungary*, the Committee of Ministers of the Council of Europe recalled that the case in question concerned the violation of the applicants' right to respect for their private and family life and for their correspondence on account of the Hungarian legislation on national security-related measures of secret surveillance, which lacked sufficiently precise, effective and comprehensive safeguards on the ordering, execution and potential redressing of those measures; whereas the Committee of Ministers further highlighted that secret surveillance should be regarded as a highly intrusive act that potentially interferes with the rights to freedom of expression and privacy and threatens the foundations of a democratic society, while recalling that in response to the ECtHR judgment the authorities announced in 2017 the need for a legislative reform; whereas the Committee of Ministers noted with serious concern that the legislative process was still at a preliminary stage and the authorities had not presented any other relevant developments, and therefore strongly called on the authorities to urgently adopt the measures required to bring the domestic legislation fully in line with the requirements of the European Convention on Human Rights, establish a timeline for the legislative process and present a draft legislative proposal to the committee;

Freedom of expression, including media pluralism

AZ. whereas on 20 July 2021, the Commission indicated in the country chapter on Hungary of the 2021 Rule of Law Report that media pluralism remains at risk and that concerns persist with regard to the independence and effectiveness of the Media Authority, also in the light of the Media Council's decisions leading to independent radio station Klubrádió being taken off air; whereas while no media support schemes were established to counter the impact of the COVID-19 pandemic on news media outlets, significant amounts of state advertising have continued to permit the government to exert indirect political influence over the media; whereas access to public information was tightened through emergency measures introduced during the pandemic, making timely access to such information harder for independent media outlets; whereas independent media outlets and journalists continue to face obstruction and intimidation;

BA. whereas on 2 December 2021, the Commission decided to send a reasoned opinion regarding a decision made by the Hungarian Media Council to reject Klubrádió's

application for the use of radio spectrum; whereas the Commission concluded that the Hungarian Media Council's refusal to renew Klubrádió's rights were disproportionate and non-transparent, and that the Hungarian national media law had been applied in a discriminatory way in this particular case, in breach of Directive (EU) 2018/1972 establishing the European Electronic Communications Code[16];

BB. whereas the Central European Press and Media Foundation (KESMA) was founded on 11 September 2018; whereas the consolidation of over 470 media outlets under KESMA has had impacts in terms of shrinking the space available for independent and opposition media and limiting access to information for Hungarian citizens; whereas the funds spent on public media and KESMA are used to pursue government propaganda and discredit the opposition and non-governmental organisations (NGOs); whereas the media environment can be skewed in favour of the government through the manipulation of media ownership, state capture of regulators and formerly independent outlets, government advertising revenue and the granting of licences – methods replicated in other parts in Europe;

BC. whereas in its judgment of 8 October 2019 in *Szurovecz* v *Hungary*, the ECtHR found a violation of the freedom of expression regarding the lack of media access to reception facilities for asylum seekers; whereas the supervision of the execution of that judgment is still pending;

BD. whereas in its judgments of 3 December 2019 in *Scheiring and Szabó* v *Hungary* and 2 December 2021 in *Szél* v *Hungary*, the ECtHR found that there had been violations of the freedom of expression regarding the displaying of banners in the Hungarian Parliament; whereas the supervision of the execution of those judgments is still pending;

BE. whereas in its judgment of 20 January 2020 in *Magyar Kétfarkú Kutya Párt* v *Hungary*, the ECtHR found that there had been a violation of the freedom of expression with regard to issuing penalties for providing the political party's mobile application which allowed voters to photograph, anonymously upload and comment on invalid votes cast during a referendum on immigration in 2016; whereas the supervision of the execution of that judgment is still pending;

BF. whereas in a statement issued on 23 March 2020, the OSCE Representative on Freedom of the Media expressed his concerns about provisions in the Hungarian draft bill on the coronavirus response that could have a negative impact on the work of the media reporting on the pandemic;

BG. whereas in its judgment of 26 May 2020 in *Mándli and Others* v *Hungary*, the ECtHR found a violation of the freedom of expression regarding the suspension of the applicants' accreditation as journalists in the Hungarian Parliament; whereas the supervision of the execution of that judgment is still pending;

BH. whereas on 24 July 2020, the dismissal of the editor-in-chief of Hungary's top independent news portal Index.hu prompted the collective resignation of more than 70 journalists, who denounced clear interference in and governmental pressure on their

[16] OJ L 321, 17.12.2018, p. 36.

media outlet;

BI. whereas according to the first Mapping Media Freedom Snapshot financed by the Commission and released in July 2020, the COVID-19 crisis had arguably the greatest effect on media freedom in Hungary above all other European counties, as existing challenges were exacerbated and new issues emerged; whereas the new legislation adopted during the state of emergency in Hungary to combat the spread of 'false' or 'distorted' information caused uncertainty and self-censorship among media outlets and actors;

BJ. whereas in her memorandum on freedom of expression and media freedom in Hungary published on 30 March 2021, the Commissioner for Human Rights of the Council of Europe indicated that the combined effects of a media regulatory authority that is not free of political control and of sustained and biased state intervention in the media market have eroded the conditions for media pluralism and the freedom of expression in Hungary; whereas the Commissioner also concluded that free political debate and the free exchange of diverse opinions, which are the prerequisites for democratic societies to thrive, have been severely curtailed, particularly outside the capital;

BK. whereas in a statement following her visit to Hungary from 15 to 22 November 2021, the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression indicated that Hungary's interventions in the media sector over the past decade could create risks for human rights in the upcoming elections; whereas the UN Special Rapporteur further specified that by exerting influence over media regulatory bodies, providing substantial state funds to support pro-government media, facilitating the expansion and development of media that follow a pro-government editorial line, and ostracising media outlets and journalists reporting critically on the government, the authorities have proactively reshaped the media sector and in their efforts to create 'balance' have undermined media diversity, pluralism and independence;

BL. whereas on 4 April 2022, in its statement of preliminary findings and conclusions following the parliamentary elections and referendum, the OSCE international election observation mission stated that the bias and lack of balance in monitored news coverage and the absence of debates between major contestants significantly limited the voters' opportunity to make an informed choice;

BM. whereas on 8 April 2022, the Hungarian National Election Office ruled as unlawful the nationwide NGO campaign urging people to cast invalid votes in the referendum on children's access to information concerning sexual orientation and gender identity issues, and imposed fines on 16 different Hungarian NGOs participating in the referendum campaign;

BN. whereas Hungary ranks 85th out of the 180 countries and territories covered by Reporters Without Borders' World Press Freedom Index 2022, and is listed in the analysis for the Europe-Central Asia region as one of the countries that have intensified draconian laws against journalists;

Academic freedom

BO. whereas in its judgment of 6 October 2020 in Case C-66/18, *Commission* v *Hungary* (‘Enseignement supérieur’), the CJEU ruled that by adopting the measures provided for in Article 76(1)(a) and (b) of Law No CCIV of 2011 on national higher education, as amended, Hungary failed to fulfil its obligations under Articles 13, 14(3) and 16 of the Charter of Fundamental Rights of the EU, Article 49 TFEU and Article 16 of Directive 2006/123/EC on services in the internal market[17], as well as the agreement establishing the World Trade Organization; whereas the Central European University had to leave Budapest;

BP. whereas in October 2018 the Hungarian Government decided to drop gender studies from a list of master’s degree programmes eligible for accreditation and public funding;

BQ. whereas on 2 July 2019 the Hungarian Parliament adopted amendments to a number of laws on the institutional system and funding of research, development and innovation, thereby stripping the Academy of Sciences of its autonomy; whereas on 31 August 2020 the management of the University of Theatre and Film Arts (SZFE) resigned in protest over the imposition of a government-appointed board; whereas the Ministry of Technology and Innovation appointed five members to the new board of trustees, rejecting members proposed by the university’s senate; whereas two thirds of the 33 public interest asset management foundations performing public duties that were created by the end of 2021 will manage higher education institutions previously run by the state;

BR. whereas in its opinion of 2 July 2021 on the constitutional amendments adopted by the Hungarian Parliament in December 2020, the Venice Commission highlighted the need to reconsider Article 7 of the Ninth Amendment relating to Article 38 of the Constitution and introducing in the Fundamental Law the public interest asset management foundations performing public duties; whereas the Venice Commission suggested that these foundations should be regulated by statutory law instead, with all the relevant duties of transparency and accountability for the management of their funds (public and private) set out clearly, as well as appropriate safeguards of independence for the composition and functioning of the board of trustees; whereas the Venice Commission also mentioned that these laws should take into account the significant role of universities as places of free thought and argumentation, providing for all due measures to guarantee the proper safeguarding of academic independence and institutional autonomy;

BS. whereas in a statement following her visit to Hungary from 15 to 22 November 2021, the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression urged the Hungarian authorities to effectively protect academic freedom and respect the rights of professors and students, given the risks linked to the privatisation of public universities for the autonomy of scholars;

Freedom of religion

BT. whereas a comprehensive amendment to the 2011 Church Act was promulgated on 21 December 2018; whereas according to the Hungarian Government, the amendment would open legal avenues for religious communities to apply, before the

[17] OJ L 376, 27.12.2006, p. 36.

Metropolitan Court of Budapest, for the status of a religious association, registered church or incorporated church; whereas the supervision of the execution of the ECtHR judgment in *Magyar Keresztény Mennonita Egyház and Others* v *Hungary*, which found a violation of the right to freedom of association read in the light of the right to freedom of religion due to the de-registration of churches, is still pending;

BU. whereas in its opinion of 2 July 2021 on the constitutional amendments adopted by the Hungarian Parliament in December 2020, the Venice Commission recommended that the public school system must provide an objective and pluralist curriculum, avoiding indoctrination and discrimination on all grounds, while respecting parental convictions and their freedom to choose between religious and non-religious classes;

Freedom of association

BV. whereas in its judgment of 18 June 2020 in Case C-78/18, *Commission* v *Hungary* (transparency of associations), the CJEU concluded that by adopting the provisions[18] of Law No LXXVI of 2017 on the Transparency of Organisations which receive Support from Abroad, Hungary had introduced discriminatory and unjustified restrictions on foreign donations to civil society organisations in breach of its obligations under Article 63 TFEU and Articles 7, 8 and 12 of the Charter of Fundamental Rights; whereas the Commission decided to send a letter of formal notice to the Hungarian authorities on 18 February 2021, considering that they had not taken the necessary measures to comply with the judgment; whereas on 20 July 2021, the Commission indicated in the country chapter on Hungary of the 2021 Rule of Law Report that the Hungarian Parliament had repealed the law and introduced new rules on legality checks for civil society, and that pressure remained on civil society organisations critical towards the government; whereas the systematic dismantling of the rule of law, democracy and fundamental rights has restricted the space for opposition parties and civil society organisations, trade unions and interest groups, leaving no room for social dialogue and consultation;

BW. whereas the adoption of the new law was not preceded by a public consultation of any kind and neither were NGOs directly consulted, in contradiction of the Venice Commission's recommendation from its opinion of 20 June 2017 that the public consultation should involve, as far as possible, all civil society organisations whose status, financing or spheres of operation would be affected as a result of the entry into force of the legislation; whereas according to the new law, these organisations can now be subjected to regular financial inspections by the State Audit Office; whereas civil society organisations are concerned that the State Audit Office, whose main function is to monitor the use of public funds – not private donations – will be used to put more pressure on them; whereas civil society organisations have warned that with the new NGO law, the state will interfere with the autonomy of association of organisations established on the basis of the right of association and the privacy of citizens who stand up for the public interest, and that the law is detrimental to the exercise of freedom of expression and the democratic public as a whole; whereas the State Audit Office began

[18] Provisions which impose obligations of registration, declaration and publication on certain categories of civil society organisations directly or indirectly receiving support from abroad exceeding a certain threshold and which provide for the possibility of applying penalties to organisations that do not comply with those obligations.

checks on dozens of NGOs on 17 May 2022, asking for their accounting and cash management policies;

BX. whereas on 23 July 2021, it was announced that no agreement had been reached by the donor states of the European Economic Area and Norway Grants – Iceland, Liechtenstein and Norway – on the appointment of a fund operator to manage the funding for civil society in Hungary; whereas as a result, no programmes will be implemented during the current funding period, nullifying the EUR 214.6 million in funding that had been set aside for Hungary;

BY. whereas in their joint opinion of 17 December 2018 on Section 253 of Act XLI of 20 July 2018 amending certain tax laws and other related laws, and on the special immigration tax, the Venice Commission and the OSCE ODIHR stated that the 25 % tax on financial support to an immigration-supporting activity carried out in Hungary or on the financial support to the operations of an organisation with a seat in Hungary that carries out immigration-supporting activity does not meet the requirement of legality and constitutes an unjustified interference with the rights to freedom of expression and of association of the NGOs affected;

BZ. whereas in her report of 21 May 2019 following a visit to Hungary from 4 to 8 February 2019, the Commissioner for Human Rights of the Council of Europe stressed that the legislative measures had stigmatised and criminalised civil society activities which should be considered fully legitimate in a democratic society, and exercise a continuous chilling effect on NGOs, while noting that some of the legal provisions are exceptionally vague, arbitrary and not implemented in practice;

CA. whereas in his report of 11 May 2020 following a visit to Hungary from 10 to 17 July 2019, the UN Special Rapporteur on the human rights of migrants observed that civil society organisations working on the rights of migrants in Hungary had experienced multiple obstacles in carrying out their legitimate and important work as a consequence of legislative amendments, financial restrictions and other operational and practical measures taken by the relevant authorities; whereas the UN Special Rapporteur also noted that a number of civil society organisations had been subjected to smear campaigns, in some cases followed by administrative or criminal investigations;

The right to equal treatment, including LGBTIQ rights

CB. whereas on 20 July 2021, the Commission indicated in the country chapter on Hungary of the 2021 Rule of Law Report that the Hungarian Commissioner for Fundamental Rights had gained more competences, but their independence had been questioned by stakeholders; whereas in the report and recommendations of the virtual session of its Sub-Committee on Accreditation held from 14 to 25 March 2022, the Global Alliance of National Human Rights Institutions recommended that the Commissioner for Fundamental Rights be downgraded to B status, as the subcommittee had not received the written evidence necessary to establish that the Commissioner was effectively carrying out their mandate in relation to vulnerable groups such as ethnic minorities, LGBTIQ people, human rights defenders, refugees and migrants, or in relation to important human rights issues such as media pluralism, civic space and judicial independence; whereas the sub-committee took the view that the Commissioner was

acting in a way that seriously compromised compliance with the Paris Principles on the criteria of standards for national human rights institutions; whereas the subcommittee also noted issues with the selection and appointment process and with working relationships and cooperation with civil society organisations and human rights defenders;

CC. whereas on 15 June 2021, the Hungarian Parliament adopted a law originally intended to fight paedophilia which, following amendments proposed by MPs from the ruling Fidesz party, contains clauses prohibiting the portrayal of homosexuality and gender reassignment to minors; whereas the law prohibits homosexuality and gender reassignment from being featured in sex education classes, and stipulates that such classes can now only be taught by registered organisations; whereas changes to the Business Advertising Law and the Media Law require that adverts and content featuring LGBTI people must be rated as Category V (i.e. not recommended for minors); whereas the association of sexual orientation and gender identity with criminal acts such as paedophilia is unacceptable and leads to the further discrimination and stigmatisation of sexual minorities; whereas as a consequence of the national rules prohibiting or limiting access to content that portrays the so-called 'divergence from self-identity corresponding to sex at birth, sex change or homosexuality' for individuals under 18 years of age, the Hungarian Government issued a decree ordering children's booksellers to wrap books and media that depict homosexuality in 'closed packaging' and forbidding the sale of any books or media depicting same-sex relations or gender changes within 200 metres of any school or church; whereas this applied to the storybook for children *Fairyland is for everyone*, published by Labriz;

CD. whereas on 2 December 2021, the Commission decided to send a reasoned opinion to the Hungarian authorities considering that by imposing an obligation to provide information on a divergence from 'traditional gender roles', Hungary was restricting the freedom of expression of authors and book publishers (Article 11 of the Charter of Fundamental Rights) and discriminating on the grounds of sexual orientation in an unjustified way (Article 21 of the Charter of Fundamental Rights), and incorrectly applying EU rules on unfair commercial practices under Directive 2005/29/EC concerning unfair business-to-consumer commercial practices in the internal market[19];

CE. whereas on 2 December 2021, the Commission decided to send a reasoned opinion to the Hungarian authorities with regard to its national rules that seek to prohibit or limit access to content portraying so-called 'divergence from self-identity corresponding to sex at birth, sex change or homosexuality' for individuals under 18 years of age; whereas the Commission concluded that these rules run counter to Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services[20], Directive 2000/31/EC on certain legal aspects of information society services, in particular electronic commerce, in the internal market[21], as well as human dignity, freedom of expression and information, the right to respect for one's private life as well as the right to non-discrimination, as enshrined in Articles 1, 7, 11 and 21 respectively of the Charter of Fundamental Rights; whereas on 22 June 2021, 18 EU

[19] OJ L 149, 11.6.2005, p. 22.
[20] OJ L 95, 15.4.2010, p. 1.
[21] OJ L 178, 17.7.2000, p. 1.

Member States associated themselves with a statement on the margins of the General Affairs Council opposing the adoption of the law;

CF. whereas in her report of 21 May 2019 following a visit to Hungary from 4 to 8 February 2019, the Commissioner for Human Rights of the Council of Europe described how Hungary is backsliding on gender equality and women's rights, the political representation of women is strikingly low, and that in government policy, women's issues are closely associated with family affairs and the authorities have ceased to implement a specific strategy on gender equality;

CG. whereas in a statement issued on 29 April 2020, the UN Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity urged Hungary to drop proposed legislation that would deny trans and gender-diverse people the right to legal recognition and self-determination;

CH. whereas in its concluding observations of 3 March 2020 on the sixth periodic report of Hungary, the UN Committee on the Rights of the Child called on the Hungarian Government to act, adopt a strategy, and provide information and support to vulnerable children, including specific measures targeting girls, Roma children, asylum-seeking and migrant children and lesbian, gay, bisexual, transgender and intersex children; whereas the committee also raised serious concerns about children with disabilities being deprived of their families and living in institutions, insufficient measures by the Hungarian authorities to end institutionalisation and promote access to health, rehabilitation services and other inclusion activities, cases of child sexual abuse and the maltreatment of children with disabilities in institutional care, a lack of information on the situation of Roma children with disabilities, and the continuing stigma endured by children with disabilities;

CI. whereas on 5 May 2020, the Hungarian Parliament adopted a resolution rejecting the ratification of the Convention on preventing and combating violence against women and domestic violence (Istanbul Convention);

CJ. whereas in its judgment of 16 July 2020 in *Rana* v *Hungary*, the ECtHR found a violation of the right to respect for private life in the case of a transgender man from Iran who had obtained asylum in Hungary but could not legally change his gender and name in that country; whereas the enhanced supervision of the execution of that judgment is still pending;

CK. whereas in a statement issued on 14 June 2021, the Commissioner for Human Rights of the Council of Europe urged Hungarian MPs to reject draft amendments banning discussion about sexual and gender identity and diversity; whereas in its opinion of 13 December 2021 on the compatibility with international human rights standards of Act LXXIX of 2021 amending certain acts for the protection of children, the Venice Commission concluded that the amendments could hardly be seen as compatible with the European Convention on Human Rights and international human rights standards and urged the Hungarian authorities to repeal a number of provisions;

CL. whereas in its opinion of 2 July 2021 on the constitutional amendments adopted by the Hungarian Parliament in December 2020, the Venice Commission recommended that the constitutional amendment regarding marriage as the union of one man and one

woman, and the addition that ‘the mother shall be a woman, the father shall be a man’, should not be used as an opportunity to withdraw existing laws on the protection of individuals who are not heterosexuals, or to amend those laws to their disadvantage; whereas the Venice Commission also recommended that the interpretation and application of the constitutional amendments, especially in the drafting of the implementing legislation, should be carried out in such a way that the principle of non-discrimination on all grounds, including on the basis of sexual orientation and gender identity, is thoroughly implemented; whereas it further noted that the amendment ‘Hungary shall protect the right of children to a self-identity corresponding to their sex at birth’ should be repealed or modified to ensure that it does not have the effect of denying the rights of transgender people to legal recognition of their acquired gender identity;

CM. whereas in its opinion of 18 October 2021 on the amendments to the Act on Equal Treatment and Promotion of Equal Opportunities and to the Act on the Commissioner for Fundamental Rights as adopted by the Hungarian Parliament in December 2020, the Venice Commission indicated that there are risks associated with the merger of the equality bodies with the national human rights institutions including, but not limited to, different traditions, legal procedures and approaches the institutions may have in place, and observed that the collision of the competences already enjoyed by the Commissioner for Fundamental Rights under Act CXI and those acquired in their capacity as successor of the Hungarian Equal Treatment Authority is a clear demonstration of a risk that may undermine the effectiveness of the work in the field of promoting equality and combating discrimination;

CN. whereas in a statement issued on 13 January 2022, the Commissioner for Human Rights of the Council of Europe affirmed that it was deeply regrettable that the Hungarian Government had decided to conduct a national referendum regarding children’s access to information concerning sexual orientation and gender identity issues on the same day as the parliamentary elections, as it furthered the instrumentalisation of the human rights of LGBTIQ people; whereas on 4 April 2022, in its statement of preliminary findings and conclusions following the parliamentary elections and referendum, the OSCE international election observation mission highlighted that contrary to established international good practice, the legal framework for the referendum did not guarantee equal opportunities to campaign and voters were not informed in an objective and balanced manner on the choices presented to them, nor on their binding effect; whereas the referendum against LGBTIQ people held in Hungary on 3 April 2022 was invalid as neither option (‘yes’ or ‘no’) obtained 50 % of the votes; whereas the referendum has been widely criticised as violating the principle of non-discrimination;

CO. whereas on 4 April 2022, in its statement of preliminary findings and conclusions following the parliamentary elections and referendum, the OSCE international election observation mission highlighted that women were underrepresented in the campaign and as candidates; whereas the proportion of women in the Hungarian Parliament elected in 2022 is 14 %;

CP. whereas in its concluding observations of 25 March 2022 on the combined second and third report of Hungary, the UN Committee on the Rights of Persons with Disabilities expressed concerns that people with disabilities do not have a mechanism to make a

decision out of autonomy, and recommended that Hungary amend its legislation to ensure supported decision-making respects the dignity, autonomy, will and preferences of people with disabilities in exercising their legal capacity; whereas the committee also recommended that Hungary redesign its measures and redirect its budgets into community-based support services, such as personal assistance, with the aim of providing for people with disabilities to live independently and equally in the community;

The rights of persons belonging to minorities, including Roma and Jews, and protection against hateful statements against such minorities

CQ. whereas on 9 June 2021 the Commission decided to send Hungary a letter of formal notice, as its national legislation was not fully in compliance with EU rules prohibiting discrimination under Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin[22] and Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation[23], which require Member States to lay down effective, proportionate and dissuasive sanctions for discrimination; whereas a fundamental change occurred in July 2020 when Hungary amended the national sanction regime, obliging courts to award moral compensation for discrimination in the field of education and vocational training only in the form of training or education services and not in form of a one-off payment; whereas the European Parliament has repeatedly called on the Member States to tackle antigypsyism through effective legislative and policy measures;

CR. whereas on 2 December 2021, the Commission sent Hungary a letter of formal notice regarding the transposition of Council Framework Decision 2008/913/JHA on combating certain forms and expressions of racism and xenophobia by means of criminal law[24], as the Hungarian legal framework fails to criminalise the public condoning, denial or gross trivialisation of international crimes and does not ensure that a racist and xenophobic motivation is considered an aggravating circumstance or that such motivation is taken into account by national courts for any crime committed;

CS. whereas in its concluding observations of 6 June 2019 on the combined 18th to 25th periodic reports of Hungary, the UN Committee on the Elimination of Racial Discrimination indicated that it was deeply alarmed by the prevalence of racist hate speech against Roma, migrants, refugees, asylum seekers and other minorities, which fuels hatred and intolerance and at times incites violence towards such groups, in particular from leading politicians and in the media, including on the internet; whereas, in particular, the committee was deeply alarmed at reports that public figures, including at the highest levels, had made statements that may promote racial hatred, in particular as part of the government's anti-immigrant and anti-refugee campaign that began in 2015, and at the presence and operation of organisations that promote racial hatred; whereas while taking note of the information provided on measures taken to improve the situation of Roma, including in the fields of health and education, as well as through the national social inclusion strategy of 2011, the committee remained highly concerned at the persistence of discrimination against Roma and the segregation and extreme

[22] OJ L 180, 19.7.2000, p. 22.
[23] OJ L 303, 2.12.2000, p. 16.
[24] OJ L 328, 6.12.2008, p. 55.

poverty that they face;

CT. whereas in its fifth opinion on Hungary adopted on 26 May 2020, the Council of Europe Advisory Committee on the Framework Convention for the Protection of National Minorities indicated that while Hungary had maintained its policy to support national minorities based on a solid legislative framework, it remained necessary to address structural difficulties faced by Roma in all spheres of public and private life, including education, employment, housing and access to healthcare; whereas the committee emphasised that urgent measures need to be taken in order to remedy the Roma situation, combat early school leaving and promote inclusive and quality education, including in segregated areas; whereas it further pointed out that in disadvantaged regions, there is a need for stronger complementarity between national and local policies so as to provide long-term solutions to employment and housing problems, while access to healthcare and social services remains subject to serious practical obstacles, mainly to the detriment of Roma women and children;

CU. whereas in its decision of 16 September 2021 concerning the pending enhanced supervision of the execution of the ECtHR judgments in *Horváth and Kiss* v *Hungary*, the Committee of Ministers of the Council of Europe recalled that the case in question concerned the discriminatory misplacement and overrepresentation of Roma children in special schools for children with mental disabilities, and that the state was under a positive obligation to avoid perpetuating discriminative practices; whereas the committee noted the use of an upgraded examination system and the steady increase in the number of children receiving integrated education, and encouraged the Hungarian authorities to further pursue these measures; whereas the committee reiterated its invitation to the authorities to provide examples demonstrating the effectiveness of the administrative and judicial remedies, to complete the statistical data provided in this respect, and to provide further information on the newly established procedure before the Commissioner for Fundamental Rights; whereas the committee noted that the possible participation of an equal opportunities expert during the examination of the learning abilities of multiply disadvantaged children constitutes an important safeguard in this process;

CV. whereas the supervision of the execution of the ECtHR judgments in *Balázs* v *Hungary* concerning violations of the prohibition of discrimination read in conjunction with the prohibition of inhuman or degrading treatment on account of the authorities' failure to carry out effective investigations into the question of possible racial motives behind the ill-treatment inflicted on the Roma applicants by law enforcement agents is still pending;

The fundamental rights of migrants, asylum seekers and refugees

CW. whereas in its judgment of 19 March 2020 in Case C-564/18, *Bevándorlási és Menekültügyi Hivatal (Tompa)*, the CJEU ruled that Directive 2013/32/EU on common procedures for granting and withdrawing international protection[25] precludes national legislation which allows an application for international protection to be rejected as inadmissible on the grounds that the applicant arrived on the territory of the Member State concerned via a state in which that person was not exposed to persecution or a risk

[25] OJ L 180, 29.6.2013, p. 60.

of serious harm, or in which a sufficient degree of protection is guaranteed; whereas the CJEU concluded that the directive also precludes national legislation which sets a time limit of eight days within which a court hearing an appeal against a decision rejecting an application for international protection as inadmissible is to give a decision, where that court is unable to ensure, within such a time limit, that the substantive rules and procedural guarantees enjoyed by the applicant under EU law are effective;

CX. whereas in its judgment of 2 April 2020 in Joined Cases C-715/17, C-718/17 and C-719/17, including *Commission* v *Hungary* (temporary mechanism for the relocation of applicants for international protection), the CJEU ruled that by failing to indicate at regular intervals, and at least every three months, an appropriate number of applicants for international protection who can be relocated swiftly to its territory, Hungary had, since 25 December 2015, failed to fulfil its obligations under Article 5(2) of Council Decision (EU) 2015/1601[26] and consequently failed to fulfil its subsequent relocation obligations under Article 5(4) to (11) of that decision;

CY. whereas in its judgment of 14 May 2020 in Joined Cases C-924/19 PPU and C-925/19 PPU, *Országos Idegenrendészeti Főigazgatóság Dél-alföldi Regionális Igazgatóság* and *Országos Idegenrendészeti Főigazgatóság*, the CJEU ruled that Directive 2008/115/EC on common standards and procedures in Member States for returning illegally staying third-country nationals[27] and Directive 2013/33/EU laying down standards for the reception of applications for international protection[28] mean that the obligation imposed on a third-country national to remain permanently in a transit zone the perimeter of which is restricted and closed, within which that national's movements are limited and monitored, and which he or she cannot legally leave voluntarily, in any direction whatsoever, appears to be a deprivation of liberty, characterised by 'detention' within the meaning of those directives; whereas the CJEU indicated that EU law precludes a number of provisions of the Hungarian legislation;

CZ. whereas in its judgment of 17 December 2020 in Case C-808/18, *Commission* v *Hungary* ('Accueil des demandeurs de protection internationale'), the CJEU ruled that Hungary had failed to fulfil its obligations under Directives 2008/115/EC, 2013/32/EU and 2013/33/EU by i) providing that applications for international protection from third-country nationals or stateless persons may be made only in the transit zones of Röszke and Tompa, while drastically limiting the number of applicants authorised to enter those transit zones daily; ii) establishing a system of systematic detention of applicants for international protection in the transit zones of Röszke and Tompa; iii) allowing the removal of all third-country nationals staying illegally in its territory, without observing the procedures and safeguards laid down in the *acquis*; and iv) making the exercise by applicants for international protection of their right to remain in its territory subject to conditions contrary to EU law; whereas on 27 January 2021, the European Border and Coast Guard Agency (Frontex) announced that it was suspending its operations in Hungary following the CJEU ruling; whereas on 12 November 2021, the Commission decided to refer Hungary to the CJEU for failing to comply with the judgment and requesting that the CJEU order the payment of

[26] Council Decision (EU) 2015/1601 of 22 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and Greece, OJ L 248, 24.9.2015, p. 80.
[27] OJ L 348, 24.12.2008, p. 98.
[28] OJ L 180, 29.6.2013, p. 96.

financial penalties;

DA. whereas on 9 June 2021, the Commission decided to send the Hungarian authorities a letter of formal notice and a reasoned opinion for failing to fully transpose Directive 2013/32/EU as regards provisions on the personal interview, the medical screening, guarantees for unaccompanied children and teenagers, and the asylum examination procedure;

DB. whereas on 15 July 2021, the Commission decided to refer Hungary to the CJEU, deeming the new asylum procedure incompatible with Article 6 of Directive 2013/32, interpreted in the light of Article 18 of the Charter of Fundamental Rights (Case C-823/21, *Commission* v *Hungary);*

DC. whereas in its judgment of 16 November 2021 in Case C-821/19, *Commission* v *Hungary* (‘Incrimination de l’aide aux demandeurs d’asile’), the CJEU ruled that Hungary had failed to fulfil its obligations under: i) Article 33(2) of Directive 2013/32/EU by allowing an application for international protection to be rejected as inadmissible on the grounds that the applicant had arrived on its territory via a state in which that person was not exposed to persecution or a risk of serious harm, or in which a sufficient degree of protection was guaranteed; ii) Article 8(2) and Article 22(1) of Directive 2013/32/EU and Article 10(4) of Directive 2013/33/EU by criminalising in its national law the actions of any person who, in connection with an organising activity, provides assistance in respect of the making or lodging of an application for asylum in its territory, where it can be proved beyond all reasonable doubt that that person was aware that that application could not be accepted under that law; and iii) Article 8(2), Article 12(1)(c) and Article 22(1) of Directive 2013/32/EU and Article 10(4) of Directive 2013/33/EU by preventing any person who is suspected of having committed such an offence from the right to approach its external borders;

DD. whereas in her report of 21 May 2019 following a visit to Hungary from 4 to 8 February 2019, the Commissioner for Human Rights of the Council of Europe found that the stance against immigration and asylum seekers adopted by the Hungarian Government since 2015 has resulted in a legislative framework which undermines the reception of asylum seekers and the integration of recognised refugees as prescribed by international human rights obligations;

DE. whereas in its report of 17 March 2020 following a visit to Hungary in 2018, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment highlighted that since the committee’s ad hoc visit in 2017, nothing had been done to put in place effective safeguards to prevent the ill-treatment of persons returned by Hungarian police officers through the border fence towards Serbia, and that it was also clear that there were still no legal remedies capable of offering such persons effective protection against their forced removal and/or refoulement, including chain refoulement;

DF. whereas in its concluding observations of 6 June 2019 on the combined 18th to 25th periodic reports of Hungary, the UN Committee on the Elimination of Racial Discrimination expressed concerns at the alarming situation of asylum seekers, refugees and migrants and at reports that the principle of non-refoulement was not being fully

respected in law and in practice; whereas the committee was also deeply alarmed by the reported excessive use of force and violence by law enforcement officers against third-country nationals found anywhere in Hungary, while 'pushing back' those found near the border to Serbia, resulting in injuries and bodily harm;

DG. whereas in its judgment of 2 March 2021 in *R.R. and Others* v *Hungary*, the ECtHR found that the lack of food provided to the first applicant (R.R.) and the conditions of stay of the other applicants (a pregnant woman and children) had led to a violation of the prohibition of inhuman or degrading treatment; whereas the ECtHR also found that the applicants' stay in the transit zone had amounted to a de facto deprivation of liberty and that the absence of any formal decision of the authorities and any proceedings by which the lawfulness of their detention could have been decided speedily by a court had led to violations of right to liberty and security; whereas the ECtHR came to similar conclusions in its judgments of 24 February 2022 in *M.B.K. and Others* v *Hungary* and 2 June 2022 in *H.M. and Others* v *Hungary*; whereas the enhanced supervision of the execution of those judgments is still pending;

DH. whereas in his report of 11 May 2020 following a visit to Hungary in 2019, the UN Special Rapporteur on the human rights of migrants reiterated his call for the Hungarian Government to conduct a meaningful reassessment of the current situation and its migration policies, and indicated that Hungary should terminate the so-called crisis situation, which does not correspond to reality and has had a severe negative impact on the human rights of migrants, asylum seekers, the freedom of civil society organisations and the power of the judiciary, as well as lift all other restrictive measures with similar features and consequences;

DI. whereas in its judgment of 8 July 2021 in *Shahzad* v *Hungary*, the ECtHR found that the applicant had been subject to a 'collective' expulsion as his individual situation had not been ascertained by the authorities, which had not provided genuine and effective ways to enter Hungary, and the applicant had not been removed as a result of his conduct and had no adequate legal remedy available to him; whereas the enhanced supervision of the execution of that judgment is still pending;

DJ. whereas in its decision of 2 December 2021 concerning the pending enhanced supervision of the execution of the ECtHR judgment in *Ilias and Ahmed* v *Hungary*, the Committee of Ministers of the Council of Europe recalled that the case in question concerned a violation of the procedural obligation under Article 3 of the European Convention on Human Rights to assess the risks of ill-treatment before removing the asylum-seeking applicants to Serbia by relying on a general presumption of a 'safe third country', noted with deep regret that no steps had been taken towards conducting the necessary reassessment of the legislative presumption of 'safe third country' in respect of Serbia, and firmly reiterated its invitation for such a reassessment to be carried out without further delay and in line with the requirements of the ECtHR case-law, and for the grounds and outcome thereof to be presented; whereas the committee also noted with grave concern that, despite the concerns expressed in its previous decision, the practice of forced removals without orderly procedure had continued, and strongly reiterated its call on the Hungarian authorities to fully comply with the requirements flowing from the ECtHR judgment and to ensure that forced returns are framed by orderly procedures and safeguards, notably concerning every person's right to seek

asylum as established by international law;

DK. whereas the supervision of the execution of the ECtHR judgments in *Nabil and Others* v *Hungary* concerning violations of the applicant asylum seekers' right to liberty and security, on account of their detention pending the examination of the merits of their asylum claims, is still pending;

Economic and social rights

DL. whereas in its recommendation of 20 July 2020 on the 2020 National Reform Programme of Hungary and delivering a Council opinion on the 2020 Convergence Programme of Hungary, the Council recommended that Hungary should take action to address shortages of health workers and ensure an adequate supply of critical medical products and infrastructure to increase the resilience of the health system, improve access to quality preventive and primary care services, protect employment through enhanced short-time working arrangements and effective active labour-market policies, extend the duration of unemployment benefits, improve the adequacy of social assistance and ensure access to essential services and quality education for all;

DM. whereas in its recommendation of 18 June 2021 delivering a Council opinion on the 2021 Convergence Programme of Hungary[29], the Council recommended that Hungary should give priority to fiscal structural reforms that will help provide financing for public policy priorities and contribute to the long-term sustainability of public finances, including, where relevant, by strengthening the coverage, adequacy and sustainability of health and social protection systems for all;

DN. whereas in its concluding observations of 3 March 2020 on the sixth periodic report of Hungary, the UN Committee on the Rights of the Child recommended that Hungary should continue to invest in measures to end poverty, paying particular attention to Roma children and children living in socio-economically deprived areas, and raised serious concerns about the number of students leaving school early, most of whom are from disadvantaged backgrounds, the allocation of public schools to religious communities, which can contribute to segregation based on religion and belief, the continued segregation of Roma children in education, the education gap between Roma and non-Roma children, the lack of official data on Roma children in education, the bullying, abuse and exclusion faced by children in schools, in particular LGBTI children, and the use of methods of discipline in schools that fail to protect children from physical and mental violence;

DO. whereas on 11 February 2022, the Hungarian Government issued an emergency decree which determined the 'necessary minimum services' that must be provided during a strike under the law on strikes, interpreting them in such a broad manner as to make it impossible to strike; whereas the decree restricted the rights of teachers who had announced plans to strike on 16 March 2022;

DP. whereas since the adoption of the prohibition of the habitual residence in a public space, several ordinary courts requested that the Constitutional Court annul the legislation alleging the unconstitutionality of the law on many grounds; whereas after a lengthy

[29] OJ C 304, 29.7.2021, p. 78.

delay, the Constitutional Court rejected all of the petitions submitted by the ordinary courts on all grounds and refused to take into account any submissions that did not support the government's reasoning; whereas in the case of homelessness, the social security system focuses primarily on declaring it illegal for homeless people to stay in public areas and on punitive measures, instead of social inclusion;

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1. Reiterates that its concerns relate to the following issues in Hungary:

   – the functioning of the constitutional and electoral system;

   – the independence of the judiciary and of other institutions and the rights of judges;

   – corruption and conflicts of interest;

   – privacy and data protection;

   – freedom of expression, including media pluralism;

   – academic freedom;

   – freedom of religion;

   – freedom of association;

   – the right to equal treatment, including LGBTIQ rights;

   – the rights of persons belonging to minorities, including Roma and Jews, and protection against hateful statements against such minorities;

   – the fundamental rights of migrants, asylum seekers and refugees;

   – economic and social rights;

2. Believes that, taken together, the facts and trends, as illustrated by Parliament's resolutions, represent a systemic threat to the values of Article 2 TEU and constitute a clear risk of a serious breach thereof; expresses deep concern about and condemns the deliberate and systematic efforts of the Hungarian Government to undermine the founding values of the Union enshrined in Article 2 TEU; highlights that these trends have substantially worsened since the triggering of Article 7(1) TEU; stresses that the Hungarian Government bears responsibility for the restoration of compliance with EU law and the values enshrined in Article 2 TEU and expresses deep regret that the lack of decisive EU action has contributed to a breakdown in democracy, the rule of law and fundamental rights in Hungary, turning the country into a hybrid regime of electoral autocracy, according to the relevant indices;

3. Deplores the inability of the Council to make meaningful progress in the ongoing Article 7(1) TEU procedure; urges the Council to ensure that hearings take place at a

minimum once per Presidency during ongoing Article 7 TEU procedures and also address new developments affecting the rule of law, democracy and fundamental rights; calls on the Council to publish comprehensive minutes after each hearing; emphasises that there is no need for unanimity in the Council either to identify a clear risk of a serious breach of Union values under Article 7(1), or to address concrete recommendations to the Member States in question and provide deadlines for the implementation of those recommendations; reiterates its call for the Council to do so, underlining that any further delay to such action would amount to a breach of the rule of law principle by the Council itself; stresses that Member States have an obligation to act together and to put an end to the attacks on the values enshrined in Article 2 TEU; calls on the Council to issue recommendations to Hungary as soon as possible in order to remedy the issues mentioned in its resolution of 12 September 2018 and in the present resolution, asking it to implement all the judgments and recommendations mentioned, including those related to the general elections held on 3 April 2022; insists that in all proceedings related to Article 7 TEU, Parliament should be able to present its reasoned proposal to the Council, to attend Article 7 TEU hearings and to be promptly and fully informed at every stage of the procedure;

4. Calls on the Council and the Commission to devote more attention to the systemic dismantling of the rule of law, as well as to the interplay between the various breaches of values identified in its resolutions; underlines that leaving rule of law breaches unchecked undermines democratic institutions and ultimately affects the human rights and lives of everyone in the country where those breaches are committed; stresses that the Union should defend all of the values enshrined in Article 2 TEU with equal determination;

5. Calls on the Commission to make full use of the tools available to address the clear risk of a serious breach by Hungary of the values on which the Union is founded, in particular expedited infringement procedures, applications for interim measures before the Court of Justice and actions regarding non-implementation of the Court's judgments; recalls the importance of the Rule of Law Conditionality Regulation and welcomes the decision to trigger it in the case of Hungary, albeit after a long delay and with a limited scope; calls on the Commission to take immediate action under the regulation as regards other breaches of the rule of law, particularly those relating to the independence of the judiciary and other grounds addressed in the letter sent by the Commission to Hungary on 19 November 2021; underlines the fact that the application of the Rule of Law Conditionality Regulation is a complementary tool to the Article 7 procedure, is directly applicable in all Member States and has been enforceable since January 2021, and calls on the Commission to take all the necessary steps to ensure its effective enforcement; notes the risk of misuse of funds under the Recovery and Resilience Facility and reiterates its call for the Commission to refrain from approving Hungary's plan until it has fully complied with all European Semester country-specific recommendations in the field of the rule of law and until it has implemented all of the relevant judgments of the CJEU and ECtHR; expects the Commission to exclude any risks of programmes under cohesion policy contributing to the misuse of EU funds or to breaches of the rule of law before approving the partnership agreements and cohesion policy programmes; calls on the Commission to apply the Common Provisions

Regulation[30] and the Financial Regulation[31] more stringently in order to tackle any misuse of EU funds for political motives; considers that the application of these instruments to protect the values enshrined in Article 2 TEU is even more pressing at a time when these values are being threatened by Russia's war against Ukraine and the actions it is taking against the EU;

6. Calls on the Commission to support independent civil society in Hungary which safeguards the values enshrined in Article 2 TEU, in particular by using the Citizens, Equality, Rights and Values programme; reiterates its call on the Commission to adopt a comprehensive civil society strategy for the protection and development of civic space within the Union that integrates all existing tools and outlines a set of concrete measures to protect and strengthen civic space;

7. Reiterates its call on the Commission and the Council to immediately enter into negotiations with Parliament on an EU mechanism on democracy, the rule of law and fundamental rights in the form of an interinstitutional agreement, including a permanent policy cycle among the EU institutions;

8. Welcomes the conclusions of the Conference on the Future of Europe, in particular those contained in proposal 25 on the rule of law, democratic values and European identity, and reiterates the need to strengthen the procedure for the protection of the values on which the Union is founded and to clarify the determination and consequences of breaches of fundamental values;

9. Instructs its President to forward this resolution to the Council, the Commission, the governments and parliaments of the Member States, the Council of Europe, the Organization for Security and Co-operation in Europe and the United Nations.

[30] OJ L 231, 30.6.2021, p. 159.
[31] OJ L 193, 30.7.2018, p. 1.

EXPLANATORY STATEMENT

The European Union (EU) is founded on the common values enshrined in the Article 2 of the Treaty of the European Union (TEU) of human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.

The EU is equipped with a set of tools to defend these common values. Among them, the Article 7 TEU empowers the Council of the EU to determine that there is a clear risk of a serious breach by a Member States of the values referred in Article 2 TEU, based on a reasoned proposal by one third of the Member States, by the European Parliament or by the European Commission.

On 12 September 2018, the European Parliament used for the first time its right to initiate the Article 7(1) TEU procedure, by adopting its report 2017/2132(INL) on a proposal calling on the Council to determine the existence of a clear risk of a serious breach by Hungary of the values on which the Union is founded.

The European Parliament identified 12 areas where it determines the existence of a clear risk of a serious breach by Hungary of the values referred in Article 2 TEU:

(1) the functioning of the constitutional and electoral system;
(2) the independence of the judiciary and of other institutions and the rights of judges;
(3) corruption and conflicts of interest;
(4) privacy and data protection;
(5) freedom of expression;
(6) academic freedom;
(7) freedom of religion;
(8) freedom of association;
(9) the right to equal treatment;
(10) the rights of persons belonging to minorities, including Roma and Jews, and protection against hateful statements against such minorities;
(11) the fundamental rights of migrants, asylum seekers and refugees;
(12) economic and social rights.

It provides the Council with a clear basis to pursue the Article 7(1) TEU procedure, enter in a dialogue through regular and thorough hearings, and consider addressing recommendations to Hungary.

Since the adoption of the report 2017/2132(INL), the European Commission, international organisations such as the United Nations (UN), Council of Europe (CoE) and the Organization for Security and Cooperation in Europe (OSCE), as well as academics and civil society organisations, have shed light on worrying developments in these 12 areas. Among them, the country chapter on Hungary of the 2020, 2021 and 2022 European Commission rule of law reports express numerous concerns in the areas of functioning of the constitutional system, independence of the judiciary, corruption and conflicts of interest, and freedom of

expression.

The European Parliament has also reiterated its concerns regarding the rapid deterioration of the rule of law, democracy and fundamental rights in Hungary on several occasions, for instance in its resolution (2021/2711(RSP)) on the Rule of Law situation in the European Union and the application of the Conditionality Regulation (EU, Euratom) 2020/2092, and later in its resolution of 6 July 2021 on breaches of EU law and of the rights of LGBTIQ citizens in Hungary (2021/2780(RSP)) as a result of the legal changes adopted by the Hungarian Parliament.

In parallel, the European Parliament, in its resolutions of 16 January 2020 (2020/2513(RSP)) and 3 May 2022 (2022/2647(RSP)) on ongoing hearings under Article 7(1) TEU regarding Poland and Hungary, has noted with concerns that the Article 7(1) TEU hearings have not been organised in a regular, structured and open manner, and has urged Presidencies of the Council of the EU to ensure these hearings take place at least once per semester.

Indeed, since 12 September 2018, only the Finnish, Portuguese and French Presidencies of the Council of the EU organised hearings of the Hungarian government. Even if the Article 7(1) TEU constitutes a preventive phase, aiming at providing a basis for entering into a dialogue with the Member State concerned and intending to avoid possible sanctions, the lack of regular hearings impedes the EU concerted action to safeguard its common values, leading to a negative impact on its image, as well as its effectiveness and credibility in the defence of fundamental rights, human rights and democracy globally.

It has also stressed that hearings can only be effective if the Council follows them up by addressing recommendations to the member states in question, as provided for by Article 7(1) TEU, and urged the Council to swiftly proceeding with adopting recommendations addressed to the Hungarian government.

Considering the broad consensus at EU, international, civil society and academic levels about the rapid deterioration of the rule of law in Hungary, the lack of progress of the Article 7(1) TEU at the Council level and the slow reaction of the European Commission when it comes to using available tools such as the Conditionality Regulation, your Rapporteur has decided to initiate the present interim consent report on the proposal for a Council decision determining, pursuant to Article 7(1) of the Treaty on European Union, the existence of a clear risk of a serious breach by Hungary on which the Union is founded.

Your Rapporteur, appointed standing rapporteur on the situation in Hungary at the beginning of the 9th term, has been following closely the situation for the last three years, through close and regular contacts with the European Commission, the Council of the EU, international organisations, civil society organisations and academics.

On 29 September - 1 October 2021, your Rapporteur has headed the official European Parliament delegation to Budapest, Hungary. The mission, after being postponed several times due to the pandemic situation, has allowed entering into a dialogue and gathering views from Hungarian officials, public authorities, opposition political parties, cultural institutions and civil society organisations. The mission report clearly states that serious concerns about democracy, the rule of law and fundamental rights remain and that the situation has not improved since 2018, but has instead deteriorated.

The present report updates the report 2017/2132(INL) on a proposal calling on the Council to determine the existence of a clear risk of a serious breach by Hungary of the values on which the Union is founded. It follows the same structure and methodology, and provides an in-depth overview of the latest developments, facts and trends in the 12 areas covered by the report 2017/2132(INL).

For that purpose, your Rapporteur uses references to reports and recommendations from the European Commission, EU agencies, Council of Europe, OSCE and the United Nations. The report also refers to case law of the Court of Justice of the EU (CJEU) and the European Court of Human Rights (ECHR), as well as infringement procedures initiated by the European Commission. References to internationally recognised indices have also been used to complement these findings, and in order to provide the most accurate possible overview of the situation since 12 September 2018. Findings and recommendations from the opinion delivered by the Committee on Constitutional Affairs (AFCO) were also included throughout the report.

Your Rapporteur sincerely thanks the stakeholders who contributed to the report, participated in the LIBE mission to Budapest and in the preparatory shadow meeting organised on 22 April 2022, as well as the AFCO Committee for providing their perspective.

Based on these findings, the report reiterates that the concerns of the European Parliament still relate to the 12 areas covered by the report 2017/2132(INL). It concludes that the facts and trends highlighted across the report represent a systemic threat to the values of Article 2 TEU and constitute a clear risk of a serious breach thereof, and condemns the deliberate and systemic efforts of the Hungarian government to undermine these founding values. Overall, it expresses regrets that the lack of decisive EU action has contributed to a breakdown of democracy, rule of law and fundamental rights in Hungary, and turning one of its member states into hybrid regime of electoral autocracy.

Considering these alarming conclusions, your Rapporteur strongly hopes this report will provide the Council the basis to address recent worrying developments during upcoming Article 7(1) TEU hearings of the Hungarian government. She also encourages EU Presidencies to use this report as a basis to start working swiftly on recommendations addressed to the Hungarian government.

4 years after the triggering of the Article 7(1) TEU procedure by the European Parliament, Your Rapporteur reiterates the urge for the Commission and Council to use all tools at their disposal to restore the rule of law, democracy and fundamental rights in Hungary. As the situation is dramatically deteriorating to the detriment of millions of citizens and of the European project as a whole, it is high time for all EU institutions to act together and put an end to these systemic breaches of the EU founding values.

MINORITY POSITION

Authors: Jorge Buxadé Villalba (ECR), Jean-Paul Garraud (ID), Balázs Hidvéghi (NI), Patryk Jaki (ECR), Vincenzo Sofo (ECR), Annalisa Tardino (ID), Jadwiga Wiśniewska (ECR)

The officially stated goal of this report is to observe so-called "breaches of the rule of law" in Hungary. A prerequisite to such a report must be objectivity, the use of clear criteria and strict adherence to facts. However, similarly to previous documents adopted by the LIBE Committee, the report is based on subjective opinions and politically biased statements, and reflects vague concerns, value judgements and double standards. In several instances, it brings up cases that were settled a long time ago by the responsible bodies, or which concern issues that form part of public debate and belong to the sole competence of Member States. Throughout the report, the rapporteur fails to point to any actual breach of the rule of law. The text reflects the well-known narrative of denouncing the “overall rule of law situation” while failing to substantiate any concrete violation. This text is yet another attempt by the federalist European political parties to attack Hungary and its Christian-democratic, conservative government for ideological reasons. This report is a disappointing piece of work by the European Parliament especially at a time when the unity of the European Union should be more important than ever.

19.5.2022

OPINION OF THE COMMITTEE ON CONSTITUTIONAL AFFAIRS

for the Committee on Civil Liberties, Justice and Home Affairs

on the proposal for a Council decision determining, pursuant to Article 7(1) 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
(2018/0902R(NLE))

Rapporteur for opinion: Włodzimierz Cimoszewicz

PA_Consent_Interim

SUGGESTIONS

The Committee on Constitutional Affairs calls on the Committee on Civil Liberties, Justice and Home Affairs, as the committee responsible, to incorporate the following suggestions into its report:

1. Expresses deep concern about the deliberate and systematic efforts of the Hungarian Government to undermine the founding values of the Union enshrined in Article 2 TEU, in particular through the removal of the constitutional checks and balances, by the limitation of the independence of the judiciary, by intentional alterations of the national electoral system, by hampering fundamental rights, such as freedom of expression, education and academic freedoms, university autonomy, media pluralism and media independence, and by challenging the right to equal treatment, as well as rights of migrants and asylum seekers; highlights that these trends have substantially worsened since the triggering of Article 7(1) TEU and have been amplified by the COVID-19 crisis;

2. Insists on the need to avoid establishing a de facto hierarchy of EU values; stresses that it is important to ensure that not only the rule of law, but also other Union values, including a wider spectrum of fundamental rights and democracy, are properly assessed;

3. Recalls that the rule of law does not mean rule by law but is underlined by the principle of legitimacy resulting in a transparent, accountable, democratic and pluralistic process of enacting laws; deplores the fact that the constitutional balance in Hungary has continued to be significantly altered by a deliberately broad and instrumental use of cardinal laws and constitutional amendments aiming to entrench the issues which are to be regulated by ordinary legislation, through amendments of constitutional level, with no or limited public consultation, in a very expedient manner and without any effective involvement of the opposition or civil society; highlights that such a trend of locking in issues at the constitutional level is problematic with regard to both the Constitution and ordinary laws, is a threat to the rule of law, is contrary to constitutional traditions and to principles common to Member States and has been a source of open and consistent

criticism by the EU, the Council of Europe, the United Nations and the Organization for Security and Co-operation in Europe Office for Democratic Institutions and Human Rights (OSCE/ODIHR); denounces the excessive use of extraordinary powers with the declaration of the state of danger at the outset of the COVID-19 pandemic without limitation and with full discretionary powers granted to the government to extend or terminate it, which included a possibility for the government to set aside any law by a simple executive decree; insists that any such measures should remain necessary and proportionate and with relevant constitutional guarantees for their legislative oversight;

4. Underlines that several recently adopted provisions in fundamental law or in cardinal acts aimed at curbing the operational functioning of civil law institutions such as universities or introduced unnecessary hurdles for making changes needed for an effective administration of elections; insists that, moreover, the Hungarian Government has, without any consultation, pushed for expedient amendments to several ordinary laws which have had a far-reaching negative impact on fundamental rights and the right of equal treatment; insists that the introduction of provisions with regard to elections led in particular to increased obstacles for parties in being able to run in a national list of candidates, the main effect of which is to favour the incumbents[1]; highlights that the practice of adopting such laws shortly before the election is contrary to established practice and the recommendations of the Venice Commission in its rule of law checklist; recalls that the OSCE/ODIHR decided to send a full-scale election observation mission to the 2022 Hungarian parliamentary elections because of concerns regarding a general deterioration of conditions for democratic elections, and concerns over the independence of the judiciary and freedom of the media; recalls that the recommendations issued by OSCE/ODIHR following the 2018 parliamentary elections as well as by GRECO, in particular those related to campaign finance, remain largely unaddressed, which negatively affected the transparency and accountability of campaign finances; recalls that new concerns have been raised by the election observation mission on 4 April 2022;

5. Stresses that in its Statement of Preliminary Findings and Preliminary Conclusions[2], the OSCE election observation mission to the 2022 Hungarian parliamentary elections found that while the elections offered voters distinct alternatives and were well run, the process was marred by the pervasive overlapping of government information and ruling coalition messaging that blurred the line between state and party, as well as by media bias and opaque campaign funding;

6. Expresses concern about the steps the Hungarian Government has taken to further limit the independence of the judiciary, in particular by weakening the powers of the National Judicial Council through the modification of appointment procedures, and by increasing the administrative powers of the president of the Supreme Court, which took place entirely without judicial involvement; recalls that the integrity and independence of the judicial system is an essential source of mutual trust in the EU and a lack of such

[1] Hungary Joint Opinion on the 2020 Amendments to Electoral Legislation approved by the Council for Democratic Elections at its 72nd meeting (Venice and online, 14 October 2021) and adopted by the Venice Commission at its 128th Plenary Session (Venice and online, 15-16 October 2021), Opinion No 1040/2021, 18 October 2021, paragraph 32.
[2] International Election Observation Mission, Hungary – Parliamentary Elections and Referendum, 3 April 2022, Statement of Preliminary Findings and Conclusions.

qualities in the judicial system leads to irreparable damage to the EU, as national judges are judges of EU law and guarantee equality between EU citizens through its uniform application; highlights, furthermore, that the Hungarian Government relies increasingly on the Hungarian Constitutional Court to avoid compliance with the judgments of the Court of Justice of the European Union (CJEU), thereby undermining the primacy of EU law;

7. Regrets the lack of proper follow-up to its reasoned proposal calling on the Council to determine, pursuant to Article 7(1) TEU, the existence of a clear risk of a serious breach by Hungary of the values on which the Union is founded; stresses the high thresholds needed for the activation and use of this provision in the Council and the political considerations influencing the procedure; recalls that pursuant to Article 7(1) TEU only a qualified majority of four fifths, under conditions established pursuant to Article 354 TFEU is necessary to determine that there is a clear risk of a serious breach by a Member State of the values referred to in Article 2; notes that the Council's failure to make effective use of this procedure enables continued divergence from the values enshrined in Article 2 TEU, which has the effect of undermining those values and mutual trust between Member States, as well as the credibility of the EU as a whole; urges the presidency of the Council to take the appropriate steps in order to proceed with the procedure under Article 7(1) TEU; calls on the Commission to make full use of the tools available to address a clear risk of a serious breach by Hungary of the values on which the Union is founded, in particular expedited infringement procedures and applications for interim measures before the Court of Justice;

8. Insists that the Council's constitutional obligation to organise hearings, enshrined in Article 7(1) TEU, should be implemented in an open, regular and structured manner; regrets that so far this has not been the case and that the Council, citing the COVID-19 pandemic, and the impossibility to hold physical Council meetings, has only organised two hearings under Article 7(1) TEU since December 2019; insists that in all proceedings related to Article 7 TEU, Parliament and the Commission should be treated equally; insists that Parliament should be able to present its reasoned proposal to the Council and to attend Article 7 hearings when it is Parliament that initiated the procedure, respecting the prerogatives of each of the three institutions and the principle of sincere cooperation pursuant to Article 13(2) TEU; reiterates its call on the Council to keep Parliament promptly and fully informed at every stage of the procedure with due regard to Parliament's role in providing its consent; calls on the Council to systematically provide the Member State concerned with recommendations including deadlines and to oversee their implementation on a regular basis, following the hearings under Article 7(1) TEU; urges the Council to immediately address such recommendations to Hungary; recalls that the Council has the obligation to regularly reassess the situation in the Member State concerned and may lift a determination if it finds that the grounds no longer apply;

9. Takes the view that the latest developments in the ongoing hearings under Article 7(1) TEU once again underline the imminent need for an EU mechanism on democracy, the rule of law and fundamental rights (DRF), as proposed by Parliament, in the form of an interinstitutional agreement, including a coherent, effective and visible EU annual DRF monitoring cycle, which should also take into account procedures under Article 7 TEU and under the Rule of Law Conditionality Regulation; reiterates that the mechanism

must complement and reinforce, rather than substitute, the ongoing and future proceedings under Article 7 TEU; calls on the Council and the Commission to enter without delay into negotiations on an interinstitutional agreement under Article 295 TFEU framing such a mechanism;

10. Takes note of the conclusions of the Conference on the Future of Europe, in particular those contained in proposal 25 on 'Rule of Law, democratic values and European identity', which include extending the scope of the conditionality mechanism to cover all violations of the rule of law;

11. Strongly believes that the Treaties should be revised in order to improve the efficiency of the Article 7 procedures under both its preventive and corrective arms;

12. Welcomes the judgment of the CJEU in cases C-156/21[3] and C-157/21[4] of 16 February 2022, which confirms the validity of the Rule of Law Conditionality Regulation, as it is based on an appropriate legal basis and is compatible with the procedure laid down in Article 7 TEU; welcomes the decision of Commission President Ursula von der Leyen to launch the Rule of Law Conditionality Mechanism against Hungary; regrets, however, that this decision was taken with significant delay; calls on the Commission to apply it as soon as possible on all the grounds addressed in the letter sent to Hungary by the Commission on 19 November 2021; underlines that application of the Conditionality Regulation is a tool complementary to the Article 7 procedure, is directly applicable in all Member States and has been enforceable since January 2021, and calls on the Commission to undertake all necessary steps for its effective enforcement; points with concern to the recent amendments to laws narrowing the scope of application of public procurement rules in Hungary and leading to reduced scrutiny and increased risk of corruption; points furthermore to a clear lack of cooperation with the European Anti-Fraud Office (OLAF), as well as failures to recover amounts due from economic operators that committed irregularities or fraud;

13. Expresses deep concern about the systemic misuse of public funds from the national and EU budget to the benefit of members of the government and affiliated circles; deplores the extremely high ratio of irregular payments under the European Structural and Investment Funds, including the European Agricultural Fund, in Hungary; notes that in 2019 the Commission imposed on Hungary the highest financial correction in the EU; notes the limited track record of investigations into allegations concerning corruption involving high-level officials; reiterates that the approval of the national plans under the Recovery and Resilience Facility should be made conditional on the fulfilment of all criteria set in the Recovery and Resilience Facility Regulation; expects the Commission to exclude any risks of programmes under cohesion policy contributing to the misuse of EU funds or to breaches of the rule of law before approving the partnership agreements and cohesion policy programmes; calls on the Commission to apply the Common Provisions Regulation and the Financial Regulation more stringently in order to tackle any misuse of EU funds for political motives;

14. Takes note of the recent parliamentary elections in Hungary and insists that the Hungarian Government remains responsible for eliminating the risk of serious breaches

[3] *Hungary* v *European Parliament and Council of the European Union*, ECLI:EU:C:2022:97.
[4] *Republic of Poland* v *European Parliament and Council of the European Union*, ECLI:EU:C:2022:98.

of EU values;

15. Calls attention to the impact of the war in Ukraine and the need for immediate responses from the Member States; calls on the Commission to ensure that the circumstances do not lead to a relaxing or delaying of the effective application of instruments for upholding the rule of law in the Union, such as Article 7 TEU and the Rule of Law Conditionality Regulation;

16. Fully condemns the criticism expressed by the Prime Minister of Hungary towards the President of Ukraine and deplores the reinforcement of ties between Hungary and Russia, given the invasion of Ukraine by the latter.

INFORMATION ON ADOPTION IN COMMITTEE ASKED FOR OPINION

Date adopted	17.5.2022
Result of final vote	+: 19 –: 7 0: 1
Members present for the final vote	Gerolf Annemans, Gabriele Bischoff, Damian Boeselager, Włodzimierz Cimoszewicz, Gwendoline Delbos-Corfield, Pascal Durand, Daniel Freund, Charles Goerens, Sandro Gozi, Brice Hortefeux, Laura Huhtasaari, Victor Negrescu, Giuliano Pisapia, Paulo Rangel, Antonio Maria Rinaldi, Domènec Ruiz Devesa, Jacek Saryusz-Wolski, Helmut Scholz, Pedro Silva Pereira, Antonio Tajani, László Trócsányi, Guy Verhofstadt, Loránt Vincze, Rainer Wieland
Substitutes present for the final vote	Jorge Buxadé Villalba, Seán Kelly, Nikolaj Villumsen

FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

19	+
PPE	Seán Kelly, Paulo Rangel, Antonio Tajani, Rainer Wieland
Renew	Pascal Durand, Charles Goerens, Sandro Gozi, Guy Verhofstadt
S&D	Gabriele Bischoff, Włodzimierz Cimoszewicz, Victor Negrescu, Giuliano Pisapia, Domènec Ruiz Devesa, Pedro Silva Pereira
The Left	Helmut Scholz, Nikolaj Villumsen
Verts/ALE	Damian Boeselager, Gwendoline Delbos-Corfield, Daniel Freund

7	-
ECR	Jorge Buxadé Villalba, Jacek Saryusz-Wolski
ID	Gerolf Annemans, Laura Huhtasaari, Antonio Maria Rinaldi
NI	László Trócsányi
PPE	Loránt Vincze

1	0
PPE	Brice Hortefeux

Key to symbols:
+ : in favour
- : against
0 : abstention

INFORMATION ON ADOPTION IN COMMITTEE RESPONSIBLE

Date adopted	13.7.2022
Result of final vote	+: 47 –: 10 0: 2
Members present for the final vote	Magdalena Adamowicz, Abir Al-Sahlani, Konstantinos Arvanitis, Katarina Barley, Pernando Barrena Arza, Pietro Bartolo, Vladimír Bilčík, Karolin Braunsberger-Reinhold, Patrick Breyer, Jorge Buxadé Villalba, Anna Júlia Donáth, Lucia Ďuriš Nicholsonová, Maria Grapini, Sylvie Guillaume, Evin Incir, Sophia in ‘t Veld, Marina Kaljurand, Fabienne Keller, Peter Kofod, Moritz Körner, Alice Kuhnke, Jeroen Lenaers, Juan Fernando López Aguilar, Nuno Melo, Javier Moreno Sánchez, Maite Pagazaurtundúa, Paulo Rangel, Terry Reintke, Diana Riba i Giner, Isabel Santos, Birgit Sippel, Vincenzo Sofo, Tineke Strik, Ramona Strugariu, Annalisa Tardino, Yana Toom, Tom Vandendriessche, Bettina Vollath, Elena Yoncheva, Javier Zarzalejos
Substitutes present for the final vote	Bartosz Arłukowicz, Malin Björk, Gwendoline Delbos-Corfield, Cyrus Engerer, Daniel Freund, Balázs Hidvéghi, Beata Kempa, Jaak Madison, Fulvio Martusciello, Philippe Olivier, Anne-Sophie Pelletier, Rob Rooken, Róża Thun und Hohenstein, Nils Ušakovs, Tomáš Zdechovský
Substitutes under Rule 209(7) present for the final vote	Daniel Buda, Ladislav Ilčić, David Lega, Lucia Vuolo

FINAL VOTE BY ROLL CALL IN COMMITTEE RESPONSIBLE

47	+
PPE	Magdalena Adamowicz, Bartosz Arłukowicz, Vladimír Bilčík, Karolin Braunsberger-Reinhold, Daniel Buda, David Lega, Jeroen Lenaers, Fulvio Martusciello, Nuno Melo, Paulo Rangel, Lucia Vuolo, Javier Zarzalejos, Tomáš Zdechovský
RENEW	Abir Al-Sahlani, Anna Júlia Donáth, Lucia Ďuriš Nicholsonová, Sophia in 't Veld, Fabienne Keller, Moritz Körner, Maite Pagazaurtundúa, Ramona Strugariu, Róża Thun und Hohenstein, Yana Toom
S&D	Katarina Barley, Pietro Bartolo, Cyrus Engerer, Sylvie Guillaume, Evin Incir, Marina Kaljurand, Juan Fernando López Aguilar, Javier Moreno Sánchez, Isabel Santos, Birgit Sippel, Nils Ušakovs, Bettina Vollath, Elena Yoncheva
THE LEFT	Konstantinos Arvanitis, Pernando Barrena Arza, Malin Björk, Anne-Sophie Pelletier
VERTS/ALE	Patrick Breyer, Gwendoline Delbos-Corfield, Daniel Freund, Alice Kuhnke, Terry Reintke, Diana Riba i Giner, Tineke Strik

10	-
ECR	Jorge Buxadé Villalba, Ladislav Ilčić, Beata Kempa, Rob Rooken, Vincenzo Sofo
ID	Jaak Madison, Philippe Olivier, Annalisa Tardino, Tom Vandendriessche
NI	Balázs Hidvéghi

2	0
ID	Peter Kofod
S&D	Maria Grapini

Key to symbols:
+ : in favour
- : against
0 : abstention