



# POLICY, SDG's AND FIGHTING CORRUPTION FOR THE PEOPLE

**A Civil Society Report on Hungary's  
Sustainable Development Goals (Goal 16)**

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Every effort has been made to verify the accuracy of the information contained in this report. All information was believed to be correct as of August 2018. Nevertheless, Transparency International Hungary Foundation cannot accept responsibility for the consequences of its use for other purposes or in other contexts.

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## Executive Summary and Major Findings

The United Nation's Sustainable Development Goals (SDGs) set out an ambitious global development agenda until the year 2030. They consist of 17 goals, and the goal 16 specifically targets measures for transparency and accountability, and the fight against corruption. These goals intend to significantly reduce illicit financial and arms flows, strengthen the recovery and return of stolen assets and combat all forms of organized crime; substantially reduce corruption and bribery in all their forms; develop effective, accountable and transparent institutions at all levels and ensure public access to information and protect fundamental freedoms, in accordance with national legislation and international agreements.

Transparency International Hungary Foundation (hereinafter referred to as TI-Hungary) made an in-depth assessment of the aforementioned goals, and revealed serious deficiencies and challenges. The main reason is why some of the development goals are not or not sufficiently met in Hungary has been the fact that corruption has become institutionalized and systemic in the country.

This scheme of corruption is very closely linked to the centralized nature of the political and economic regime. Fidesz, the incumbent governing party won landslide victories three consecutive times (in 2010, 2014 and 2018), and got a two third majority ('supermajority') in the Parliament. Thereafter, it severely restricted societal controls. In 2010, the new administration extended its power to a level that is unusual in liberal democracies, and constructed a de facto 'upper house' of government by appointing own loyalists to public institutions that are nominally independent (from the executive power). Fidesz changed the electoral law transforming it towards a more majoritarian (and less proportional) system and applied some gerrymandering. The three consecutive Fidesz governments in the post 2010 period have radically diminished political and professional autonomy of most of the state institutions and transformed them into the instruments of the central government's power undermining the system of checks and balances.

The capture of the state by influential groups – oligarchs and/or political players – has become the rule rather than the exception across Central and Eastern Europe (CEE). Particularism, extractive institutions and favouritism seem to be overcoming universalism, inclusiveness and public integrity. In Hungary, an informal network including politicians, oligarchs and grey eminencies re-politicize the state in pursuit of political monopoly. This political mode of monopolizing the state positions and resources is clearly distinct from the oligarchical state capture and can be seen as "reverse" state capture. Corruption has become centralized – and, in some cases, has been legalized.

Democratic checks and balances characterizing liberal democracies have been almost entirely eliminated, apart from the law courts. Judges have preserved a substantial portion of their autonomy and law courts' decisions awarded in legal disputes do not reflect the will and endeavours of the government. But that's also not a remedy for tackling corruption charges. The Achilles heel of the judicial system is the prosecution service, which, with very few exceptions, fails to bring cases in which pro-government players are involved before justice, thus preventing law courts from ruling in politically exposed corruption cases.

A peculiarity of the Hungarian situation is that a strong tension between regulation and practice has developed since the incumbent government captured the state in a steady process after 2010. On one hand, a large number of regulations contain anticorruption provisions in compliance with European Union standards. This is the case, for instance in certain regulatory aspects of public procurement, whistleblower protection, access to information, political finance and mandatory disclosure. On the other hand, enforcement and practice is particularistic and biased favouring loyalists and cronies. One of the most obvious examples for this is how the public

procurement system works in paper (the regulation complies to a large extent with EU norms), and in practice (the implementation benefits the loyalists).

The split of the Hungarian society is more profound than any time in the recent thirty years. Obsession with centralization, populist rhetoric and the government's measures have divided the country's citizens on one hand into loyalists, cronies and clients, and, on the other hand, those who oppose the current regime and whom the government portrays more or less as foes, e.g. the representatives of the independent NGOs and the free media. In accordance with a new regulation adopted in 2017, those CSOs which receive more than EUR 23 000 in foreign funding per year have to register themselves as "foreign funded organisations". In addition, the so called 'Stop Soros' legislative package, voted on by the Parliament on 20 June 2018 targets and criminalises organisations which assist to refugees under the pretext of countering "illegal migration". Moreover, a separate legislation adopted by the Parliament on 20 July, 2018 imposes a 25 percent punitive surtax on organisations who assist refugees and asylum seekers for allegedly promoting illegal migration. Despite these measures, the populist rhetoric and smear campaigns against groups of civil society, whose approach towards the government's moves is critical, still there has been a certain gap between words and actions. Campaigns to undermine these CSOs' credibility usually lack administrative sanctions, or if such sanctions exist in paper, they have not been enforced, so far.

## The 2030 Agenda for Sustainable Development

Spearheaded by the United Nations, the sustainable development goals (SDGs), also known as *Transforming our World: the 2030 Agenda for Sustainable Development*, is a set of 17 aspirational “global goals” and 169 targets adopted in 2015 by the 193 UN member states. All UN member states have committed to these global goals that are intended to steer policy-making and development funding for the next 15 years. Of particular relevance to the anti-corruption agenda is SDG 16 on sustainable governance, most notably targets 16.4 on illicit financial flows, 16.5 on bribery and corruption, 16.6 on transparent and accountable institutions, and 16.10 on access to information

Global targets and indicators have been set for each goal with the expectation that they will be incorporated into national planning processes and policies. Countries are also encouraged to define national targets tailored to their specific circumstances and identify locally relevant indicators and data sources that will be used to measure progress towards achieving each of the SDG targets.

As part of its follow-up and review mechanisms, the 2030 Agenda for Sustainable Development encourages member states to conduct regular national reviews of progress made towards the achievement of these goals through an inclusive, voluntary and country-led process. In addition, each year certain state parties volunteer to report on national progress to the High-Level Political Forum (HLPF), which was held this year in New York in July 2018. Transparency International Hungary was among the countries reporting this year. While SDG 16 will not be reviewed in depth by the HLPF until 2019, integrity risks across the SDG framework make it essential to monitor national progress against corruption from the outset.

### Rationale for this Shadow Report

While governments are expected to take the lead in reviewing progress towards the Sustainable Development Goals (SDGs), national-level monitoring needs to go beyond the remit of governments to include civil society and other stakeholders.

This shadow report is based on data collected by TI-Hungary. The report has been developed in response to three key issues related to the official SDG monitoring processes: the multi-dimensional nature of SDG targets, data availability and perceived credibility of data generated by government agencies. Collectively, these limitations provide a strong rationale for an independent appraisal of the government’s anti-corruption efforts in the context of the Sustainable Development Goals.

Firstly, several of the targets under Goal 16 are multi-dimensional in the sense that they measure broad concepts like “corruption” which cannot be adequately captured by a single indicator. Moreover, the indicators in the official global set do not sufficiently cover the full ambition of the targets. For instance, target 16.5 seeks a substantial reduction in corruption and bribery “in all their forms”, but the only approved global indicators measure bribery between public officials and the public or business. There are no measures of corruption within or between governments or other forms of non-governmental corruption. For some targets, the selected global indicators fail to capture critical aspects. For instance, target 16.4 seeks to combat all forms of organised crime, but there is no official indicator that measures organised crime nor an indicator related to strengthening the recovery and return of stolen assets.

*This shadow report seeks to provide a more comprehensive picture of national anti-corruption progress across a range of policy areas.*

Secondly, even where the official indicators are themselves capable of capturing progress towards SDG 16 targets, there is an absence of data to speak to these indicators. Many of the

global SDG 16 indicators rely on data that is not regularly produced or currently have no established methodology or standards for data collection.

*This shadow reporting exercise is partly an effort to compensate for insufficient coverage of and data availability for official SDG 16 indicators by presenting alternative indicators, data sources and proxies.*

Finally, the official assessment of progress made towards the SDG targets will rely on data generated by government agencies, particularly national statistics offices. The reliability and credibility of official data may be open to question for two reasons. First, in some settings, national statistics offices may simply be overwhelmed by the task of producing data for 169 targets. Second, politically sensitive targets, such as those related to corruption and governance, require that governments assess their own efficacy; illicit financial flows (16.4) may involve government officials, corruption (16.5) may involve government elites, while governments may be restricting information, or even targeting journalists, trade unionists or civil society activists (16.10).

*Given the challenges described above, independent analysis is vital to complement and scrutinise official government progress reports related to SDGs 16.4, 16.5, 16.6 and 16.10. This shadow report is an attempt to do just that.*

The information gleaned from the shadow reporting exercise and presented here in this report can be used as an input into two key processes. At the global level, this information can be used to complement National Voluntary Reviews at the High Level Political Forum in July 2018. Nationally, this information generated can feed into the governmental SDG review processes taking place on a rolling basis in each country.

## Introduction

No official and publicly available document is accessible on the internet about the current state of SDG reporting from the government side. On 6 June 2018, in an answer to the question posed by Transparency International Hungary (TI) in a semi-official email, the Ministry of Foreign Affairs and Trade sent a text of “Main messages” in the attachment of the email as the position of the Hungarian government. In this document it, inter alia, it was stated that:

“Hungary looks back on a long history in its commitment to sustainability, sharing the view that our global future depends on the success of achieving the holistic, integrated and participatory implementation of the social, economic and environmental dimensions of sustainable development, with the primary aim of eradicating poverty in the world. (...) During the OWG consultations, Hungary put particular emphasis on building the Sustainable Development Goals and targets on the overarching principles of guaranteeing human rights, solidarity and global partnership and considers encompassing the human rights based approach in the implementation process of the 2030 Agenda of utmost significance. Hungary is convinced that the transformation towards a sustainable world can only be guaranteed if the three pillars of sustainable development are equally strengthened. The social pillar is reinforced by Hungary’s holistic family policy, the main aims of which are to empower families and to achieve a lasting turn in demographic trends. To underline its dedication to family values, the Government declared 2018 the Year of Families. The economic pillar is supported by several measures to improve the productivity of the economy. The Hungarian Government aims to create a work-based society by the introduction of several programs for extending employment as well as for enhancing the competitiveness of the enterprises of all sectors. The other important component of boosting sustainable and inclusive economic growth is the intention of the Government to consolidate Hungary as a knowledge and innovation-based nation. The environmental pillar has always been the centre of the concept of sustainability in our country. Hungary holds the opinion that clean water supply and sanitation is one of the greatest concerns of the future of mankind, playing a crucial role in furthering sustainable development and peace. (...)”

There has been no public consultation with TI so far. However, according to this semi-official letter, the government consulted with businesses, academia and NGO-s in the framework of “multi-stakeholders platform”.

## Methodology

The report aims to provide a broad assessment of national progress towards four SDG targets linked to anti-corruption and transparency – 16.4, 16.5, 16.6 and 16.10. A number of policy areas are covered under each of these four SDG targets to provide a rounded overview in a way that goes beyond the narrow understanding of corruption captured by the official global indicators.

Each policy area was assessed against three elements. First, there was a scored evaluation of the country’s *de jure* legal and institutional framework. Second, relevant country data from assessments and indices produced by civil society groups and international organisations was considered. Finally, researchers conducted a qualitative appraisal of the country’s *de facto* efforts to tackle corruption.



# Transparency International Hungary's findings on national progress towards SDG 16.4, 16.5, 16.6 and 16.10

## Recent Developments

According to Transparency International's Global Corruption Barometer Survey only 23 % of the Hungarian respondents stated that their government performs "well" (or "fairly well") at fighting state corruption. The Hungarian government adopted the National Anti-Corruption Program as a mid-term (2015-2018) strategic document in 2015. However, this program, according to TI's assessment, is more like a window-dressing to cover high-level, centralised and systemic corruption. The incumbent Prime Minister, Viktor Orbán hasn't addressed corruption as a serious problem since his Fidesz party got to power in 2010. If corruption allegations are revealed concerning family members, and pro-government players and loyalists, the Prime Minister in most of the cases ignores them. A telling sign that a former ideologue of Fidesz, Mr. András Láncki, who has been the Pro-Rector of Corvinus University of Budapest since 2016, stated in a pro-government newspaper interview<sup>1</sup> that "what the others call corruption is the *raison d'être* of Fidesz".

The schemes of current Hungarian corruption cases are very closely linked to the nature of the political and economic regime. From 2012 on, TI has been highlighting that the state is captured in Hungary. Formal institutions have a tendency to be hollowed out while informality is gaining salience. The major corruption risk has been the instrumentalization of state institutions, i.e. subordination of organs such as inter alia the prosecution, the central bank, the media authority and the State Audit Office to the executive power. Corruption has become institutionalized, systemic, top-down – and, in some cases, has been legalized. Democratic checks and balances characterizing liberal democracies have been almost entirely eliminated, apart from the law courts. The judges have preserved their autonomy and their decisions have been still independent from the central government endeavours. But that's also not a remedy for tackling corruption charges. The Achilles heel of the judiciary is the prosecution service, which prevents cases from being heard by law courts by making virtually no indictments in those affairs in which pro-government players are involved.

One of the features of the current Hungarian context is that the divisions among societal groups, but most importantly between the pro-government citizens and those who don't support the current regime is deeper than ever in the past 30 years, since the state socialism failed in 1989. Despite the populist and sometimes hostile rhetoric, the day-to-day operation of the NGOs was not made significantly harder until July 2018 when a 25 percent punitive surtax on organisations which assist refugees and asylum seekers for allegedly promoting illegal migration was imposed. The new law<sup>2</sup> regulating civil society organizations was adopted in 2017 under the pretext of making the NGOs more transparent – which they are, as they have to submit each year detailed financial and narrative reports. But despite the declaration of being "foreign funded organizations" (if an NGO receives more than EUR 23 000), no other administrative burden has been imposed for TI Hungary.

The free media is under pressure as many outlets, TV and radio stations have been bought by government-affiliated oligarchs and were transformed into mouthpieces of the regime in the past couple of years. We can hardly speak of a market in this sector – not only because the number of independent outlets has been constantly shrinking, but also due to the strains in the

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<sup>1</sup> <https://magyaridok.hu/belfold/lanczi-andras-viccpartok-szinvonalan-all-az-ellenzek-243952/>

<sup>2</sup> [http://www.venice.coe.int/webforms/documents/?pdf=CDL-REF\(2017\)031-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-REF(2017)031-e)

advertising market. According to recent data<sup>3</sup>, among the top 10 biggest beneficiaries of state advertisements (institutions and SO enterprises), we find only pro-government media companies and outlets.

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<sup>3</sup> <http://mertek.eu/en/2018/02/25/state-advertising-2006-2017/>

## Target 16.4: By 2030, significantly reduce illicit financial and arms flows, strengthen the recovery and return of stolen assets and combat all forms of organized crime

### Anti-money Laundering

*Legislative scorecard result: 83%*

Definitions of Hungary's money laundering offence have brought the regulation much in line with international standards, resulting in a situation where Hungary's relevant law<sup>4</sup> meets most of the requirements<sup>5</sup>. A significant enforcement gap though stems from the fact that legal regulations on criminal sanctions applicable to legal entities, though in force since 2001, have fallen into disuse.<sup>6</sup>

From a regulatory angle, and in light with the FATF's conclusion, one could suppose that Hungary is more or less compliant with international anti-money laundering standards. Still, there is a grounded suspicion that the government is reluctant intransigently enforce anti-money laundering norms. Hungary's inglorious residency state bond program serves as a perfect example of shaky legal concepts that undermine anti-money laundering endeavours. Under the residency bond program, non-EEA citizens who pay 300,000 euros can buy themselves unhindered and permanent access to the Schengen-zone of the European Union.<sup>7</sup> Though issued by Hungary's state debt management agency, applicants can only invest through intermediary companies, all but one of which have seats in secrecy jurisdictions, such as the Cayman-islands, Liechtenstein, Malta, and Cyprus.<sup>8</sup>

A significant portion of these intermediary companies' revenues came from Hungarian public resources, as the government offers a 29,000 euros discount on every 300,000 euros package of bonds. Taking the number of residency bonds into account, intermediary companies may have received a total of more than 192 million euros from the Hungarian government.

Anti-money laundering regulations have not been applied to any of the players of the residency bond business, meaning that neither the source of funds invested in the bonds were checked, nor was any due-diligence or client identification measures put in place.

In TI-Hungary's estimation, the government residency bond business is not only the footprint of high-level corruption in Hungary, but it also incites to the laundering of ill-gotten assets into the Hungarian economy. In sum, this scandalous Golden Visa business seems to have opened the door wide to off-shoring and has seriously increased the risk of money laundering.

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<sup>4</sup> Act LIII of 2017 on the prevention of and combating money-laundering and terrorist finance (hereinafter referred to as: AML & TF Act)

<sup>5</sup> See also the evaluations and conclusions contained in the Fifth Round Mutual Evaluation Report (hereinafter referred to as: MER – accessible here: <http://www.fatf-gafi.org/media/fatf/documents/reports/mer-fsrb/MER-Hungary-2016.pdf>) on Hungary of the Council of Europe's Financial Action Task Force (hereinafter referred to as: FATF – accessible here: <https://rm.coe.int/moneyval-2017-21-hungary-1st-enhanced-follow-up-report-technical-compl/1680792c61>) and the FATF's

1<sup>st</sup> Enhanced Follow-up Report & Technical Compliance Re-Rating.

<sup>6</sup> Exporting Corruption report 2015

<sup>7</sup> Between 2013 and 2017, the period when the residency bond program was in operation, 6,621 permanent residency permits were requested from the Immigration Office. As the purchase of a residency bond is a prerequisite of the request for a permanent residency permit, one can conclude with reason that at least 6,621 packages of residency bonds have been subscribed. However, in a non-assessable quantity, there may be residency bond holders, who did not request the issuance of a permanent residency permit. For the sake of simplicity, we will calculate with 6,621 residency bonds. See also:

<https://g7.24.hu/allam/20180328/iden-negyvmilliard-forinttal-tamogatja-a-koltsegvetes-a-fidesz-bevandozlasi-programjat/>

<sup>8</sup> See: <http://www.akk.hu/en/page/government-securities-issuance-and-trading#information-about-residency-bond>

## Beneficial Ownership Transparency

*Legislative scorecard result: 56%*

As regards beneficial ownership, it needs to be underlined that the relevant legal definitions are in line with international expectations. A beneficial owner is defined as a natural person who directly or indirectly exercises ultimate control over a legal entity. The definition of ownership covers control through other means, besides legal ownership<sup>9</sup>. In addition, financial institutions are required to identify the beneficial owners of their clients when establishing a business relationship<sup>10</sup>. Moreover, government authorities, such as law enforcement agencies, the tax administration, police and security agencies, as well as law courts and the prosecution service have access to beneficial ownership information.<sup>11</sup>

Nonetheless, in practice, no beneficial ownership information of private corporations are available for ordinary people. The only ownership information recorded in company registries pertains to the formal owner of a company's shares/quotas (stocks), but it does not reveal if the formal owner coincides with the final/beneficial owner. However, information on beneficial owners of companies that receive or manage public funds is accessible on request, as Hungary's Fundamental Law sets out that information pertaining to the management of national assets shall be publicly accessible<sup>12</sup>. Still, transparency regulations applicable to state / municipally owned corporations and to the management of public funds often fall into disuse, due to lacking will on the government's side to intransigently enforce them. Therefore, information in most cases is only accessible through the employment of freedom of information tools, which often ends up in lengthy and time consuming court disputes. Nevertheless, even court decisions to demand the publication of beneficial ownership information of shell companies that acquired the quorum of a state-owned bank's shares proved insufficient in making the identities of ultimate beneficial owners transparent<sup>13</sup>.

## Recovery of Stolen Assets

*Legislative scorecard result: 58%*

Hungary introduced a standalone regulation to govern asset recovery processes in 2012<sup>14</sup> and set up an asset recovery office (ARO) as a specifically designated section within criminal police. An asset recovery process may only be launched as part of a criminal process, i.e. the asset recovery process is rather a complementary process aiming to examine adhesive elements of criminal liability. Hungary's new criminal procedure code<sup>15</sup> contains the same provisions vis-à-vis the recovery of stolen assets<sup>16</sup>. Beside provisions in the criminal procedure code, the national police issued an internal regulation in 2010 on recovery of misappropriated assets and proceeds of criminal activities<sup>17</sup>. Crime stat<sup>18</sup> information shows however that the efficiency and effectiveness of asset recovery efforts are rather low.

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<sup>9</sup> See: Point 38 of § 3 in AML & FT Act

<sup>10</sup> See § 8 of in AML & FT Act

<sup>11</sup> Access is based on general legal provisions enshrined in a variety of different acts, e.g. in the criminal procedure act, the police act, the national security services act, the tax administration act, the prosecution service act, etc., which expect any private or public institution, as well as individuals, to provide government agencies with access to all sorts of information in their possession.

<sup>12</sup> See Section 2 of Article 39 of the Fundamental Law

<sup>13</sup> See: <https://transparency.hu/wp-content/uploads/2017/07/MNB-Kuria-itelet-MKB-szanalas.pdf>

<sup>14</sup> Act CCXXIII of 2012

<sup>15</sup> Act XC of 2017 in, which entered into force on July 1, 2018

<sup>16</sup> paras 354-355 of Act XC of 2017

<sup>17</sup> Police regulation 45 of 2010

<sup>18</sup> Information contained in the below table was shared by the Ministry of Interior, on request of TI-Hungary.

Damage caused by criminal activities & recovered during criminal process	2013	2014	2015	2016	2017	2018 (I-VI.)
Damage caused by criminal activities (HUF)	232 199 152 505	200 540 971 355	215 655 695 576	219 682 141 428	322 452 828 904	325 728 268 871
Damage recovered during criminal process (HUF)	24 372 185 686	13 321 523 997	15 327 110 142	16 665 424 579	20 720 895 864	9 402 413 589
Rate of recovery	10,50%	6,64%	7,11%	7,59%	6,43%	2,89%

Even though publicly available information on its functions and operations is limited, the above figures suggest that the ARO is largely dormant. Moreover, the concept of asset recovery as a way to effectively fight organised crime is not a prominent approach in Hungarian crime enforcement policies. Instead, a stringent and heavy-handed anti-crime policy accompanied by a law and order rhetoric dominate the control of crime in Hungary, with a prime determination to impose deterrent, dissuasive, and in many cases incapacitating criminal sanctions.

Hungary's participation in international cooperation networks focusing on asset recovery is also highly questionable, as indicated in a non-public report by the Ministry of Interior<sup>19</sup>, which reveals that from 2015 forward, there was only one asset tracing/recovery procedure in process each year.

### Fight Against Organised Crime

Hungary has joined the OECD's convention on combating bribery of foreign public officials in international business transactions<sup>20</sup>, and the Council of Europe's criminal law convention on corruption. Hungary is also a signatory to the Palermo Convention and its additional protocols<sup>21</sup>, and has signed the Merida Convention<sup>22</sup> (the United Nations' Convention against corruption).

As part of this endeavour, Hungary has adapted to the idea that proceeds of criminal activities and financial means controlled by criminal organisations should be targeted at first hand by criminal investigations to substantially weaken the financial basis of organised criminal groups. As a result, criminal regulations on confiscation, and relating to procedural measures, e.g. the freezing of bank accounts, seizure of properties, provisional measures, etc. have been designed to meet EU, Council of Europe and UN standards.

Though since 2012, no major police corruption scandals broke out, it has to be emphasised that serious penetration into the criminal police on certain criminal organisations' behalf was uncovered in 2012. Criminal investigations were launched against very senior officers of the police anti-organised crime unit, who, supposedly, were on the payroll of Budapest-based criminal organisations. Criminal proceedings against police officers concerned and against those who bribed them are still underway. The US State Department's Human Rights Report on Hungary has enumerated this case as an example of police abuse in Hungary<sup>23</sup>.

One can conclude that from a regulatory angle, Hungary has the necessary provisions in place to deter and incapacitate criminal organisations. However, the examples enumerated above,

<sup>19</sup> This report exists only in paper format and it is in TI-Hungary's possession.

<sup>20</sup> Promulgated by Act XXXVII of 2000

<sup>21</sup> Promulgated by Act CII of 2006

<sup>22</sup> Promulgated by Act CXXXIV of 2005

<sup>23</sup> See the Country Reports on Human Rights Practices produced by the Bureau of Democracy, Human Rights and Labour in the United States department of State for the years 2012, 2013, 2014.

namely the fact that even as late as in 2012, senior experts and leaders of the Hungarian police anti-organised crime unit were regularly bribed by criminal organisations reveal the extent to which organised crime may have penetrated the police.

## Target 16.5: Substantially reduce corruption and bribery in all their forms

### Experience and Perceptions of Corruption

In Transparency International's most recent Corruption Perceptions Index (CPI) which contains the assessments of the businesses and experts and which was released in February 2018 based on the results of 2017, the country scored 45 points on a scale of 0 (highly corrupt) to 100 (very clean), and was ranked 66 out of 180 countries.

According to another survey which assesses the population's perceptions, Transparency International's 2016 Global Corruption Barometer 15% of respondents state that they or a member of their household made an unofficial payment or gift when coming into contact with public services over the past 12 months. The same survey points out that 28% of respondents state that corruption is one of the three most important problems facing this country that the government should address. More than half (55%) of respondents said that the Hungarian government performed "badly" at fighting state corruption.

According to the GCB data, in 2016 16 % of the total population paid bribes. In 2013 the share of those who paid bribes was 12 % of the population. This suggests that the corruption (bribery) experienced by the people increased from 2013 to 2016. As far as the general perceived level of corruption is concerned, in 2013 61 % of respondents said that "corruption increased in the past two years", meanwhile in 57 % disagreed that "the corruption decreased in the past four years". This suggests that a large majority of the population thinks that corruption has been increased in Hungary for quite a while.

### Anti-Corruption Framework and Institutions

*Legislative scorecard result: 91%*

Hungary has a sound and reliable criminal law regulatory framework in place in the anticorruption field. Passive and active bribery of domestic public officials, embezzlement, misappropriation, and other diversion of property by public officials, trading in influence, abuse of functions and of public authority, private sector bribery, embezzlement of property in the private sector, laundering of the proceeds of criminal activities, and concealment are adequately defined and sanctioned, as required by the UNCAC. Moreover, bribery of foreign public officials and trading in influence in international public and business relations, as well as the omission to prevent the bribery of public officials or private sector decision makers by an employee are defined and sanctioned in line with OECD's anti-bribery convention.

However the below examples of the State Audit Office and the prosecution service highlight how political bias, and, government capture prevent the intransigent enforcement of properly defined regulations.

Hungary's supreme auditing institution, the State Audit Office (SAO), an autonomous body with a formal independence from all branches of the government mandated to audit public finances can be considered as an institution captured by the executive branch. Its president, in office since 2010, previously served as an MP of the ruling party. The SAO extensively sanctioned opposition parties for unlawful conducts that seem to go unpunished on the governing parties' behalf<sup>24</sup> (for details, see the section on party and campaign finance, below). The application of double standards indicates that the SAO has given up the endeavour to appear impartial.

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<sup>24</sup> See TI-Hungary's study: <https://transparency.hu/wp-content/uploads/2018/01/Javaslatok-a-korrupci%C3%B3-visszaszor%C3%ADt%C3%A1s%C3%A1ra-Magyarorsz%C3%A1gon.pdf>, especially footnote 65

Serious concerns surround the legal framework that governs the leadership and the functions of the prosecution service. The Prosecutor General's wide and unchecked discretion puts the right to fair procedure, as well as the accountability of law enforcement, at high risk. Moreover, there is no forum that is independent from the prosecution service where a decision by the prosecutor not to bring a case to court can be challenged. This means that decisions regarding appeals against dismissals or the termination of an investigation remain within the prosecution service. As every prosecutor is obliged by law to fully adhere to the line of command headed by the Prosecutor General, the will of the latter may easily outweigh any other consideration. Private prosecution – that is, a criminal case commenced by the victim or his/her legal successor or heir, and brought before justice, independently of the prosecution service – is only available to individual victims of offences. Corruption offences and misallocation of public funds cases, as well as other forms of corruption, are understood in Hungary as offences without individual victims. Thus, there is no way to circumvent a prosecutorial decision to dismiss a case concerning wrongdoing in the public domain.

## Private Sector Corruption

*Legislative scorecard result: 100%*

Regulatory compliance is a decisive feature of private sector corruption, for example, bribery of foreign public officials, a so-called OECD Convention offence, is fully incorporated in the country's legal system, however, the enforcement is poor, in addition, the law prohibits hard core cartels and collusion<sup>25</sup>.

The enforcement of anti-cartel and collusion regulations under the Competition Law pertains to the jurisdiction of the Hungarian Competition Authority (HCA), an autonomous state organ nominally independent from the executive branch of the government, however, under the leadership of a government loyalist<sup>26</sup>. In TI-Hungary's judgement, the HCA selectively processes cases, based on political considerations.

An example to this is the infamous Elios affair. Elios, a lighting company owned by the son-in-law of the Prime Minister was investigated by the European Anti-Fraud Office (OLAF) for allegedly taking part in a vertical cartel and abuse of dominant position. In order to win a major procurement tender, it reportedly accepted led bulbs at a significantly lower price from its major supplier, Tungsram, than it supplied to other partners. Although OLAF proposed in its recommendation that the Hungarian authorities investigate of supposed fraud, the HCA has remained inactive.<sup>27</sup>

TI-Hungary's Transparency in Corporate Reporting ([TRAC](#)) research completed in 2013, assessed the 50 largest Hungarian companies across 16 sectors by their public disclosure practices. Companies of the automotive and retail industries had the worst scores and the telecom sector showed the best performance in their reporting on anti-corruption programs. The research concluded that 1 out of 3 companies does not disclose any information relating to anti-corruption measures. None of the companies assessed received the highest possible score; the average score was 45 per cent. The best result, 96 per cent, was attained by 4 companies: Hungarian Telekom, the largest telecom company; MOL group, an energy company, the country's largest enterprise; Telenor, another big telecommunication company and TVK, a chemical company, actually being a subsidiary of the MOL group. One third of the corporations observed scored 0, i.e. no answer was published on the companies' website re anti-corruption measures, leaders' personal commitment to anti-corruption or adoption of a code of conduct.

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<sup>25</sup> See Act LVII of 1996 on prohibition of unfair market practices (Competition Law)

<sup>26</sup> [https://index.hu/gazdasag/magyar/2010/08/06/zoldfulu\\_gvh\\_elnokot\\_valasztott\\_orban/](https://index.hu/gazdasag/magyar/2010/08/06/zoldfulu_gvh_elnokot_valasztott_orban/)

[https://index.hu/gazdasag/magyar/2010/08/09/vonzodik\\_a\\_biraskodashoz\\_ezert\\_lesz\\_a\\_gvh\\_elnoke\\_juhasz\\_miklos/](https://index.hu/gazdasag/magyar/2010/08/09/vonzodik_a_biraskodashoz_ezert_lesz_a_gvh_elnoke_juhasz_miklos/)

<sup>27</sup> See: <https://transparency.hu/wp-content/uploads/2018/03/Black-Book.pdf>



Among the industries, telecom sector performed as best with an average result of 90 per cent, followed by the chemical sector with 81 per cent. Retail sector and automotive were performing as worst with average results of 18 and 0 per cent, respectively.

The TRAC study also highlighted that low level of company leaders' personal commitment to anti-corruption and integrity. Companies pay significantly more attention on displaying their business results rather than disclosing information on ethical standards based on which these results have been achieved.

## Party and Campaign Finance Transparency

*Legislative scorecard result: 60%*

Although a legal framework regulating the financing of political parties and the finance of candidates running for elected offices exists, political finance in Hungary is prone to serious corruption. This is partly facilitated by regulatory shortcomings, partly by the lack of determination to fairly and rigorously enforce existing legislations.

Political parties are banned to collect donations from non-Hungarian individuals and from legal entities, and have to declare all donations received from Hungarian citizens, if such donations exceed HUF 500,000 (approx. EUR 1,500), also donors of donations in excess of HUF 500,000 have to be publicly identified<sup>28</sup>. The role and impact of party dues is negligible in political parties' revenue structure. As a result, political parties are largely dependent on public subsidies coming from the state budget, which make up the better part of their revenues. Political parties receive state subsidies in two different forms. First, those parties, which get at least one percent of ballots cast at national elections are eligible for campaign subsidies transferred by the state treasury. Second, parties in the Parliament get a generous operational subsidy each year. However, they are not expected to file detailed and evidence-based financial reports on their expenses, and, the State Audit Office has in the last two decades been happy to accept any kind of financial statements on political parties' behalf, no matter how much those reports contradicted to common sense. This resulted in a situation where political parties only submit a one-pager with no break-down of calculations and no evidence to verify the source and the use of funds. Moreover, under laws on freedom of information and in line with the relevant judicature, political parties' finances are not deemed public interest information, therefore no means are within reach to strengthen transparency and enhance accountability of political parties' finances.

As regards finances of candidates for elected offices, specific regulations are only in place for parliamentary candidates, i.e. no or just very scattered and deficient campaign finance regulations are applicable to municipal candidates, and European Parliamentary candidates. These shortcomings of the regulatory framework have a devastating effect on the reliability of the political finance system in Hungary.

In addition, regulations on campaign finance<sup>29</sup> have failed to prevent third party campaigning and the massive involvement of so-called government organized non-governmental organizations (GONGOs) in the campaign to promote the cause of a very political party. These laws also omit to ban government propaganda and in general to prevent the blurring of government's activities with the campaign of the governing parties. Most importantly, the law does not prevent the overt incite to campaign overspending beyond the HUF 5 million (approx. EUR 15 thousand) per candidate limit, and to unlawfully absorb generously defined campaign subsidies payed by the state treasury. Government subsidies function as in-cash contributions, instead of being offered as a form of financial support that remains on an escrow account maintained by the state treasury. Given the lack of strict accounting requirements, these

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<sup>28</sup> Act XXXIII of 1989

<sup>29</sup> Acts XXXVI and LXXXVII of 2013

subsidies are in practice a source of easy-to-pocket money. The unique combination of generous state subsidies and the lack of meaningful oversight or scrutiny resulted in the unmatched Hungarian phenomenon of a fake party system, i.e. in the creation of political parties with no real political agenda but with a clear intent to swallow government campaign funds. As all parties with a certain number of candidates are eligible for government subsidies, the law itself incentivises the cheating in the candidate nomination process to get a party list of the desirable size.

The State Audit Office, in spite of TI-Hungary's multiple attempts to persuade, fails to keep parties' financial statements under strict control and to compare entries included in such statements with the reality, as well as to compel parties to provide evidence in support of their financial statements.<sup>30</sup>

Recently, the SAO has started to vehemently check annual financial statements of parties, but it does so selectively, and seems to ignore that the biased enforcement of existing legislations paralyses opposition parties. The SAO imposed severe fines for undeniably wrongful financial practices, which however go unsanctioned if committed by the governing party coalition.<sup>31</sup> This clear and undue distinction between political parties demonstrate that the SAO is not any more anxious about the impression of impartiality.

TI Hungary has been very critical of Hungary's political finance solutions and holds that the lack of transparency and accountability of party and campaign finances is not just a serious corruption risk, but it also undermines the reliability of democratic processes in the country.<sup>32</sup>

## Lobbying Transparency

*Legislative scorecard result: 0%*

Since 2010, Hungary has no comprehensive lobby regulation in place. Between 2006 and 2010, a separate law on lobbying<sup>33</sup> provided a voluntary registration system for lobbyists, envisioned a common code of conduct, and prescribed reporting requirements for both lobbyists and executive decision-making bodies. In events of non-compliance, the Lobbying Act foresaw pecuniary sanctions, with a maximum fine of HUF 10 million (approx. EUR 32 thousand). Nonetheless, the Lobbying Act had a negligible impact on the transparency of lobbying.<sup>34</sup>

The government's decree on integrity measures in public administration, the so-called "Integrity Decree"<sup>35</sup> is the only regulation in Hungary to offer some scattered and fragmented provisions on lobbying. In the Integrity Decree's definition, a lobbyist is a person, who approaches a public organ or a public official without being a party to any procedure pertaining to jurisdiction of the public organ or the public official concerned. The Integrity Decree expects public officials to provide their immediate superior with detailed information on lobbying contacts prior to accepting the lobbyist. Information should include the lobbyist's name, the

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<sup>30</sup> See, for example, TI-Hungary's open letter aiming to persuade the State Audit Office to do more detailed audits ([https://transparency.hu/wp-content/uploads/2016/07/megkereses\\_allami\\_szamvevoszek\\_20140603.pdf](https://transparency.hu/wp-content/uploads/2016/07/megkereses_allami_szamvevoszek_20140603.pdf)) and the SAO's response to this initiative, in which it declines to take any action (<https://transparency.hu/wp-content/uploads/2014/08/%C3%81llami-Sz%C3%A1mvev%C5%91sz%C3%A9k-v%C3%A1lasza-a-TI-Magyarorsz%C3%A1gnak.pdf>).

<sup>31</sup> See the SAO's report EL-0275-060/2017., dated 6 Dec. 2017.

<sup>32</sup> Conclusions in this paragraph are based on evidence and findings contained in TI-Hungary's study entitled 'Campaign Spending in Hungary – Total Eclipse' (<https://transparency.hu/wp-content/uploads/2016/02/Total-Eclipse-Campaign-Spending-in-Hungary-Study.pdf>) for the 2014 national elections, and by the Limited Election Observation Mission Final Report published by Office for democratic Institutions and Human Rights of the Organisation of Security and Cooperation in Europe (<https://www.osce.org/odihr/elections/hungary/385959?download=true>) for the 2018 national elections.

<sup>33</sup> (Act XLIX of 2006 on Lobbying, 'Lobbying Act')

<sup>34</sup> <https://transparency.hu/wp-content/uploads/2016/04/Lifting-the-Lid-on-Lobbying-National-Report-of-Hungary.pdf>  
<https://www.palgrave.com/us/book/9781137552556>

<sup>35</sup> Government's Decree No. 50 of 2013 on the Integrity Management of Public Administration and the Regulation of Accepting Lobbyists

name of the organization represented by the lobbyists and the time and place of the planned meeting. Public officials are also required to indicate in writing if the meeting with the lobbyists entails integrity risks, and they have to, on a yearly basis, report to their superiors on lobbying contacts. The public officials' superior may prohibit the meeting or specify a third person who should be present at the meeting. Leaders of public organs may generally restrict or prohibit meetings with lobbyists. However, the Integrity Decree does not require either the mandatory registration of lobbyists or the disclosure of contacts with lobbyists to an independent control body, nor does it expect public organs to make reports on lobbying contacts publicly accessible.

In such an environment, new, unconventional forms of informal lobbying, such as, for example, the participation in government business delegations and attendance of soccer matches with political leaders have emerged. In addition, the government offered to corporations the opportunity of concluding so-called Strategic Partnership Agreements (SPA) in 2012. SPAs function as policy tools aimed to mitigate the consequences of uncertainties of the business environment. As of 31 August 2017, the Hungarian government concluded 77 SPAs.<sup>36</sup> Besides facilitating dialogue between policy makers and economic actors, the government has apparently succeeded by the introduction of SPAs in separating the economic weight and policy importance of corporate players from their lobbying potential. Thus, SPAs proved instrumental for the government in preserving arbitrary distinctions between “productive” and “speculative” branches of the economy, and in rhetorically scaffolding the ideology of the “work-based society”.

Another peculiar symptom of lobbying in Hungary is the system of corporate donations to team sports. This system, devised in 2011 and aiming to channel large sums of corporate revenues to organisations of so-called spectator team sports (ice hockey, handball, basketball, soccer and water polo, and volleyball since the summer of 2017) equals to a diversion of public funds. Corporations may deduct the amount of donations from their profit before tax, i.e. businesses pay a portion of their corporate income tax (CIT) to sports teams and sports federations, instead of paying taxes to public coffers. This way, 360 billion Hungarian forints (approx. EUR 1.1 billion) in tax revenues were diverted from the state to sports recipients, over the period from 2011 to 2016, and an additional 170 billion forints (EUR 0.5 billion) are anticipated to be lost until the end of 2018.

The European Commission concluded that the spectator team sports donation system was state aid.<sup>37</sup> Nonetheless, secrecy over these donations prevailed domestically, a reason why TI-Hungary needed to litigate the government and national federations of spectator team sports in court.

Secrecy may have delivered its benefits, since the lack of publicity instigated companies to take political aspects into consideration when making a decision on sports donations. Nothing else can reasonably explain why sports organizations with good political connections absorbed way more donations than ordinary sports clubs. The absolute champion with the highest rate of absorption is the soccer club of Felcsut, hometown for Mr. Viktor Orban, Hungary's ardent football fan Prime Minister (14 billion forints over the last six years).<sup>38</sup> TI-HU has concluded that this system of tax exempt corporate donations aim to give businesses the opportunity to secretly divert large sums of public money from the tax coffers to sports team, thus showing their loyalty and, perhaps, bribing their way to get lucrative public contracts from the state.

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<sup>36</sup> A list of the companies which have concluded an SPA is available here: <http://www.kormany.hu/hu/kulgazdasagi-es-kulugyminiszterium/strategiai-partnersegi-megallapodasok>

<sup>37</sup> Report no. C(2011)7287 of the European Commission, Article

65 [http://ec.europa.eu/competition/state\\_aid/cases/240466/240466\\_1271180\\_52\\_3.pdf](http://ec.europa.eu/competition/state_aid/cases/240466/240466_1271180_52_3.pdf).

<sup>38</sup> <https://transparency.hu/wp-content/uploads/2015/10/Corruption-Risks-in-Hungarian-Sport-Financing-Study.pdf>

## Target 16.6: Develop effective, accountable and transparent institutions at all levels

### Transparency and Integrity in Public Administration

*Legislative scorecard result: 44%*

Hungary has no revolving door regulation in place, nor has the country adopted any provisions on mandatory cooling off periods. The ‘revolving door’ phenomenon has not been recognised in Hungary as a corruption threat, as a result, not even soft-law tools, such as codes of conduct address this issue.

The regulation and the practice of interest and asset declarations in Hungary is twofold. On one hand, the circle of those obliged to declare assets is very broad, it includes all sorts of public officers (judges, prosecutors, civil servants, military and police, etc.), and those who decide over the use of public funds, as well as their spouses. However, only Members of the Parliament and most senior public officials, such as ministers, vice- and undersecretaries of state, chief justices, and the prosecutor general are expected to make their declarations publicly available. No spousal declarations are published.

The declarations’ content is not adequately verified, and, the value of the assets declared is not examined by any competent authority. Lack of sufficiently deterrent sanctions applicable to false or deficient declarations facilitates misstatements. Politicians’ and other public officials’ negligence to declare the origin and value of their assets goes unpunished; they can exculpate themselves by simply referring to unintentional obliviousness.

In general, declarations are to be repeated in every three or five years, in case of ordinary public officers and judges, whereas high level decision makers, political leaders and senior public officials are required annually submit their declaration.<sup>39</sup>

Citizens’ growing mistrust in politics is fuelled by the general experience that those obliged by law to declare their assets and interests are not held against the same standards as ordinary people, whose misrepresentation to the tax administration results in serious audits. The system of asset and interest declarations can be circumvented, which do not evoke any respect either in the community or on behalf of the declarants. Scandalous and unexplained enrichment of politicians, in the first place Members of Parliament and of the Cabinet are recurring events of Hungary’s political life, and, even more disturbingly, none of these cases qualify as unlawful, due to the huge gaps in the regulatory framework and the loopholes in the enforcement practice.<sup>40</sup>

TI-Hungary’s recommends<sup>41</sup> the introduction of a publicly accessible electronic database of searchable and comparable asset declarations edited in a user friendly format, and the publication of easy-to-digest information, as well as the regular comparison of asset declared to reality, and the imposition of harsher sanctions for missing or false declarations.

As regards oversight, most of the officials covered by disclosure requirements declare their assets and incomes to the upper or supreme level of the hierarchy, i.e. prosecutors submit their declaration to the chief prosecutor, judges submit their declarations to the law court president, public servants submit their declarations to the ministry’s / office’s administrative secretary,

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<sup>39</sup> For a more appropriate description, see TI-Hungary’s study on the legal norms that govern the system of asset and interest declarations ([https://transparency.hu/wp-content/uploads/2016/07/policy\\_paper1\\_FIN.pdf](https://transparency.hu/wp-content/uploads/2016/07/policy_paper1_FIN.pdf)).

<sup>40</sup> TI-Hungary compiled a handful of suspicious enrichment stories of the recent years, where the person concerned failed to clarify the source of fund, and the enrichment disproportionately exceeded the value of declarant’s publicly disclosed assets. See: [https://transparency.hu/wp-content/uploads/2016/07/policy\\_paper2\\_FIN.pdf](https://transparency.hu/wp-content/uploads/2016/07/policy_paper2_FIN.pdf)

<sup>41</sup> [https://transparency.hu/wp-content/uploads/2016/07/policy\\_paper3\\_FIN.pdf](https://transparency.hu/wp-content/uploads/2016/07/policy_paper3_FIN.pdf)

etc. Members of Parliament, and other officials required to publicly declare assets and interests, besides uploading their declarations, submit such declarations to the Standing Committee on Immunity Affairs. So do other elected officials, e.g.: the president of the State Audit Office, the members of the Media Board and of the Media Authority, the head of the election board, the ombudsman, etc. Formally, the institution or leader to whom declarations are submitted is responsible for the management of the declaration, but no scrutiny is exercised, no verification is done, and the declarations are not even opened and examined<sup>42</sup>. An asset and interest declaration verification process may only be commenced if concrete, factual evidence sustains the suspicion of a misstatement or false declaration. This legal provision seems highly controversial and it seems to fail to take into account the fact that nobody can access the declarations, therefore the chance to collect concrete and factual evidence of wrongdoing is close to zero. As far as publicly available declarations are concerned, the Parliament Immunities Committee is per definition a political body, which makes political decisions. As a result, a decision on the examination of an MP's asset and interest declaration depends on political endeavours, which always overrule any other consideration.

Sanctions for failing to declare assets and interest on time are rigid and rigorous, namely the one who fails to declare automatically loses its public office<sup>43</sup>. However, false, deficient or hazy declarations are not sanctioned, moreover, if the Parliament Immunities Committee decides to take action against an MP, whose declaration is questionable or unclear, such decision is based on political considerations.

As regards effectivity of sanctioning, the only occasion where a declarant was sanctioned took place in 2013, and it was a judge who failed to submit an asset and interest declaration and lost his judicial position.<sup>44</sup> To demonstrate how easy it is to get away with false or deficient asset declaration, let TI-Hungary cite the case of Vice Prime Minister Zsolt Semjen, who failed to declare corporate donations in the range of HUF 20-25 Million (approx. EUR 66-83 thousand) he had received from an entrepreneur, who covered the costs of the Vice Prime Minister's participation at five luxury hunting events. Even though TI-Hungary has filed multiple writs to several competent authorities, including the Parliament Immunities Committee, none of the institutions concerned has taken any step to at least examine the content of the declarations.<sup>45</sup>

Nonetheless, the most notable case of questionable enrichment is that of Mr. Lorinc Meszaros, Hungary's wealthiest person, whose hit rate in winning public procurements is breath taking. Mr. Meszaros had been a bankrupt plumber in 2007 and his wealth started to grow in 2010, when his former classmate, Viktor Orban, took office as Prime Minister of Hungary. As a pro bono mayor of Mr. Orban's hometown, Mr. Meszaros had to submit a non-public asset and interest declaration, which was made public as a result of a freedom of information litigation commenced by TI-Hungary. The declaration of Mr. Meszaros revealed a speed of enrichment that fades even that of the Facebook founders, an occasion for Mr. Meszaros to allege that he must be more talented than Mark Zuckerberg.<sup>46</sup>

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<sup>42</sup> For a description of the oversight role, the mandate of the institutions concerned and the process, as well as a list of the relevant legal regulations, see TI-Hungary's study referenced in footnote 30.

<sup>43</sup> For a list of the relevant legal regulations, see TI-Hungary's study referenced in footnote 30.

<sup>44</sup> TI oldalra link

<sup>45</sup> For details, and for TI-Hungary's actions, see:

<https://transparency.hu/wp-content/uploads/2018/03/A-TI-Magyarorsz%C3%A1g-%C3%A9s-a-K-Monitor-feljelent%C3%A9se.pdf>

<https://transparency.hu/hirek/ti-tallai-andrashoz-fordul-semjen-zsolt-vadaszatai-miatt/>

<https://transparency.hu/hirek/ti-vagyonyvilatkozati-eljaras-kezdemenvezeset-keri-semjen-zsolt-ellen/>

<https://transparency.hu/hirek/mentelmi-bizottsag-nem-vizsgalja-semjen-zsolt-vagyonyvilatkozatat/>

<sup>46</sup> <https://www.youtube.com/watch?v=FN5ZHJKJKw>

All in all, Hungary's system of asset and interest declarations is seriously underperforming, it is deficient and does not fulfil its mission to prevent the unlawful or questionable enrichment of those holding public offices and / or managing public funds.

## Public Procurement and Government Contracting

*Legislative scorecard result: 75%*

In Hungary in 2017 3,457 billion forints were spent through public procurement by the organs of the state. Last year, almost 1,500 billion forints more public funds were spent on public procurement than in 2016, which is outstandingly high as compared to funds spent in public procurement thus far. While in 2016 the funds spent in public procurement constituted 5.7% of the GDP, in 2017 this value reached 9.4% of the GDP.

The statistics on public procurement in Hungary have indicated severe problems concerning the practice of public procurement for several years. Competition in public procurement is extremely constrained. This is implied by the fact that, on the one hand, the ratio of one-bidder public procurement procedures has been very high for several years - it has been steadily around 30% since 2009 -, which significantly exceeds the average in the European Union. According to 2016 data, in 36% of the so-called procedures above the EU threshold only one economic actor submitted a bid in Hungary. In contrast, in the European Union the ratio of one-actor public procurement is only 17%, on average. The Hungarian percentage of one-bid public procurement procedures is the sixth highest in the EU. At the same time, it can be assumed that there are even more one-bid public procurement procedures with lower value contracts, especially if we also consider public procurement procedures conducted with sham bids, submitted "for show".

It is an additional problem that in Hungary the ratio of procedures with no public announcement - i.e. contracts awarded without competition intentionally - has been approximately 13% for several years, which is three times as high as the European Union average of only 4-5%. In 2016, in the case of public procurement projects above the EU threshold, the ratio of procedures with no public announcement decreased to 11%. The situation is even worse if we consider procedures under the EU threshold, i.e. small value procedures, since the rules applying to these are less stringent than the rules defined by the European Union, and control is also much weaker. In this scope the ratio of public procurement with no public announcement is as high as 15%, not to mention the so-called "four bids" public procurement projects. The "four bids" public procurement procedure is a unique Hungarian procedure where the purchasing entity operated by state funds does not announce the public procurement to the general public, but rather sends an invitation for bids to four companies of its choice. These types of public procurement restrict competition at least as much as the classical procedures without public knowledge.

Concerning exceptions, the public procurement law provides exceptions that are vulnerable to misuse. Above the EU thresholds, the exemptions are strictly regulated in the EU Public Procurement Directives. Below the EU thresholds – since EU Directives are not applicable, but EU principles are to be respected, as explained above – the list of subject-matters exempted from the scope of the Act is much wider, and ever growing. In the Hungarian public procurement practice it is very common to abuse or circumvent these exceptions. The two exemptions that are mostly abused are the national security exemption and the urgency exemption that allows using the procedure without prior publication.

Bidders have to disclose beneficial owners, but this information is not made public.

Legal remedy in public procurement procedures in Hungary is regulated by the Act CXLIII of 2015 on Public Procurements in accordance with the relevant EU Directive (Directive

89/665/EEC as amended by Directive 2007/66/EC). The complaint mechanism is relatively well-known, and well-regulated. However, there are two serious shortcomings built-in the system that significantly questions the effectiveness and impartial manner of any legal remedies in the area of public procurement: the fee for legal remedy is extremely high, especially for Hungarian small and medium size enterprises (SMEs); and the market players generally don't trust the PPAB, since its institutional independence is highly questionable.

## Whistleblowing and Reporting Mechanisms

*Legislative scorecard result: 43%*

The law<sup>47</sup> provides protection for reporting persons in both, the public and the private sector. However, it does not establish a designated agency to protect persons who make whistleblowing reports, nor does it introduce a specialised procedure to examine whistleblower reports. The law does not encourage people to report abuses and has not introduced new and proactive investigative techniques to examine reported incidents of corruption. Protection of reporting persons is an empty declaration, moreover, spouses and other relatives of the reporting person are not even formally protected. The law introduced the “protected electronic system”, an anonymous reporting channel for whistleblowers operated by the ombudsman. However, so far this has not proven to be an important step forward. There is an absence of effective and robust methods to examine incidents of corruption, and reports made through the “protected electronic system” are not adequately followed. The ombudsman's function is in reality restricted to receiving reports and forwarding them to the competent authorities.

As regards the protection of reporting persons, the regulation's approach is rather hypocritical, as it says that all forms of retribution to a whistleblower for his or her whistleblowing performance shall be unlawful, but falls badly short of any measures to actually (physically or legally) protect whistleblowers who, despite legal prohibition, suffers some kind of a retribution. The law fails even to introduce the reversal of burden of proof, therefore it is the whistleblower, who, besides suffering retribution, is required to prove that the retribution was a consequence of his or her whistleblower activity. Literally, the provision of the law concerned is a simple declaration, which only rhetorically protects whistleblowers, and, offers some meagre financial support to indigent whistleblowers, an entirely aborted approach in TI-Hungary's opinion. Spouses / relatives of the reporting persons entirely fall out of the scope of the protection. These shortcomings explain why TI Hungary regards the protection measures of the whistleblowing legislation as non-existent.<sup>48</sup>

As far as disclosure procedures are concerned, the law introduced the so-called “protected electronic system” for safe reporting, and there is grounded reason to expect that this reporting channel secures anonymity for the reporting person. There is sufficient visibility of this reporting channel on the ombudsman's website<sup>49</sup>, and public excerpts of whistleblowing reports received through the protected electronic system are available on line<sup>50</sup>. Still, important aspects of a functional reporting channel are totally ignored. The law does not require any follow-up to reports received through the protected electronic system. The ombudsman, who maintains the protected electronic system, is not mandated to examine reports, instead, is only charged with forwarding them. This is so, albeit the ombudsman is nominally responsible for overseeing

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<sup>47</sup> Act CLXV of 2013 on the protection of whistleblowers

<sup>48</sup> For TI-Hungary's position re the Hungarian regulation on whistleblowing and on whistleblower protection, see: <https://transparency.hu/wp-content/uploads/2016/04/A-TI-ny%C3%ADt-levele-dr.-%C3%81der-j%C3%A1nos-k%C3%B6zt%C3%A1rsas%C3%A1gi-eln%C3%B6k-%C3%BArhaz-a-k%C3%B6z%C3%A9rdek%C5%B1-bejelent%C5%91k-v%C3%A9delme-%C3%A9rdek%C3%A9ben.pdf>

<sup>49</sup> see: <https://www.ajbh.hu/kozerdeku-bejelentes-benyujtasa>

<sup>50</sup> see: <https://www.ajbh.hu/kozerdeku-bejelentes-publikus-kivonat> (Public excerpts of 996 cases reported to the ombudsman between 15 December 2017 and 30 June 2018 are available on the website of the ombudsman's office.)

other government agencies' performance in examining and managing concrete, individual whistleblowing reports. However, in reality, the ombudsman, apart from establishing the fact that an agency was in breach of its obligations to follow upon or investigate a whistleblower report, has no jurisdiction to sanction such omissions, nor is empowered to compulsorily call on the agency concerned to do its obligation. Agencies omitting to examine whistleblower reports are not required to accept any call on the ombudsman's behalf, moreover, they are not even obliged to explain their omission to the ombudsman. On top of this, the ombudsman has no jurisdiction, whatsoever, in regard of law courts, the prosecution service and the Parliament, therefore any omission on these organisations' behalf entirely fall out of the ombudsman's oversight mechanism. These features explain why TI-Hungary holds that this regulation is seriously deficient. TI-Hungary's concrete experience has proven that if a whistleblower report directly arrives to the competent authority, or to the authority where the reported conduct took place, such authority can turn the report down by saying that it does not contain anything significant.

Another major deficiency of the regulation is that remedies are entirely lacking. The law foresees only a minor and fragmented compensation scheme for needy (indigent) whistleblowers who may be eligible for state assistance designed for the victims of criminal offences, such as free legal counselling, no legal fees in court cases, etc. Victim assistance services are very far from being adequate for whistleblowers. Rewards to whistleblowers are not even on the radar of the regulator.



## Target 16.10: Ensure public access to information and protect fundamental freedoms, in accordance with national legislation and international agreements

### Protection of Fundamental Freedoms

According to Freedom House's Freedom in the World Rating Hungary got 44/ points out of 100 (0 most free, 100 least free). And in the most recent World Press Freedom Index, issued by Reporters Without Borders Hungary was ranked 73 with 29.11 score.

In Hungary, there are legal provision to financially sanction journalists, human rights defenders and civil society groups fulfilling their mission and enjoying their fundamental rights. The possibility to impose fines with the pretext of balanced information covering political motivations under the new [media law](#) being in force since 2011 exists. However, it has never been used in the past seven years. The media regulation, at least in its direct way, has not been a major risk for the prevalence of press freedom. The major risk for the press freedom is the shrinking number of free outlets as more and more media have been bought up by Fidesz close oligarchs.

The negative impact of the regulation is rather indirect, and can be captured what the media authority ([National Media and Info-communications Authority](#), NMIA) fails to do. At the end of the day, the NMIA has made it possible that each of the 18 local newspapers (and their online peers) would be in the hands of government close players, either owned by [Andy Vajna](#), or by [Lőrinc Mészáros](#). The NMIA haven't say a word that there have been no national radio broadcasters which would not be the public (state) radio or which would not belong to pro-government oligarchs. Recently, the biggest private radio broadcaster has become the Radio-1 station owned by Andy Vajna, government commissioner. The NMIA [prevented](#) the partial fusion of 24.hu, an independent online portal and RTL Klub, an independent TV station and online portal what also might be explained by political reasons. The media authority's motivation is not to foster a wide supply of outlets and broadcasters for readers and listeners by promoting free competition but to accommodate to the government's endeavours.

Moreover, a rather soft and often self-initiated censorship prevails. The pro-government outlets are virtually not part of the merit-based and professional media market, meaning that they mostly operate from public money, and their journalists have become the mouthpiece of the government stances, policies and rhetoric<sup>51</sup>. The number of the independent, free media outlets has been constantly decreasing as it was described earlier in point 17.1., but even they are facing indirect pressure from the advertising market. The outlets that are not controlled by the government do not get advertisements from the state institutions and state-owned companies, and also face the reluctance of private companies to advertise in them.

Regarding civil society groups and human rights defenders, on one hand, the government's [smear campaign](#), continuous rhetorical attacks, repeated occasions of discrediting and undermining the reliability of certain NGOs has been a pattern since 2013-2014. This effort has been partly related to the government's anti-migration and anti-migrant campaigns, basically any group of civil society to criticize the government's performance is automatically labelled as one that wishes to promote the inundation of Hungary with dangerous irregular migrants. On the other hand, a regulation adopted in 2017 expects CSOs with more than 23 000 euros foreign funding to register as "foreign funded organizations". Though this legislation does not attach a sanction per se to the foreign funded status, the stigmatizing effect and the creation of a hostile

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<sup>51</sup> See any of Mérték.hu, independent think tank's analyses: <http://mertek.eu/en/our-works/press-freedom/>. E.g. this one: <http://mertek.eu/wp-content/uploads/2017/10/MertekFuzetek12.pdf>

environment is beyond doubt. CSOs concerned, including TI-Hungary have challenged this legislation both domestically (before the Constitutional Court) and abroad (before the European Court of Human Rights). Both processes are pending.

## Access to Information

*Legislative scorecard result: 83%*

Hungary's constitution, the Fundamental Law fully recognises the right of access to information<sup>52</sup>. Moreover, a separate law<sup>53</sup> defines obligations of organisations that process and manage public interest information in a detailed catalogue. However, public interest information is normally accessible upon request, and the law requires the proactive publication of only a limited category of public interest information<sup>54</sup>.

The FOI Act defines exceptions to the right of access to information<sup>55</sup>. A set of new exemptions were added to this catalogue in 2015 and 2016. As a consequence, data requestors are not anymore allowed to request access to the same public data more than once within one calendar year, even in case no proper response is given to the first request. In addition, data requestors may be obliged by state organs controlling public information to *ex ante* refund the "labour input costs associated with completing the information request", provided that servicing the information request would require "a disproportionate use of the labour resources required to fulfil the basic functions" of the state organ concerned. Making the payment of supposedly large sums of money a prerequisite for servicing public interest information requests undoubtedly creates administrative obstacles for citizens trying to access public data.

The proportionality and necessity test, i.e. the harm test in the Hungarian context is applicable to any restriction of a fundamental right<sup>56</sup>. The right to access information may therefore only be restricted, if such restriction is necessary for the protection of another fundamental right or a constitutionally protected value, on condition that the restriction of the fundamental right is proportionate to the legal target such restriction endeavours to achieve. The proportionality and necessity test (harm test) expects judges and data possessors to individually weigh the arguments for and against the publication of the information. The only exception to the applicability of the proportionality and necessity test (harm test) is the terrain of classified information, which cannot be accessed on the basis of a freedom of information request.

Hungary's National Authority for Data Protection and Freedom of Information is the successor of the country's Freedom of Information Parliamentary Ombudsman, whose office term was early terminated by the FOI Act. The Court of Justice of the European Union ruled<sup>57</sup> that Hungary's early termination of the former parliamentary data commissioner's term was a violation of the *acquis communautaire*. The National Authority for Data Protection and Freedom of Information underuses its competences and often denies its mandate to take a clear stance for the protection of the right to access information.

Amendments to the legal framework of freedom of information over the past two years have seriously undermined the accessibility of public interest information. The government's inclination to embed questionable legal concepts in the FOI Act and to adopt vaguely defined

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<sup>52</sup> For the legal background, see Hungary's Fundamental Law, which, in Art. VI (2) and in Art. 39 (2) fully recognises the right to public interest information as a fundamental right in Hungary, but also says that any data pertaining to the use of public funds shall be deemed public interest information and shall therefore be publicly accessible

<sup>53</sup> Act CXII of 2011 on freedom of information (FOI Act)

<sup>54</sup> Act CXXII of 2009 on austerity measures applicable to state or municipally owned enterprises

<sup>55</sup> Infotv. 27. § (2) bek

<sup>56</sup> Art. I. (3) of the Fundamental Law

<sup>57</sup> See case C-288/12.

<http://curia.europa.eu/juris/document/document.jsf?text=&docid=125053&pageIndex=0&doclang=HU&mode=req&dir=&oc c=first&part=1&cid=880384>

regulations in order to hinder accessibility of public interest information is beyond doubt. An *ad hoc* and case-by-case reregulation of the freedom of information scene can be observed, sometimes resulting in extremely casuistic solutions, such as the redesigning of tax secrecy legislation to prevent the law court from ruling in favour of TI-Hungary in an ongoing litigation. Besides amendments to restrict accessibility of public interest information, most disturbing is the legal uncertainty these changes evoke, as this undermines the freedom of information edifice and make it much more difficult to hold the government accountable.

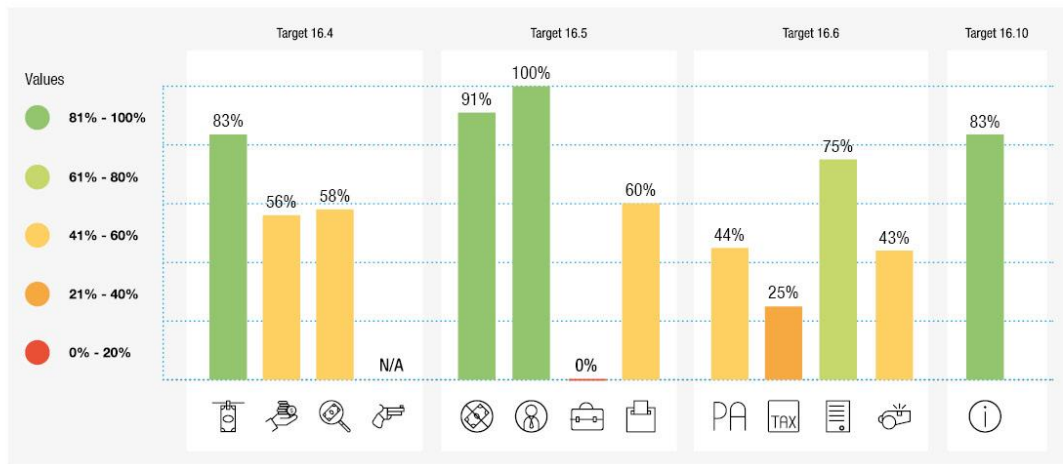
# Hungary's Legal SDG Scorecard

## COUNTRY LEGAL SCORECARD\*

### HUNGARY

#### SDG AGGREGATE VALUE

Target 16.4 Score	69%
Target 16.5 Score	71%
Target 16.6 Score	48%
Target 16.10 Score	83%



#### POLICY AREA

Target 16.4	Target 16.5	Target 16.6	Target 16.10
<ul style="list-style-type: none"> <li>Anti-Money Laundering</li> <li>Beneficial Ownership</li> <li>Asset Recovery</li> <li>Arms Trafficking</li> </ul>	<ul style="list-style-type: none"> <li>Anti-Corruption Framework and Institutions</li> <li>Private sector</li> <li>Transparency in Lobbying</li> <li>Transparency in Party &amp; Election Campaign Finance</li> </ul>	<ul style="list-style-type: none"> <li>PA Transparency and Integrity in Public Administration</li> <li>TAX Fiscal Transparency</li> <li>Integrity in Public Procurement</li> <li>Whistleblowing</li> </ul>	<ul style="list-style-type: none"> <li>Access to Information</li> </ul>

\* This scorecard is simply intended to assess whether a given country's legislative and institutional anti-corruption framework is in line with international best practice. It does not assess compliance with the legislative framework or the effectiveness of its implementation.

## Recommendations

Based on our above analysis, TI Hungary makes the following recommendations:

- As the main corruption risk is the capture of state institutions by government interests, we urge the government to re-establish the democratic checks and balances and the professional autonomy of state institutions, and enhance their capacity to effectively and efficiently carry out their mandate.
- Concerning public procurements – as the main vehicle for funnelling public money to political actors – an effective and independent controlling mechanism should be established. And an adequate legal remedy system would be of utmost importance in order to enforce the present legal framework.
- The government ought to strengthen the legal framework that governs the accessibility of public interest information by, inter alia, 1) revising legal provisions that enable secrecy; 2) promoting proactive disclosure practices; and 3) expecting corporations to reveal information concerning their beneficial owners.
- The government ought to introduce more stringent legal provisions to enhance transparency and accountability of political finance, and ought to set higher standards of the implementation of such provisions in order to incentivise an intransigent enforcement of the legal norms concerned.
- The government should reinstate and reaffirm public trust in the political elite also by reforming the current system of interest, income and asset disclosures by expecting a higher level of transparency and by exercising more rigorous control.
- The government ought to publicly acknowledge the significance of whistleblowing by not just condoning these people who expose wrongdoing and thereby take a risk, but also by introducing a system to offer them reliable protection and sufficient financial support. In addition, the government should also adopt necessary regulations to guarantee that reports made by whistleblowers are thoroughly examined.
- We urge the government to incentivize companies that participate in public procurement to adopt integrity measures. Companies should introduce coherent rules and systems in order to extensively tackle corruption risks and maintain regulatory compliance. Companies should make their operation and organizational structure available to public, thus become accountable to stakeholders.
- The government should create a new, comprehensive legislative framework on transparent lobbying through a legitimate and inclusive process that meets the long-term support of all stakeholders concerned. We encourage market players and their respective professional organisations to apply lobbying self-regulation tools and promote responsible lobbying practices in general.
- The independence of the media authority has to be re-established in order to foster a wider supply of outlets and broadcasters and to halt the tendency of the distortion of the media market towards government players. The regulation should promote free competition in the media sector, e.g. facilitating that the state advertisements should not be directed exclusively to the pro-government outlets.

## Regional Coordination

TI Hungary plans to advocate the current report and the questionnaire at different levels. We will target the government, state administration, academia, NGOs and media. Our advocacy efforts should be linked to the general awareness-raising about SDGs as in Hungary people know little about it. The more we can embed our efforts and findings into a Central and Eastern European context, the more efficient the advocacy could be. Using the findings of other countries of the region as peers could raise the significance of conclusions of the current report. For this reason, a comparative study based on the questionnaires and reports across the Visegrad 4 countries (or the wider CEE countries) and / or a relevant regional workshop could be desirable.