



27.9.2024

NOTICE TO MEMBERS

Subject: Petition No 0072/2024 by J. H. (German) calling for the return of funds released to Hungary

1. Summary of petition

According to the petitioner, under the Orbán government EU funds are being systematically misappropriated. The petitioner fears that the release in December 2023 of previously frozen EU funds amounting to around ten billion euros will jeopardize the values of the EU. The petitioner demands, among other things, the immediate reversal of the released funds and the recovery of the amounts already paid from this release, and no further payment of EU funds until an expert opinion commissioned by the European Commission has established that there is no longer any systemic corruption in Hungary. The petitioner also requests the withdrawal of Hungary's voting rights.

2. Admissibility

Declared admissible on 18 April 2024. Information requested from Commission under Rule 227(5) (New Rule 233(5)).

3. Commission reply, received on 27 September 2024

The Commission's observations

It is an utmost priority of the Commission to uphold and defend the EU's values and ensure the fight against corruption across all Member States.

In its decisions of 22 December 2022, approving Hungary's programmes co-financed from the Cohesion Policy Funds, the European Maritime, Fisheries and Aquaculture Fund, and the Home

Affairs Funds, the Commission considered that Hungary did not fulfil the horizontal enabling condition on the EU Charter of Fundamental Rights because of several concerns, including on judicial independence. Because of these concerns, the Commission blocked most of the Funds allocated under the Common Provisions Regulations 2021/10601 (CPR).

After a thorough assessment, and several exchanges with the Hungarian government, on 13 December 2023 the Commission considered that Hungary had taken the measures it committed to take in order for the Commission to consider that the horizontal enabling condition on the Charter of Fundamental Rights is fulfilled in what concerns judicial independence. This meant that part of the EU funding could and should no longer be blocked, and therefore Hungary may start claiming reimbursements of up to around EUR 10.2 billion from the CPR Funds. However, significant parts of CPR funding remain frozen under the horizontal enabling condition on the Charter of Fundamental Rights for concerns relating to LGBTIQ rights, academic freedom, and asylum rights.

The specific date on which the Commission took the decision considering the horizontal enabling condition fulfilled as regards judicial independence resulted from the legal deadline to adopt such a decision. It was thus a matter of legal compliance, not subject to political considerations. The Commission has to abide by the rule-of-law and all its decisions are based on the applicable legislation, namely the CPR as regards the horizontal enabling condition.

The Commission will closely and continuously monitor, notably through audits, active engagement with stakeholders and in monitoring committees, the application of the measures put in place by Hungary. If, at any point in time, the Commission considers that this horizontal enabling condition for what concerns judicial independence or any other aspect is no longer fulfilled, it may carry out a new assessment and decide to block funding.

The Commission's concerns regarding the situation of the rule of law in Hungary are clearly stated in the dedicated country chapter of the Commission's annual Rule of Law Report². In addition, the Commission continues to share several concerns expressed by the European Parliament in its reasoned proposal of 12 September 2018 triggering the Article 7(1) TEU procedure for Hungary. The procedure covers a wide range of issues related to EU values.

Article 7(2) TEU provides that the European Council, acting by unanimity, may determine the existence of a serious and persistent breach by a Member State of the values referred to in Article 2 TEU. Where a determination under Article 7(2) TEU has been made, it is the Council, acting by a qualified majority, who may decide to suspend the voting rights of the representative of the government of the Member State concerned in the Council.

Furthermore, on 15 December 2022, based on a proposal from the Commission, the Council adopted measures to protect the Union budget from breaches of the principles of the rule of law in Hungary under the general regime of conditionality³. The Council suspended part of the

1 REGULATION (EU) 2021/1060 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 24 June 2021 laying down common provisions on the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund, the Just Transition Fund and the European Maritime, Fisheries and Aquaculture Fund and financial rules for those and for the Asylum, Migration and Integration Fund, the Internal Security Fund and the Instrument for Financial Support for Border Management and Visa Policy, OJEU L 231 of 30 June 2021

2 https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law/rule-law-mechanism_en

3 Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council of 16 December 2020 on

financial commitments under three Cohesion Policy programmes, for an amount of about EUR 6.3 billion for the period 2021-2027 and prohibited to enter any new legal commitments under direct or indirect management with so-called public interest trusts. These measures relate to the principles of the rule of law in Hungary in the areas of public procurement, prosecutorial action, conflict of interest and the fight against corruption. In the course of the procedure, Hungary proposed some remedies, but failed to implement them fully, leaving several issues outstanding. The Commission reassessed⁴ the situation and decided, on 13 December 2023, that the measures could not be lifted, as Hungary had not adopted and formally notified the Commission of any new remedy to address the outstanding issues. Hungary has to date submitted no further remedies. The Council measures thus remain in place.

Additionally, the Hungarian recovery and resilience plan (RRP) includes further measures to ensure the respect of EU law by Hungary. Indeed, in its RRP, approved by the Council on 15 December 2022, Hungary committed to 27 “super milestones” to ensure the protection of the Union's financial interests, and to strengthen judicial independence. These “super milestones” remain unchanged in Hungary’s revised plan (approved by the Council on 8 December 2023), and also apply to the REPowerEU chapter. The 27 “super milestones” of the RRP include 4 “super milestones” on judicial independence, which correspond to the measures requested of Hungary by the Commission under the horizontal enabling condition on the EU Charter of Fundamental Rights, and 21 “super milestones” that correspond to the key implementation steps of the remedial measures proposed in the course of the procedure under the general regime of conditionality. Given that the “super milestones” have not been fully complied with yet, no RRP payment has to date been disbursed to Hungary with the exception of ‘automatic’ REPowerEU pre-financing.

Conclusion

It is a priority for the Commission to defend the EU values and the fight against corruption across all Member States. The Commission uses all tools available to ensure that all Member States, including Hungary, comply with EU law. In this respect, the Commission not hesitated and will not hesitate to take legal action against any Member State when EU law is violated while always respecting itself EU law.

a general regime of conditionality for the protection of the Union budget, OJ L 433I, 22.12.2020, p. 1, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32020R2092>

⁴ The Commission’s reassessment is available at https://commission.europa.eu/document/83f08b3a-bf4a-4462-a361-88d44692452b_en