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From: General Secretariat of the Council
To: Delegations

Subject: Values of the Union - Hungary - Article 7 (1) TEU Reasoned Proposal -
Report on the hearing held by the Council on 16 September 2019

As a foreseen in 10641/2/19 REV2 (paragraph 23 of the Annex), delegations will find in the Annex the formal report on the hearing of Hungary, held on 16 September 2019, in accordance with Article 7(1) TEU.

On 16 September 2019, the Council heard Hungary in accordance with Article 7(1) TEU. The hearing was conducted during the meeting of the General Affairs Council and lasted approximately two hours.

At the start of the hearing, the Presidency briefly reminded the participants how the procedure would be conducted (10641/2/19 REV2). It also informed the Council about its contacts with the European Parliament.

On 4 September 2019, the Presidency together with colleagues from Croatia and Germany met the Chair of the Committee on Civil Liberties, Justice and Home Affairs (LIBE), Mr Juan Fernando López Aguilar, and the newly appointed rapporteur, Ms Gwendoline Delbos-Corfield. The European Parliament welcomed this opportunity and stressed the importance of well-articulated inter-institutional cooperation on such an important matter. It also stressed the widespread support within the European Parliament for the Reasoned Proposal on Hungary. The European Parliament expressed the view that side-meetings could not substitute a formal presentation of the Reasoned Proposal by the rapporteur before the Council. It stated that it should be granted equal footing with the Commission. Accordingly, the European Parliament asked for the opportunity to intervene in Council and stated that this would apply on this occasion only. It added that it would not need to be directly involved in the rest of the hearing process. As regards the issues covered by the hearings, the European Parliament welcomed the general scope of the first hearing. It stated that, although further thematic hearings would be useful, it was essential not to lose sight of the wider picture. The European Parliament stressed the fact that the scope and the number of changes in Hungary were creating systemic threats to the rule of law and posed a concrete risk that the rights of minorities, across the board, would be endangered by the ruling majority. In particular, the European Parliament pointed out that the situation did not appear to have improved in recent months. Indeed, there were serious concerns in several areas, especially in relation to: media pluralism; academic freedom; the independence of the judiciary and the reform of administrative courts; the fundamental rights of migrants, asylum seekers and refugees.

The Hungarian delegation was then given the floor. The Hungarian delegation referred to its updated information note of reply of 12 September 2019 (12133/19) and stated that it was ready to provide further information and clarification. It stated that the European Parliament's Reasoned Proposal did not contribute to the unity of the Union and that it had been adopted in such way as to

breach the European Parliament's rules of procedure. The delegation expressed the view, therefore, that the procedure pursuant to Article 7(1) TEU lacked a legal basis. Nevertheless, it stated that Hungary would participate constructively in the procedure, in a spirit of cooperation, and in the hope of avoiding undue delay and of facilitating a timely closure. The scope of the procedure pursuant to Article 7(1) TEU should be limited to issues covered by the European Parliament's Reasoned Proposal and take into account that some of these were subject to procedures and others were pending. The delegation stated that there should be no interference between those ongoing procedures and the procedure pursuant to Article 7(1) TEU. It stated that Hungary had been subject to unprecedented international scrutiny and that the resources and reports were available to all interested parties.

The delegation stated that, although the Union's values were founded on common constitutional traditions, Hungary did not expect all Member States to follow exactly the same trajectory. This applied, for instance, in the matter of the creation of constitutional courts. In Hungary, there was overwhelming public support for EU integration, and EU membership was seen as beneficial. In the area of migration there was, however, a need to restore the balance between individual rights and the public interest, and the state could not be indifferent towards those who were entering Union territory. In addition, Hungary had always enforced ECJ judgements and had never been subject to financial penalties. The delegation stated that Hungary was committed to Union's values but that those values were currently being used as political leverage. It added that the European Parliament had failed to fulfil its duty of cooperation and that the European Parliament's Reasoned Proposal was biased and comprised a number of mistakes. There were no elements that demonstrated a clear risk of a serious breach of the Union's values.

The delegation stated that Hungary's cooperation with the Venice Commission was excellent and that the justice scoreboard gave Hungary a favourable ranking. In addition, GRECO reports were in line with this view and scored Hungary as being above the average. The delegation went on to assert that academic life in Hungary was flourishing. In this regard, it stated that Member States had significant room for manoeuvre in this area: it was not unprecedented that institutions based in another country were subject to regulation in the interests of ensuring "a level playing field" and of verifying that they were carrying out genuine activities in their country of origin. On the issue of religious organisations, Member States reserved the right to differentiate between the legal status of historic (traditional) churches and the status of other religious communities; all regulatory issues raised by the Commission in this area had been resolved. In addition, Hungary recognised the contribution of NGOs. Nevertheless, it was legitimate to take measures to ensure transparency of

funding, whilst avoiding the imposition of disproportionate burdens. The approach on illegal immigration was in line with EU standards, too. This applied, for instance, in the need to address the problem of entities that intentionally support illegal migration. This was of particular relevance in view of Hungary's geographical position and its EU external border. The delegation asserted that families were a priority in government spending; work-life balance and equal treatment were assured, as well as the effective protection of women against violence. Sound policies were in place against racism and particular attention was devoted to the integration of Roma people. On the issue of migration, Hungary was striving to address its causes - also through cooperation with third countries - and to fully protect external borders. The delegation stated that European Parliament's Reasoned Proposal did not address economic and social rights in a systematic way. Accordingly, none of the statements in the Reasoned Proposal, individually or as a whole, demonstrated a clear risk of a serious breach by Hungary of the values on which the Union was founded.

The Commission was then given the floor. It stated that it appreciated the Presidency's efforts to involve the European Parliament in the hearing process. Even so, there was a need to ensure a fair handling of the issue, also considering that the Commission could not be a proxy for the Parliament and that it was for Member States to ask questions. The Commission shared the concerns of the European Parliament on the issue of judicial independence, which also GRECO and the Council of Europe had pointed out in recent reports. This had resulted in the request made by the National Judicial Council to the Hungarian Parliament for the removal of the President of the National Office for the Judiciary. The postponement of the reform of the administrative courts was not a long term solution. On the issue of corruption, as indicated by GRECO's compliance reports, Hungary's level of compliance had remained unsatisfactory, across the board. The Commission was using all the instruments available: value-related infringement procedures, audits, and investigations on the use of EU funds. The Commission welcomed the fact that the first hearing would cover all the grounds of the Reasoned Proposal, as these indicated that there was a systemic threat. There was no legal reason to exclude items under infringement proceedings: the Member States needed to examine a dynamic, changing situation, and to receive all the elements so as to make an informed assessment. Follow-up hearings could be organised, focusing on the detail of selected topics. On those occasions, international bodies could be invited to contribute, and provide their assessments, based on authoritative and independent sources.

The Swedish delegation asked how a plural landscape could be ensured, considering that 80% of media in Hungary were controlled by one single entity, which was exempt from scrutiny by competition authorities.

The Hungarian delegation replied to the Commission that corruption was a recurring issue in the press and in political debates, but that Hungary had a positive record in this regard. A very complex set of measures had been adopted - both in the public and private sector - which included very stringent rules on conflicts of interest concerning politicians and civil servants. In its view, an increasing rate of indictments and a record high in foreign direct investment demonstrated that efforts were being made to crack down on corruption. The implementation of only 5 out of 18 GRECO recommendations was due to technical difficulties. In addition, GRECO advice was problematic in some instances. This concerned, for instance, the recommendation to reduce the scope of immunity for judges.

On the issue of media freedom, the Commission and the Council of Europe had examined the current media regulation in 2011. They had made a positive assessment at the time. In particular, freedom of expression was guaranteed, even vis-à-vis the media owner. Journalists' sources were fully protected; on the basis of a qualified majority, the Hungarian Parliament elected a media council that was subject to a long mandate and strict rules designed to ensure an independent oversight of the media. In addition, sanctions were applied by the media council on a progressive basis. The media holding in question had been set up by independent market operators and, in reality, its market share was well below 80%. 55% of television broadcasts were critical of the government, a corresponding 80% of online sources were critical of the government, too. Media concentration was similar or higher in other Member States.

The Belgian delegation asked how it was possible to ensure academic freedom and the freedom of expression following the reform of the Hungarian Academy of Sciences and the creation of a new body - in which the government appointed 7 of the 13 members - to oversee research institutes.

The Hungarian delegation stated that the European Parliament had not raised this issue, but that in a spirit of cooperation Hungary was prepared to provide an answer to the question. The new body had, in fact, 15 members. 7 of these were nominated by the government, 7 by the Hungarian Academy of Sciences; the president was chosen by common accord by its members. Reforms related only to the research network attached to the Academy, which dated back to the communism era. This was inefficient and included only roughly one third of members chosen by actual researchers. The new president had made it clear that all the directors of the 15 existing research institutes would retain their positions. The focus of the new body would be on securing an even

wider autonomy and increased funding in the framework of effective management: it would not be responsible for deciding on specific research projects.

The Netherlands delegation asked whether Hungary was taking into account the Country Specific Recommendations (CSR) of July 2019, which highlighted the point that Hungary should reinforce its anticorruption system.

The Hungarian delegation replied that the CSR were not based on hard facts - but rather on the citation of opinions. According to OLAF, Hungary was in the top tier of Member States. Several measures had been taken - including the training and screening of all officials - and efforts had been stepped up in 2019, as reflected in milder language in the CSR of 2019, as compared to 2018. Efficiency in the use of EU funds was improving: Hungary was the first Member State to implement the new EU rules on public procurement and to introduce e-procurement.

The Spanish delegation inquired about freedom of expression, variety and diversity in the media landscape (and the risk of excessive concentration) and academic freedom - and the guarantees the Hungarian legislation offered in these areas.

The Hungarian delegation stated that it had already replied on the issues of freedom of expression and the media. With regard to academia, the new law on higher education had been adopted in 2012 and an assessment was necessary after 5 years. The aim of this was to provide quality higher education. Amendments had been introduced to create a level playing field between Hungarian institutions and institutions that were based in another country. Requirements were no more stringent than in other Member States. The government had always consented to the extension of deadlines for compliance by institutions.

The Danish delegation stressed the point that several international bodies and organisations had identified violations. The cumulative impact of these constituted a serious threat to democracy and the rule of law. The delegation inquired about judicial independence and the steps taken in relation to the request made by the National Judicial Council to the Hungarian Parliament for removal of the President of the National Office for the Judiciary, following the disciplinary procedures the latter had advocated be taken against members of the National Judicial Council.

The Hungarian delegation replied that measures were in place to ensure the independence of the President of the National Office for the Judiciary. He or she was elected by 2/3 majority in Parliament and had to be a career judge with at least 5 years of judicial experience. The President denied having received pressures and the disciplinary procedures against judges in the National Judicial Council had been instigated before their election and were unrelated to their activities in the Council. The dismissal of the President of the National Office for the Judiciary could be decided only by the President of the Republic or by a 2/3 majority of the National Judicial Council. Institutional tensions had increased since 2018, but this only confirmed that checks and balances were working.

The French delegation (also on behalf of Germany) pointed out that each Member State was responsible for ensuring the respect of fundamental values and that a sound implementation of EU common policies was paramount. Further hearings on specific issues could prove to be necessary. The delegation asked about disciplinary measures, in particular why they were not handled in the context of the immediate hierarchical structure and what the role of the Prosecutor General was.

The Hungarian delegation reiterated that the prosecution service was completely independent from the judiciary and the executive; the Prosecutor General was appointed by 2/3 majority in Parliament and was answerable to the Parliament only - the National Judicial Council had no oversight role. An individual prosecutor, however, had to follow instructions issued by prosecutors who were their hierarchical superiors. As regards disciplinary sanctions, fair process was guaranteed through the presence of a disciplinary commissioner, who was not linked to the prosecutor who was the hierarchical superior.

The Italian delegation highlighted once more the importance of academic freedom.

The Luxembourg delegation stressed the importance of dialogue on rule of law issues and asked whether, on the issue of immigrants, asylum-seekers and refugees, Hungary intended to adapt the measures in the so-called 'stop Soros' package to ensure that these measures were proportionate and respectful of human dignity, consistent with the Charter of fundamental rights and other international instruments.

The Hungarian delegation replied that all conditions were met, notably those laid down by the reception conditions directive. Throughout all the procedures, rights were fully respected (namely:

translation, legal counselling, as well as the requisite accommodation, food, access to health care, education and social assistance). Due attention was given to full compliance: a two-tier procedure was foreseen, with final decisions rendered locally, in the transit zone.

The German delegation asked why, according to GRECO and Transparency International, Hungary was performing poorly in the area of corruption and which additional measures were being taken against corruption.

The Hungarian delegation replied that there was a lack of solid evidence justifying the downgrading of Hungary. International assessments relied mainly on surveys of the public, and this approach was questionable from a methodological viewpoint. Additional measures taken included the creation of a specific service, within the Prosecutor General office, focusing on high level corruption. The implementation of the new whistle-blowers directive would not require any change to the legislation in force in Hungary since 2015.

The Portuguese delegation inquired about the reform of administrative courts.

The Hungarian delegation replied that a debate on the issue had been ongoing since the fall of the communist regime, which had abolished administrative courts in 1949. Hungary had requested the opinion of the Venice Commission and, in essence, had taken on board all the comments made. There was no legal controversy, but a highly toxic political debate was still ongoing, which had prompted the government to postpone indefinitely the entry into force of the reform of the administrative courts.

The French delegation asked about the extension of the Prosecutor General's mandate, the media coverage of the electoral campaign and whether measures were envisaged to ensure wider pluralism at the next elections.

The Hungarian delegation replied that the Prosecutor General's mandate had been extended until the appointment of the new Prosecutor General. This dependent on agreement in Parliament. On the question of elections, the turnout had been the highest ever at the last elections; citizens took an active interest in the political process, and this proved they were able to express their views.

A number of guarantees were in place to ensure the neutrality of public broadcasters. In particular these related to a board of trustees responsible for overseeing the public service: here the opposition and the majority had the same number of representatives. Public television was required to allocate the same airtime to different political parties, and instant measures could be taken to address any violation of the rules.

In its closing comments, the Hungarian delegation welcomed the fact that sufficient time had been given to cover in sufficient detail the various issues discussed and to present the Hungarian context. Only one conclusion was possible: there was no systemic risk of a breach of Union's values by Hungary. All further procedural steps should have the support of a clear majority of Member States.

The Presidency concluded that the General Affairs Council would remain seized of this matter.