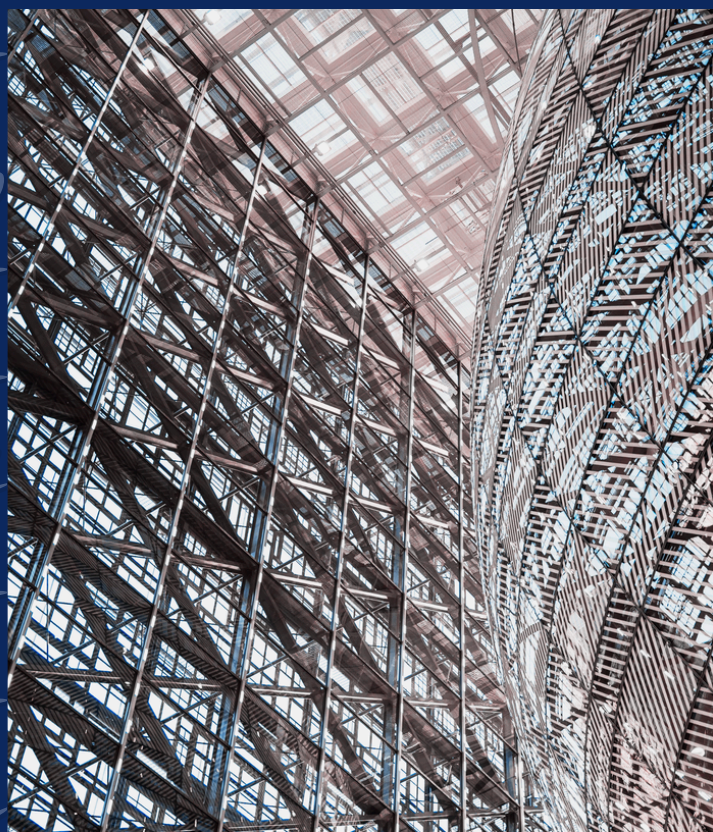


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Review of the European Union's Competences

Edited Volume



Ministry of
European Union Affairs

EDITED VOLUME ON THE REVIEW OF THE COMPETENCES OF THE EUROPEAN UNION

**Consolidated Findings of the Review Conducted by the
Government of Hungary between 2025 and 2026**

Ministry of European Union Affairs

„Under the principle of conferral, the Union shall act only within the limits of the competences conferred upon it by the Member States in the Treaties to attain the objectives set out therein. Competences not conferred upon the Union in the Treaties remain with the Member States.”

- Article 5(2), Treaty on European Union

Introduction

The European Union was originally built on economic cooperation among the Member States, mutual respect, and the institutional framework — laid down in the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU) (hereinafter jointly: the Treaties) — for the exercise of competences on the basis of conferral. The EU is founded on the principle of conferral¹: it is the Member States that decide in which fields they wish to cooperate through the institutions. The joint exercise of competences is governed by the principles of subsidiarity and proportionality.² At the same time, the Treaties expressly provide that the Union shall respect the Member States' national identity, inherent in their fundamental political and constitutional structures.³ The interpretation of the exercise of competences is therefore not merely a technical issue, but a matter of constitutional significance. Accordingly, Union action is justified where the objectives pursued cannot be achieved with sufficient effectiveness at Member State level, and where the measure does not exceed what is necessary to attain the objective. The Lisbon Treaty explicitly set the objective of making the division of competences more transparent and strengthening the legitimacy of decision-making. As part of this, the Treaties more clearly defined the categories of competences (exclusive, shared, and supporting, coordinating or supplementary competences), and reaffirmed that the Union may act only within competences that the Member States have chosen to exercise jointly. Practical experience shows that the interpretation of competences and the shaping of the substance of Union action are recurring issues in institutional practice; as a result, a number of Member States have raised the need to examine whether the actual focal points of the exercise of competences are aligned with the Treaties' conferral, and where the risk of overreach may arise. A review of the division of competences is a recognized and applied approach across Europe. In 2012, the United Kingdom launched a comprehensive competence review,⁴ carried out within a framework of governmental coordination, with the aim of establishing — on a fact-based basis — how EU competences operate in practice and what impact this has on national decision-making. The review was built around thematic reports, supported by extensive information-gathering and consultation, involving parliamentary actors, economic and civil-society stakeholders, as well as EU partners; its results were set out in policy reports.

¹ Article 5 (1) TEU

² Article 5 TEU

³ Article 4(2) TEU

⁴ „Review of the Balance of Competences”

The Dutch subsidiarity review conducted in 2013 is also well known. Guided by the principle of “European where necessary, national where possible,” it examined existing and forthcoming EU legislation in order to assess whether the requirements of subsidiarity and proportionality are genuinely met in practice, and whether EU rules leave sufficient room for maneuver for Member State implementation. The findings of the UK and Dutch reviews — particularly in the areas of the economy, migration, energy policy, and in the cross-cutting fields of education and culture and family policy — converge at several points with the conclusions of the present volume.

In France, the relationship between EU decision-making and Member State room for maneuver regularly features in institutional-level reviews. A timely example is the 2024 study of the French Council of State (Conseil d’État), which uses the question of sovereignty as a lens through which to interpret, at a systemic level, the relationship between state capacity to act and common European regulation, while also identifying the conditions for the practical exercise of sovereignty within the framework of governance. Beyond this, in several Member States there has been a growing demand for safeguarding competences and for ensuring effective compliance with the limits laid down in the EU Treaties. In Germany, a decision of the Federal Constitutional Court placed the practical requirements of EU competences and proportionality review at the center of attention.⁵ The Polish Constitutional Tribunal examined the compatibility of provisions of the EU Treaties with the national constitution, in connection with questions of conferral and institutional overreach.⁶ Finland’s governmental EU policy has, on several occasions, set out the clear division of competences, as well as the consistent application of subsidiarity and proportionality.⁷ In Denmark, the continuous weighing of sovereignty considerations and the scope of Union action has also come to the fore, *inter alia*, in the context of accession to the euro area banking union.

While the institutional form of Member States’ approaches differs, the common objective is, in each case, to ensure that Union measures remain within the limits of the competences conferred upon the Union, and that Member States’ decision-making discretion is preserved in a manner consistent with the requirements of subsidiarity and proportionality. The precedents referred to above confirm that a systematic assessment of the relationship between the Treaty-based allocation of competences and actual institutional practice is a response to evolving integration dynamics, and reflects a legitimate and increasingly articulated demand—across a number of Member

⁵ German Federal Constitutional Court (Bundesverfassungsgericht), Judgment of the Second Senate of 5 May 2020, 2 BvR 859/15 et al. (PSPP)

⁶ Polish Constitutional Tribunal (Trybunał Konstytucyjny), judgment of 7 October 2021, K 3/21.

⁷ Finnish Government, Government Report on EU Policy: Strong and united EU – towards a more sustainable European Union (2021) <https://julkaisut.valtioneuvosto.fi/server/api/core/bitstreams/b7363644-f54f-4036-855e-01829ae118f3/content>

States—for enhanced legitimacy and the protection of sovereignty. These approaches are also intended to advance the realization of the European integration project’s original objectives by strengthening the Treaties’ framework for the joint exercise of competences.

Strategic Grounds for the EU Competence Review

In recent years, efforts aimed at further deepening European integration have increasingly intensified. In opposition to federalist visions of integration, positions that embrace the “Europe of Nations” approach — seeking to uphold national sovereignty and to realize the genuine objectives of European integration—are being delegitimized on political and ideological grounds, driven by a clear will to power. A discernible trend in recent years is that certain institutions of the European Union are acting with growing consistency to strip away those powers which, by shaping Member States’ constitutional arrangements, provide the guarantees for preserving national identity. The EU institutions — above all, the European Commission (hereinafter: the Commission) and the Court of Justice of the European Union (CJEU) (hereinafter: the Court) — are exerting influence in areas that have traditionally fallen within the sphere of Member State sovereignty, while Europe’s Christian roots and the millennia-old traditions that define our continent’s identity are increasingly being pushed into the background. As a consequence, the practice of so-called competence creep has become ever more pronounced in recent years. Its essence is that the European Union, by deploying interpretative and procedural instruments, gradually — without any Treaty amendment — extends its influence into fields where, under the Treaties, it has no clear authorization. This process of further deepening European integration leads to a narrowing of Member States’ discretion and to the strengthening of centralized decision-making ambitions, thereby directly endangering the effective exercise of national sovereignty. The control mechanisms laid down in Protocol (No 2) on the application of the principles of subsidiarity and proportionality do not, in practice, provide an effective corrective instrument capable of meaningfully halting competence creep, i.e., the gradual broadening of competence interpretation. The interpretation of competences is also a key issue from the perspective of democratic accountability, since Member State decisions are grounded in a direct electoral mandate, whereas a substantial part of the EU institutional system does not bear direct political responsibility towards Member State electorates. As a result, the reallocation of competences to the institutional level is not merely a matter of democratic legitimacy, but also a problem of popular sovereignty. The absence of a direct link between EU institutional decision-making and the electoral mandate conferred at Member State level reinforces the democratic deficit inherent in

competence reallocation, particularly in fields that fall within the scope of national constitutional identity.

According to the consistent position of the Government of Hungary, the functioning of the European Union requires change. Member States are the masters of the Treaties: as the custodians of the future of European integration, they are the primary holders of sovereignty, and therefore they alone are entitled to decide which competences they wish to exercise jointly with others. Both the political myths that have sought to deepen integration in recent years—such as the myth of an “ever closer union”—and the contestable practices of the EU institutions point to the continuous advance of EU law and, with it, the ongoing expansion of EU competences. By contrast, within the current institutional framework, the principle of checks and balances and the principle of separation of powers cannot be applied with sufficient effectiveness; therefore, in order to protect sovereign nation-states, new solutions and instruments, as well as coordinated action, are required.

For these reasons, on 6 November 2025, the Government of Hungary launched a systematic review of the European Union’s competences. The European Union’s review of competence expansion focuses on those policy areas which are, at the same time, of direct relevance to the exercise of Member State competences and which materially influence the everyday lives of Hungarian citizens. The purpose of the competence review is to uncover the practice of competence creep in the fields of economic policy, energy policy, migration, the rule of law, and education, culture and family policy. The review also examines the extent to which the division of competences between the Member States and the Union can be regarded as optimal; it analyses why EU instruments designed to protect Member State competences do not operate with sufficient effectiveness in practice; and it proposes how solutions could be introduced that genuinely safeguard Member State sovereignty. All of this does not amount to a rejection of European cooperation; on the contrary, it serves its original mission: a balanced joint exercise of competences based on a Europe of Nations, in which a strong Union — built on cooperation among strong nations — can act on the world stage, as opposed to a federal union that has become trapped in an ideological dead end.

The review was conducted in two stages under the coordination of the Ministry of European Union Affairs (EUM), with the involvement of external professional partners. The first step of the competence review was the Europe Studies Network (ETH) Conference 2025, held at the National University of Public Service, where a dedicated section addressing the public-law aspects of competences began the processing of the topics. This was followed by the launch of a professional conference series entitled “Hol a határ? – Nemzeti szuverenitás és uniós hatáskörök” (“Where Is the Boundary? – National Sovereignty and EU Competences”). Implemented with the support of external partners, the thematic conference series served to strengthen professional dialogue and to

subject the findings to broad-based scrutiny: from November 2025 to January 2026, it was delivered across the five policy areas under review, with the involvement of the relevant institutional, academic, and professional stakeholders. As a second step, the institutes prepared in-depth analyses by policy area, examining the allocation of Union and Member State competence exercise in the respective field.

The economic policy analysis was prepared with the involvement of the Oeconomus Economic Research Foundation and the Századvég Foundation. The energy policy work was carried out with the participation of the Századvég Foundation and The Institute for Energy Strategy (ESI). In the field of migration and asylum, the professional work was performed by the MCC Migration Research Institute. The rule of law chapter, and the professional groundwork for the related events, were delivered by the Nézőpont Institute and the Central European Academy (CEA). The professional tasks relating to education, culture and family policy were carried out by Károli Gáspár University of the Reformed Church in Hungary.

The outcomes of the conferences—together with the professional observations and proposals raised—were incorporated into the review’s consolidated findings. The project was managed by Boglárka Bólya LL.M., Ministerial Commissioner at the Ministry of European Union Affairs responsible for advancing the European Union’s sovereigntist reform process.

I. Trends of competence expansion affecting economic policy

Economic policy is one of the defining issues of national elections and has traditionally been at the forefront of voters' demands and interest. Tax policy, price regulation, support schemes, and fiscal priorities are instruments of a national economic strategy shaped on the basis of the electoral mandate. In line with this, under the EU Treaties, the shaping of economic policy falls within Member State competence, while Member States coordinate their economic policies within the Union. In this context, the Union has a coordinating competence, under which it may propose policy orientations by means of assessment and recommendation instruments.⁸

According to the findings of the review carried out, the European Semester was originally intended to serve the coordination of Member States' economic policies, so that the synergies arising from such coordination could be harnessed. The mechanism operates on an annual cycle, in the course of which EU economic policy objectives are implemented through Member State plans, taking into account recommendations developed jointly by the European Commission and the Member States. This formed the basis of the original concept. However, in recent years the European Semester's originally soft-law, recommendation-based toolbox has, in practice, become de facto mandatory, and the Commission — through the Semester's mechanisms — has built up influence that has led to a tangible narrowing of Member States' economic-policy discretion.

The review clearly concludes that this process is driven by the gradual normative strengthening of soft-law instruments: expectations that are formally recommendation-based are transformed — through financial and procedural linkages — into an effective compliance constraint. As a consequence, while the Government shapes the national economic policy toolkit on the basis of the electoral mandate, any material deviation from the country-specific recommendations may entail risks for access to EU funding and, in the future, the risk of a loss of funds. According to the review, the European Semester has become an institutionalized framework for evaluation and guidance, within which the Commission identifies the main risks on the basis of the country reports, and on that basis, prepares the annual country assessment. Consequently, the Commission proposes the content of the country-specific recommendations, which are adopted by the Council of the European Union. The recommendations adopted in this manner are not legally binding.

According to the review, country-specific recommendations are no longer general guidance, as they regularly set out specific policy steps as well as expectations concerning (short- and medium-term) timelines, based on the country diagnosis developed in the Commission's country reports.

⁸ Article 2(3) TFEU; Article 5(1) TFEU; Article 119(1) TFEU; Article 120 TFEU; Article 121(1)–(4) TFEU

These documents form part of the macroeconomic and structural assessment framework applied by the Commission, and are components of the above-mentioned Semester.

All of this materially reduces Member State competence, since the assessment of implementation is tied to the baseline assessment and the expected trajectory defined by the Commission. As a result, Member State discretion no longer extends to deciding whether change is necessary, but rather to determining how quickly, in what sequence, and by what measures it must align with the logic of the recommendations.

From a Member State perspective, the Commission's country diagnoses and assessments cannot be regarded as risk-free. In several instances, they have underestimated Hungary's economic performance—meaning that the entire system of recommendations rested on flawed premises. In 2013, for example, the Commission considered fiscal tightening to be warranted, while the actual data pointed to stronger Hungarian economic performance; consequently, the proposed consolidation measures proved, in reality, to be unnecessary and could also have dampened growth. This is of particular significance because, if recommendations based on country assessments become conditions for disbursement, erroneous or one-sided assessment baselines may entail direct financial consequences.

According to the review, the substance of the country-specific recommendations is increasingly being carried over into EU procedures that are already capable of creating an effective compliance constraint. In addition, they have gradually expanded into areas such as social policy, education, healthcare, pension systems, housing policy, R&D, and the green and digital transitions. As a result, the European Commission also assesses instruments that are fundamentally tied to Member State decision-making and that form part of the national economic policy model. Examples include the interest rate cap, subsidized loan schemes, price caps and margin caps, and the application of sector-specific surtaxes (windfall profit taxes).

A tangible illustration of these recommendations is that, in taxation matters, the Commission has formally challenged the Hungarian retail tax and urged its radical amendment or repeal, while—also in relation to the fiscal trajectory—the Commission sets out explicit expectations regarding the structure and stability of tax policy. According to the review, all of this means that, in practice, economic policy coordination extends across an increasing number of policy areas and exerts continuous pressure on Member State decision-making.

Through the Recovery and Resilience Facility (RRF), the country-specific recommendations — including requirements that are not economic in nature, such as rule-of-law and institutional requirements — have been transformed into conditions for disbursement, linked to reform and

investment milestones and subject to strict Commission scrutiny. According to the review, the RRF has brought about a significant shift by turning country-specific recommendations into concrete, enforceable payment conditions, the fulfilment of which the Commission makes a prerequisite for the disbursement of funds. The Commission strictly verifies payment requests and the fulfilment of milestones; accordingly, payment is approved only where fulfilment is established. This process can clearly be identified as a sanction, since non-fulfilment entails an immediate financial consequence, thereby rendering economic policy coordination coercive in practice.

The competence review further anticipates that, in the 2028–2034 period, in the use of cohesion and rural development funding, the recommendations may become a fundamental point of reference for national and regional partnership plans. According to the review, the solution developed under the RRF is not a one-off exception, but rather a pattern whereby reform expectations set out in the Semester are gradually extended across the EU funding system as a whole, particularly to cohesion and rural development support. As a result, the center of gravity of Member States' economic-policy discretion shifts: alongside national objectives, the feasibility of meeting the Commission's expected reform roadmap becomes the primary consideration, because the risk of a loss of funds becomes directly embedded in governmental decision-making. In this way, the designation of Member States' development-policy priorities and the use of funds may increasingly take place within a compliance framework in which reform delivery carries direct weight.

According to the review, this is particularly sensitive for catching-up Member States, as cohesion and rural development funding are key drivers of economic growth and investment promotion. It should be noted that the Commission proposal currently under negotiation on the next Multiannual Financial Framework (MFF) takes the RRF as its model as regards rule-of-law conditionality.⁹

Member State discretion is further reduced in industrial and investment policy through the eligibility conditions attached to EU funding instruments, and in tax policy through State aid control and the EU transposition of the minimum tax. According to the review, in industrial and investment policy this narrowing of discretion operates through three channels.

First, within the framework for Important Projects of Common European Interest (IPCEI), the European Commission determines what qualifies as a project of common European interest and under what conditions Member State support may be authorized. Second, under the foreign direct

⁹ European Commission (2025): Europe's budget Strengthening the Rule of Law
<https://op.europa.eu/en/publication-detail/-/publication/3170395c-d63e-11f0-8da2-01aa75ed71a1/language-en>

investment (FDI) screening mechanism, comments by the Commission and by Member States do not formally amount to a veto, yet they may, in practice, influence investment decisions. Third, the EU-wide standards of the sustainable finance taxonomy align the financing of investments—on the side of market actors as well—with Union expectations, thereby indirectly reducing Member States’ development-policy discretion.

In tax policy, the review records that the EU has no competence to harmonize direct taxation; however, on the basis of State aid rules, the Commission may scrutinize national tax systems and, in the event of an infringement, can also secure the recovery of tax advantages. The review further finds that the mandatory EU-level transposition of the global minimum tax directive materially narrows Member States’ fiscal discretion, particularly in those countries that previously built their competitiveness strategy on favorable corporate income tax rates.

Finally, projecting the practical consequences of competence creep onto Hungary, the competence review records that the adverse effects arise primarily at the level of economic convergence and competitiveness, as well as in terms of fundamental economic-sovereignty risks. Withheld funding may increase the budget’s need for foreign-currency financing and raise interest burdens, while uncertainty may render the Forint (HUF) more vulnerable to external, speculative pressure—potentially translating into a direct cost-increasing factor for economic actors.

II. Trends of competence expansion affecting energy policy

Under the Treaties, energy policy is a shared competence, meaning that the EU is empowered to legislate, particularly with a view to the functioning of the internal energy market, security of supply, energy efficiency and the promotion of renewables, as well as the interconnection of networks. At the same time, the determination of the energy mix is a fundamental component of the national economic model. The energy structure, pricing policy, and the security-of-supply strategy have a direct impact on households' cost of living and on economic competitiveness; therefore, joint action may not affect Member States' right to determine the conditions for exploiting their energy resources, their choice between different energy sources, and the general structure of their energy supply —above all, the determination of the energy mix.¹⁰

According to the findings of the review carried out, in the field of energy policy, EU secondary legislation, soft-law frameworks, and the Court's case-law have created a regulatory and interpretative environment that, in practice, narrows Member State discretion. This phenomenon can clearly be identified as competence creep, since the Treaty-based guarantees of Member State energy sovereignty remain formally intact, yet their practical operation is increasingly shaped by EU regulatory and implementation frameworks. The reduction of Member State discretion is therefore not captured in a single decision, but in the cumulative effect of successive regulatory steps building upon one another.

One tangible example of this is the EU system of “green” policy packages. The European Green Deal (Green Deal), as well as Fit for 55 and REPowerEU, lay down obligations which—invoking climate-policy objectives—are introduced, yet whose substance directly influences how Member States shape their energy systems and subjects their decisions on the energy mix to an indirect compliance constraint. In practice, binding targets are coupled with detailed implementing conditions, deadlines, market rules and verifiable obligations which, taken together, also determine the direction and pace in which compliance is expected.

Energy-efficiency and building-energy regulation, for example, not only sets numerical targets but also defines granular compliance requirements which — even in the form of a directive —leave only a narrow margin of discretion for transposition and materially influence Member States' choice of instruments. A comparable burden is imposed by regulatory measures, adopted in the form of a regulation, on the reduction of methane emissions: strict administrative obligations combined with short adjustment timelines immediately translate into direct implementation tasks.

¹⁰ Article 4(2) TFEU; Article 194(1) – (2) TFEU

The EU response to the energy crisis triggered by the Russia–Ukraine war has brought about measures that have materially expanded the Union’s capacity to intervene and may create a lasting precedent for circumventing ordinary law-making. Within the framework of REPowerEU, the activation of extraordinary legal bases relying on Article 122 TFEU — which was originally designed for temporary crisis-management measures — enables accelerated intervention and may, in turn, diminish the weight of the classic guarantees of Member State control. Measures built on that basis, in several instances, take the form of directly applicable Council regulations, and cast expectations regarding market functioning and security of supply as implementation obligations for Member States. EU action organized around joint purchasing and demand aggregation (the EU Energy Platform) also points in this direction.

REPowerEU, alongside crisis-management interventions, also sets out the decoupling from Russian energy as a longer-term roadmap, extending this approach beyond fossil energy carriers to the field of nuclear fuel supply as well. The REPowerEU Roadmap sets out the gradual phase-out of procurement sources for nuclear fuel of Russian origin and seeks to make imports of Russian enriched uranium more difficult through trade measures. In parallel, the Roadmap also points towards narrowing the scope for concluding new fuel-procurement contracts with Russian suppliers — appearing to Member States not merely as a political objective, but as a constraint that directly affects procurement decisions.

According to the Commission’s announcement in June 2025, the deadline for introducing measures affecting the nuclear field may be pushed back; nevertheless, the direction is unambiguous: full decoupling, including the gradual phase-out of Russian nuclear technology, beyond raw materials and processed products. The Roadmap’s logic is particularly sensitive in that fuel-supply contracts may, in the future, be made subject to Commission approval, which may entail additional disputes and risk. From Hungary’s perspective, this may pose a risk in terms of security of supply and the practical ability to shape the energy mix, since — given the limited alternatives — the operation of the Paks Nuclear Power Plant and the Budapest Research Reactor may also become more vulnerable.

With regard to the decoupling from Russian fossil energy carriers, the review also highlights the importance of the choice of legal basis. In connection with the Commission’s proposal for a regulation presented on 17 June 2025 on banning imports of Russian natural gas and crude oil, it points out that while the adoption of foreign-policy sanctions requires unanimity,¹¹ the

¹¹ Article 29 TEU; Article 31(1) TEU

Commission submitted the import ban—guided by considerations of political expediency—as a trade-policy regulation that can be adopted by qualified majority.¹²

The solution proposed by the Commission is problematic on several counts. The import ban put forward in this manner is — by its substance and effects — clearly sanctions-like; moreover, bypassing the Treaty-based legal basis endangers the practical effectiveness of Member States’ decision-making autonomy, guaranteed by the Treaties, in determining their energy mix. This approach may also rewrite the conditions of decision-making in the longer term, as it can set a precedent whereby measures that directly affect the choice of procurement sources and security-of-supply considerations become adoptable by qualified majority instead of requiring unanimity.

In its current form, the Commission’s proposal would restrict the range of available procurement sources, could increase the overall cost of energy imports, and may also force amendments to existing supply contracts, with attendant compensation risks. The shift in legal basis therefore entails a structural risk for the practical enforcement of Member States’ Treaty-based autonomy in determining their energy mix, while financial linkages within the EU system of fund disbursements further intensify the regulatory pressure.

The European Commission links access to resources under the Recovery and Resilience Facility (RRF) to rule-of-law procedures and to European Semester recommendations, which also include expectations relating to the phase-out of fossil fuels. As a consequence, expectations concerning energy-policy transformation may become decisive compliance criteria when it comes to access to funding.

Finally, the review also points out that energy-policy discretion is narrowed not only through legislation, but also through the Court’s internal-market case-law. Moreover, in a number of cases the Court of Justice of the European Union (CJEU) proceeds on the basis that national interventions applied in the energy sector may be maintained only under strict conditions aligned with EU internal market requirements. As a result, Member States’ price-regulation instruments become not merely a matter of political discretion, but increasingly instruments that are conditioned on EU compliance requirements and thus contested and risk-laden. This judicial approach also has a direct impact on investment decisions.

In the case of strategically significant energy projects, EU scrutiny and approval mechanisms may, in themselves, amount to an implementation risk capable of materially affecting both the scheduling and the feasibility of projects.

¹² Article 207 TFEU

III. Trends of competence expansion affecting migration

Migration policy is not merely an administrative or humanitarian matter, but a strategic field of decision-making that shapes, in the long term, the composition of the national community and its cultural and social structure — one in which democratic legitimacy is particularly strong. For that reason, defining the competence framework is of paramount importance in the fields of migration and asylum. In this area, shared competence exists between the Member States and the Union; moreover, Union competences extend to the management of the external borders, the common asylum system, and certain aspects of immigration. As regards integration measures, the Union has a supporting competence; consequently, it remains within the competence of the Member States to determine how many third-country nationals they admit for the purposes of employment.¹³

EU regulation in the fields of migration and asylum has, over the past decade, been reshaped not only at the level of legislation but also in the interpretative frameworks through which the phenomenon is understood. In public discourse, the humanitarian approach has gained strength, while the conceptual boundary between migration and asylum is often blurred — directly affecting which instruments appear justified at EU level.

At the same time, the factual data suggest that, on an annual basis, on the order of 700 million people cross the EU's external borders, and within that number 5.3 million people took up long-term residence in the Union in 2022, and 4.3 million in 2023, under various legal bases.

According to the main findings of the review carried out, migration and asylum have, over the past decade, become one of the EU's key areas of competence expansion. In several cases, the Commission's initiating and supervisory role manifests as political pressure, circumventing Member State competences, while the Court's expansive interpretation narrows Member State discretion and creates precedents on which the Commission and the European Parliament subsequently rely as points of reference.

The 2015 migration crisis was of pivotal significance in the history of EU asylum regulation. Building on the principle of solidarity, the EU organized relocation from Greece and Italy in two steps—initially on a voluntary basis, and subsequently as a mandatory scheme determined by quotas—with an overall target of 160,000 persons. Within this process, the mandatory relocation quota decision was adopted, invoked by reference to the principle of solidarity laid down in Article 80 TFEU. Hungary and Slovakia brought an action before the Court of Justice of the European

¹³ Article 4(2) TFEU; Article 77(1) TFEU; Article 78(1) TFEU; Article 79(1), (4) and (5) TFEU

Union (CJEU) against that decision; however, the Court dismissed the actions and held the quota decision to be lawful.

The practical operation of the mechanism already revealed the system's limits at that time: the programme originally designed to relocate 160,000 asylum applicants ultimately resulted in the relocation of only approximately 35,000 persons, meaning that less than one quarter of the stated target was achieved. The Commission's crisis measure demonstrated that it could be pushed through even in the face of Member State resistance; at the same time, implementation shortfalls generated lasting tensions in political and institutional terms.

The Commission used that precedent to ensure that, in the new Pact on Migration and Asylum adopted in 2024, the mandatory solidarity mechanism would no longer operate as an ad hoc crisis measure, but would become a permanent feature of how the system functions. As a result, the Pact created an enduring framework in which the solidarity contribution appears as a recurring annual obligation, and the Council regularly reviews both its scale and the conditions for its fulfilment.

Mandatory solidarity, through (i) the quota-based allocation stemming from the mandatory solidarity mechanism linked to the annual Union reference number (30,000 persons/year), (ii) the option of an alternative financial contribution (EUR 20,000 per person), and (iii) the automatism (in the absence of voluntary pledges: quota-based take-up or mandatory payment), effectively narrows Member State decision-making to the form of compliance. Consequently, Member State discretion is largely confined to how the obligation is met, while both the obligation itself and the annual target figure are fixed.

A further feature of the process characterizing the migration pact is that an increasing number of elements of the common policy are elevated to the level of regulations: the regulatory framework is thus set at Union level, and the center of gravity of Member State discretion typically shrinks to questions of implementation. Under the earlier regulatory structure, most asylum rules were based on directives, allowing implementation tied to common objectives while leaving national legislative discretion. By contrast, the earlier directive-based logic of the new Pact on Migration and Asylum is largely replaced by directly applicable regulations, which further reduces Member States' scope for discretion.

This shift in the hierarchy of legal instruments is of particular significance, because under the previous system, national discretion was typically preserved in the rules governing asylum procedures, reception conditions, and the recognition of status. By contrast, nine of the Pact's ten legal acts are regulations—i.e., directly applicable, uniform regulatory instruments. The practical

significance of direct applicability is further reinforced by the fact that, at multiple points, implementation is linked to quantified capacity and numerical obligations.

For Hungary, the number of procedures to be conducted at the border has been set at 7,716 persons, which means that 7,716 places must be maintained on a permanent basis. This capacity is set to increase continuously: for the period between 12 June 2026 and 12 June 2027, Hungary would be required to ensure the examination of 15,432 applications, while for the period between 13 June 2027 and 1 October 2027, the examination of up to 23,148 applications per year would have to be ensured. The determination of these obligations is based on earlier statistical data that can only track monthly fluctuations in migration routes to a limited extent, while the obligation to maintain capacity is prescribed irrespective of actual flows. Non-compliance, at the same time, also entails the risk of infringement proceedings.

In political debates relating to border protection, the question of double standards emerges with particular sharpness in the assessment of Hungary's practice. In 2015, Hungary erected a temporary border fence on the Serbia–Hungary border, which was met with strong criticism at EU level, and the Commission rejected both support for fences and the assumption of costs linked to border protection. In parallel, the legal controversy surrounding Hungary's border-protection solutions remained on the agenda on a lasting basis, and subsequent judicial proceedings and financial legal consequences turned the political dispute into a direct cost risk.

At the same time, in other border situations, EU institutional reactions were different. During the Turkey–Greece border crisis, border closure appeared within a supportive political framing, and EU financial resources were also associated with strengthening Greek capacities. A similar shift can be observed in the handling of pressure coming from the Belarusian direction, where the assessment of the Polish border closure was already significantly more permissive and EU resources were linked to it. Thus, what was rejected in Hungary's case became acceptable in other Member States' cases—and financing was even attached to it. Double standards therefore appear not as isolated incidents, but as a structural, recurring pattern: identical legal situations, in different political contexts, trigger different institutional responses, undermining regulatory predictability and the principle of equal treatment.

Double standards are also discernible in the area of the migration solidarity system. In the case of some Member States, the Union handles with flexibility what qualifies as a “disproportionate burden”, whereas in other cases it does not adjust obligations accordingly. In Poland's case, EU institutions assessed the situation linked to the Belarusian border as migratory pressure, and they also took into account the reception of a large number of Ukrainian refugees as a factor that may

justify an exemption from the obligation to take over asylum applicants. By contrast, no similar exemption is available for Hungary, even though—on the basis of the available data—migratory pressure along the southern border is sustained and significant. Nor does the system recognize, as a solidarity measure, the actual Member State efforts and costs resulting from reinforcing border protection; accordingly, the role assumed in border policing does not appear as a corrective factor in burden-sharing. As a consequence, the practical application of solidarity does not develop on the basis of uniform criteria, but through ad hoc exceptions and divergent assessments, rendering the fair consideration of Member States' burdens highly contestable.

Competence-expansion efforts are also brought to bear—alongside the Commission—through the Court's case-law. The Court of Justice of the European Union (CJEU) imposed on Hungary a lump sum of EUR 200 million and a penalty payment of EUR 1 million per day, on the ground that Hungary had failed to comply with its obligations established in an earlier judgment. The Court applies the continuously increasing financial burden—by its own reasoning—as a means of promoting, and effectively compelling, compliance with the earlier judgment. Since the assessment of the infringement established in the earlier decision is itself contested, the sanction is, in practice, more readily interpretable as an instrument of political pressure—cast in legal form.

As a consequence, however, the very nature of migration-related disputes also changes. The sanction does not appear as a one-off, closed legal consequence, but as sustained pressure which narrows Member State discretion also in budgetary terms and turns implementation choices into a direct financial risk. Sanctions of this magnitude transform the implementation obligation, in practice, into an effective compliance constraint, because the Member State is not merely engaged in a legal dispute, but bears a continuously increasing financial burden until measures aligned with EU expectations are taken.

The extraordinary scale of the financial sanction is, in itself, message-bearing: the Court's toolkit is thereby reinforced with a coercive capacity of an intensity that goes beyond the classic logic of infringement proceedings and exerts an effect extending across Member State migration policy as a whole. All of this sets a precedent and may have a deterrent effect on Member States.

IV. Trends of competence expansion affecting rule of law

The competence review presents the enforcement of the rule of law at EU level as a developmental trajectory in which, from the 2000s onwards, the European Commission has pursued, with increasing consistency, the creation of a stand-alone, continuously operating institutional framework for action linked to EU values. In this process, Communications and other legally non-binding documents play a particularly important role: these documents simultaneously serve conceptual clarification, methodological framing, and the setting of benchmarks that later reappear in institutional practice and subsequently function as preparatory bases for funding-related decisions.

The founding Treaties do not define the precise content of the rule of law, while it appears both as a foundational principle and as an EU value named in Article 2 TEU. This duality, in itself, opens a wide margin for interpretation in institutional practice. The concept's appearance as a value also carries a moral and identity-forming surplus meaning which, unlike the exercise of competences tied to a precisely delimited Treaty legal basis, is more conducive to EU institutions building requirement frameworks aligned with political agendas and enforcing them, through various procedures, as "European standards". Typically, the Commission itself has also relied on several reference points that are, by their nature, non-binding and not of EU origin when defining the rule of law.

According to the review, the rule of law functions not only as a means of EU political pressure, but also as an instrument for the de facto extension of competence exercise. Efforts in this direction are most clearly observable in the practice of the Commission and the Court. Institutional protection of the rule of law therefore is no longer confined to the exceptional procedures explicitly named in the Treaties; rather, it is implemented through multiple, layered instruments. Member States are subjected to continuous monitoring and assessment along mechanisms designed by the Commission, while the procedural safeguards intended to secure Member State discretion are narrow, and the effective weight of decision-making increasingly aligns with the interpretative practice of the Commission and, in particular, the Court.

One indication of competence-expansion efforts is that the Commission brings within its rule-of-law "field of vision" subject areas for which the Treaties do not confer an independent Union competence. In several instances, it seeks to substantiate this merely by referring to the Union values under Article 2 TEU, as well as to Article 10 TEU, with the result that the rule of law can also appear as a stand-alone point of reference. The Treaties' failure to define the precise content

of the rule of law operates, in practice, as an interpretative space in which institutional considerations and political priorities can readily crystallize into normative requirements.

This is well illustrated by the Commission's Communication of 11 March 2014, in which it proposed the establishment of a new EU framework to strengthen the rule of law ("Communication from the Commission to the European Parliament and the Council: A new EU Framework to strengthen the Rule of Law" COM (2014) 158 final). The proposal is expressly intended to avert recourse to the procedure under Article 7 TEU, within which the setting of the benchmark and the assessment are primarily concentrated in the Commission's hands. The procedure consists of three stages: first, the Commission conducts an assessment and engages in dialogue; it may then issue a recommendation and monitor its implementation. Ultimately, it may also raise the possibility of activating the procedure under Article 7 TEU. However, the position widely accepted in the literature is that the procedure under Article 7 TEU is, by its nature, primarily a political mechanism.

The setting of rule-of-law benchmarks and the assessment of Member States do not, in themselves, automatically create direct legal consequences. The significance of the findings becomes tangible where they are embedded in the conditions governing access to EU funds. Rule-of-law-related expectations that were originally recommendation-based may, once linked to EU disbursements, acquire a coercive effect in practice.

On the basis of the competence review, the Commission seeks to establish a comprehensive legal and political toolkit, an ambition that manifests in a network of mutually reinforcing mechanisms. The Commission subsumes under the concept of the rule of law mechanisms that were previously created for different purposes. In doing so, it creates an assessment framework that may extend to a broad range of Member States' internal regulatory and institutional matters. The primary instrument of political pressure is the conditionality procedure, within which the Commission—invoking the protection of the Union budget—links access to cohesion (and other funds directly or indirectly managed by the Commission) to a set of rule-of-law-related conditions which, by virtue of its content and practical effects, may go beyond the protection of budgetary interests and has thereby become a *de facto* sanctioning instrument.

Moreover, in connection with the Conditionality Regulation (Regulation (EU, Euratom) 2020/2092 on a general regime of conditionality for the protection of the Union budget), the Court also accepted an interpretation according to which the EU legislature may, alongside Article 7, establish additional procedures in secondary law for rule-of-law-related examinations, provided that their aim and subject matter are distinct. In light of the consequences genuinely linked to

breaches of the rule of law—namely, those involving the suspension of funds—the purpose-based distinction may, in practice, easily become hollow, since a financial restriction, by its very nature, produces a disadvantage that materially narrows Member State discretion.

The risk of double standards is now supported not only by political claims, but also by institutional feedback. In its Special Report published on 22 February 2024, the European Court of Auditors expressly recorded that the Commission did not systematically assess and document the potential impact on the Union’s financial interests in respect of every Member State concerned. It also noted that, based on its internal guidance, the use of information sources does not extend across all Member States but is carried out on a case-by-case basis.

The conditionality procedure clearly demonstrates how access to EU funds can become an instrument of sanctioning through the institutional (and politically reinterpreted) application of the concept of the rule of law, since the required remedial measures prescribe wide-ranging institutional expectations (including, *inter alia*, the establishment of the Integrity Authority, the setting up of the Anti-Corruption Task Force, and the extended use of the Commission’s ARACHNE Risk Scoring Tool). Meanwhile, the issue of universities maintained by Hungarian public interest trusts (KEKVA structures) may be cited as one of the clearest examples of the Commission’s procedure-driven pressure and of the political discretion inherent in the application of conditions.

A further example of the Commission’s ambitions in the exercise of competences is that, in the absence of any authorization or request by the Member States, it decided to establish the so-called Rule of Law Review Cycle, the purpose of which is to monitor the rule of law situation in all Member States. The central element of this cycle is the Commission’s annual report, around which it has organized interinstitutional dialogue, a Member State contact-point practice, and Council debates, in a manner whereby the definition of the benchmark and the agenda-setting effectively remain in the Commission’s hands. As a result, the rule of law discourse no longer operates as an *ad hoc* response, but becomes a permanent assessment that creates continuous compliance pressure for the Member States.

Another main instrument of competence-expansion efforts is the annual Rule of Law Report. Since 2020, in its annual Rule of Law Reports, the Commission has examined developments along four pillars, which it has supplemented with an “internal market dimension”, thereby enabling it to bring under scrutiny even more areas that may go beyond EU competences. Over the years, the content of the pillars has expanded substantially instead of stabilizing: new fields have been added, the assessment criteria have become increasingly granular, and issues are raised for which no

explicit EU *acquis* can be identified. This is particularly problematic where the Commission, by invoking “European standards” (for instance, recommendations of international organizations), formulates expectations and then presents them as country-specific requirements, without it being clear how these become enforceable benchmarks at EU level.

In parallel, it ties the “enforcement” of the rule of law to the logic of common budgetary and financial governance—i.e., it is able to convert political evaluation into financial consequences. Its interinstitutional imprint is that, on 16 December 2014, the Council established an annual rule of law dialogue in the General Affairs Council; yet, from 2020 onwards, the substantive basis of Council debates has typically been the country chapters of the Commission’s annual reports. As a consequence, the Commission not only assesses but also sets the agenda for the debates.

A further example of using soft-law instruments for rule-of-law purposes is the European Semester and the EU Justice Scoreboard, which the Commission takes into account for its annual rule-of-law reports. The European Semester is, by its nature, a framework for economic and budgetary policy coordination, while the Justice Scoreboard is a data-based and comparative information tool. The Commission, however, treats the European Semester as an early-warning and preventive instrument, and—at the same time—incorporates the Justice Scoreboard’s findings into rule-of-law assessments; accordingly, they may become not only an informational basis for the conditionality of financial access, but—within a politicized interpretative environment—also a reference point capable of supporting pressure.

In parallel, in the absence of a legal basis and an express authorization, the Commission issues country-specific recommendations to Member States and, in subsequent reports, assesses their implementation using its own grading categories. This practice—particularly where it is linked to access to funds—effectively reclassifies the nature of the recommendations: formally they are not binding, yet within the system of consequences they operate as if they were. The Commission treats as conditions not only the adoption of legislation, but also its application and the assessment of experience gathered during its application—meaning that a positive decision can be deferred and a protracted state of suspension can be created.

These reports also contain findings, even in areas going beyond EU competence, that may lend themselves to political bias because they rely on non-public or difficult-to-verify information channels and also on assessments by non-governmental actors, while the rate at which Member State official positions are cited is low. The strengthening of the Commission’s role observed in recent years is not solely the result of the Commission’s own institutional initiatives. Through an interpretation that has consistently broadened the legal framework for EU action, and through an

institutional logic aligned with EU objectives, the Court of Justice of the European Union (CJEU) has perceptibly expanded the Commission's discretion, thereby, overall, facilitating the de facto extension of the European Union's competences.

The strengthening of the Court's role in the rule-of-law domain can be captured in the way it links the safeguarding of the effectiveness of EU law to the organizational and operational guarantees of national justice systems. Building on Article 19 TEU and Article 47 of the Charter of Fundamental Rights of the European Union, the Court has developed a set of judicial, rule-of-law-linked requirements that do not appear only in individual proceedings, but also affect multiple elements of Member States' public-law and judicial arrangements—especially rules on appointments and promotion, disciplinary regimes, the allocation of cases, guarantees relating to the term of office, and administrative governance structures. The competence-related tension is further intensified by the fact that the Treaties do not contain a substantive, detailed definition of the rule of law; as a result, the scope of these requirements may expand, case by case, in judicial practice, which significantly reduces the foreseeability for Member States as to the content and extent of the requirements. In turn, the effective operation of the principle of legal certainty is also materially undermined.

From the perspective of coherence and consistency, it is also relevant that the EU's accession to the European Convention on Human Rights (ECHR) has still not been realized, even though Article 6(2) TEU prescribes this as an express obligation. The blockage of accession can be traced back to the Court's Opinion—invoking the protection of the autonomy of the EU legal order—which effectively stalled the process¹⁴. The troubling consequence of this situation is that, while the Commission, when setting rule-of-law benchmarks, regularly relies on the European Court of Human Rights (ECtHR) conceptions of the rule of law, the Union remains outside the very convention-based system that provides the institutional guarantee of those requirements. This also raises issues of credibility and legal certainty, since it is difficult to justify that reliance on the rule of law genuinely satisfies the requirement of legal certainty when the Union does not even fulfil the accession obligation it assumed in its own Treaties.

¹⁴ notably Opinion 2/13

V. Trends of competence expansion affecting education, culture and family policy

Education, culture and family policy are the primary domains through which national identity, a value order and the social model are transmitted; accordingly, under the logic of the EU Treaties, they fall within a sphere of Member State self-determination that is particularly protected. On that basis, in the fields of education, vocational training, youth and sport, as well as culture, the Union has supporting, coordinating and supplementary competences. The content and organization of education systems fall within Member State competence, while in the field of culture the EU has a supplementary competence, with respect for national and regional diversity. Family policy, by contrast, is an exclusive Member State competence.¹⁵

According to the review, the *de facto* shift of competences in the field of education–culture–family policy manifests in two mutually reinforcing ways. First, through the case-law of the Court of Justice of the European Union, and second, through the European Commission extending its influence into areas that remain within Member State competence. The common feature of the two institutions is that EU action does not appear as a direct, sector-specific competence; rather, it is integrated into Member State domains by relying on related legal bases, thereby creating a legal framework within which the Union can exercise meaningful control even over education, cultural and family-policy decisions that have traditionally not been harmonized. In this process, the Court’s evaluative interpretation is particularly decisive, since an expansive approach relying on related legal bases is capable of developing substantive EU requirements while the formal competence boundaries remain unchanged.

This is broadened primarily by reference to internal-market legal bases, the provisions of the Charter of Fundamental Rights of the European Union, and the EU values laid down in Article 2 TEU — an approach that disrupts the Treaty equilibrium. An illustration of this is the Advocate General’s Opinion submitted in the child-protection-related proceedings brought against Hungary, which interprets the enforcement of internal market rules and EU fundamental values in an expansive manner, while reflecting an approach that narrows the space for assessing arguments based on Member State competences and the protection of public policy (*ordre public*). In the case in question, the Commission simultaneously linked certain provisions of the Child Protection Law¹⁶ to internal market rules, to fundamental-rights arguments, and to EU values. Taken together,

¹⁵ Article 6(c) and (e) TFEU; Article 165(1) TFEU; Article 166(1) TFEU; Article 167(1) and (5) TFEU; cf. Article 4(1) TEU; Article 5(2) TEU; Article 81(3) TFEU

¹⁶ Act LXXIX of 2021 on taking more severe action against paedophile offenders and amending certain Acts for the protection of children

this process may set a precedent for Member State regulation connected to education, culture and family policy to be subjected to more direct scrutiny on the basis of EU values.

A similar question is raised by the *Klubrádió* case,¹⁷ namely: how far EU legal scrutiny may extend in the enforcement of media pluralism at the expense of Member State regulatory discretion. The findings of the review indicate that, on the basis of procedural requirements derived from the EU electronic communications and media regulatory framework (in particular transparency, objectivity, equal treatment and proportionality), decisions on rights to use radio frequencies may also fall under EU-level scrutiny—thereby effectively narrowing the national regulatory authority’s margin of discretion.

In the field of family law, Union action typically materializes by relying on related legal bases. The substance of family-law institutions formally remains within Member State competence; however, through EU instruments linked to the free movement of persons, EU citizenship, and civil judicial cooperation, Member States are, in certain situations, required to recognize legal statuses or documents originating in other Member States. An example is the *Coman* case, in which the Court derived the granting of a right of residence from the logic of EU free movement and construed the recognition of family relationships as a condition for exercising that right. This category also includes cases concerning the recognition of parental status, where the Court prioritizes ensuring the effective enjoyment of EU citizenship and free movement. As a result, in several instances, the application of national family-law rules is constrained by the requirement to secure the effective exercise of free movement, and the Court supports this approach with fundamental-rights arguments.

In parallel, the Commission, in soft-law documents, sets out shared value- and identity-based expectations, which gradually reinforce the alignment of Member State policies with EU-level expectations. The “European Cultural Compass” initiative is also indicative: while it is not, in itself, a legislative act, its approach of linking culture with other policy areas foreshadows a more ambitious drive in the Commission’s cultural action, and it also raises the question of how references to values and budgetary considerations may be coupled in Union action affecting the cultural field. In education, the comprehensive package of EU initiatives (the European Education Area) follows a logic that includes elements designed to strengthen EU awareness, as well as the concept of a “joint European degree label”, the conditions of which also include compliance with the values referred to in Article 2 TEU. It can be established that cooperation in the field of education is becoming increasingly detailed in substantive terms and, accordingly, may not only

¹⁷ Case C-92/23

create frameworks for cooperation but also introduce substantive expectations and requirements. Second, the “joint European degree label” is presented as a three-stage process running until 2029, one declared precondition of which is compliance linked to the values referred to in Article 2 TEU. In the light of the Treaty-based limits on competences, this raises the question of how value-linked conditions can appear in a field in which, as a rule, the Union may not harmonize.

In parallel, a further instrument of competence expansion available to the EU institutions is access to EU funds. The KEKVA case¹⁸ illustrates well that, through the conditionality toolkit, the EU institutions are able to impose direct intervention with immediate effect even in the field of education and higher education. Following the rule-of-law conditionality procedure, higher-education institutions maintained by KEKVA structures were excluded from the Erasmus+ and Horizon Europe programmes, affecting the participation opportunities of several hundred thousand students, teachers and researchers. Formally, the objections concerned risks of conflicts of interest and the transparency of the use of EU funds; in practice, however, the restriction reflected the EU’s political assessment of the Hungarian higher-education model. The Hungarian legislator extended public procurement and conflict-of-interest rules to public interest foundations performing public duties, and then—by amending the KEKVA Act¹⁹—introduced further safeguards within the governing bodies that went beyond the earlier expectations (widening the conflict-of-interest rules, a cooling-off period, term limits, eligibility requirements, external oversight, and an obligation to submit asset declarations). Despite this, the Commission did not propose lifting the restriction; instead, it set out a further 12 criteria, several of which are not substantively connected either to the Conditionality Regulation or to remedying the deficiency identified by the Council. It is particularly incongruous that the restriction also extends to programmes where the use of funds is, by its nature, earmarked and, to a significant extent, centrally monitored—meaning that the actual substantiation of the financial risk is not transparent. As a result, the conditions governing access to EU funds have become an autonomous instrument of pressure in matters of education policy and institutional maintenance, while Member State policy space has been reduced through funding restrictions.

¹⁸ public interest asset management foundations performing public duties

¹⁹ Act IX of 2021 on public interest asset management foundations performing public duty

The outcome of the competence review and its reform proposals

The purpose of the study volume compiled as a result of the competence review is to provide a systemic account of the extent to which, across the various policy fields, the European Union remains within the framework for the exercise of competences laid down in the Treaties, and to identify where EU institutions pursue competence-expansion efforts that materially restrict Member State decision-making autonomy. Within this framework, the volume, first, records in an objective manner the practice of (creeping) encroachment on Member State competences that can be discerned in the fields examined and, second, identifies those policy areas in which the consistent protection and sustained strengthening of national decision-making competences is particularly warranted.

The body of knowledge acquired in the course of the process and the policy conclusions drawn from it will contribute to Hungary becoming an active and influential actor in future EU reform processes. In addition, the study volume may serve as a catalyst for the launch of similar Member State reviews, thereby initiating professional dialogue and cooperation underpinning coordinated action. On this basis, we propose measures the timely application of which can advance the restoration and effective exercise of Member State competences. According to the proposals, and flowing from the principle of conferral, the mechanisms designed to protect Member State discretion require reinforced procedural and institutional frameworks, which may also involve significant restructuring of the Union's institutional system. The aim of the reforms is to strengthen the effective assertion, at Union level, of the Member States' national sovereignty, to ensure that the Union serves the interests of the Member States rather than supranational political interests, and to guarantee the accountability of the Commission.

These reforms contribute to restoring trust between the Union and the Member States, since mutual trust served as the foundation of European integration. In this context, the proposals include, on the one hand, reforms that can be implemented without Treaty amendment and, on the other hand, reform proposals that require Treaty amendment.

I. Reforms without Treaty amendment

The first group in the package of proposals consists of institutional and procedural solutions that, relying on the existing provisions of the Treaties, can be implemented without Treaty amendment. The core premise is that certain guarantees designed to protect the Member State margin of discretion can already be strengthened within the current Treaty framework, provided that the institutional structures and procedural arrangements necessary for their application are put in place. The purpose of these proposals is to ensure that competence control over Union legislation and the interpretation of Union law is meaningfully strengthened in practice—especially through more effective enforcement of subsidiarity and by reinforcing the procedural positions of Member State actors.

a) Establishment of a competence court

The Treaty of Nice provides for the establishment of specialized courts in certain areas, a provision subsequently codified by the Lisbon Treaty. To date, only one court with special jurisdiction has been established under this framework: the European Union Civil Service Tribunal, created in 2005, which operated as part of the Court of Justice of the European Union until its dissolution in 2016. Pursuant to Article 270 TFEU, the Civil Service Tribunal had jurisdiction to determine disputes between the European Union and its employees. Drawing on the model of the Civil Service Tribunal, we propose that consideration be given to establishing a court specialized in adjudicating disputes concerning the division of competences, which, within the meaning of the provisions introduced in the Treaty of Nice, would have jurisdiction to resolve disputes between the Union and the Member States concerning competences.

b) Establishment of a subsidiarity review mechanism

Under Article 8 of Protocol (No 2) on the application of the principles of subsidiarity and proportionality annexed to the TFEU, national parliaments may also bring an action before the Court of Justice of the European Union. The French National Assembly relied on this basis for the action it brought on 14 August 2024, in which it challenged Regulation (EU) 2024/1351 of the European Parliament and of the Council of 14 May 2024 on asylum and migration management—commonly regarded as one of the central elements of the migration and asylum pact. That Regulation constitutes a Union measure amending asylum and migration management rules and prescribing reforms in that field.²⁰ To initiate such an action, the support of one-tenth of the

²⁰ Regulation (EU) 2024/1351 of the European Parliament and of the Council

members of the National Assembly (i.e., 60 out of 577 members) is sufficient. In this form, the mechanism enables minority parliamentary actors to contest Union legal acts that, in their view, infringe the principle of subsidiarity, particularly where the yellow-card and orange-card procedures cannot be deployed due to their minority position. In order to safeguard and protect national sovereignty, it is proposed that consideration be given to establishing a similar subsidiarity review mechanism within the National Assembly of Hungary.

c) Establishment of a negative competence list

More generally, in the field of institutional procedures, it is recommended to strengthen and operationalize the powers of national parliaments relating to the protection of Member State competences. In this respect, it may be practical to draw up a negative competence list covering those legislative subject matters that clearly fall within national competence. Where a Union legislative initiative touches upon such an area, the National Assembly of Hungary would automatically initiate a yellow-card procedure.

II. Proposals requiring Treaty amendment

The second category of proposals requires Treaty amendment. Consideration should be given to the adoption of a catalogue of competences, listing those powers in respect of which Hungary's inalienable right to self-determination must prevail. The catalogue of competences would map which competences it is a national priority to retain, in which areas Union regulation can offer an advantage or added value, and in which areas a flexible, shared exercise of competences is required. In order to preserve national sovereignty and the Member State margin of discretion in the long term, it is justified to launch a sovereigntist reform process. This process may serve as a counterweight to the European Parliament's ambitions: invoking the recommendations of the Conference on the Future of Europe. The European Parliament itself has initiated the revision of the Treaties and has tabled its proposals, under the procedure laid down in Article 48 TEU, for consideration at the level of the European Council.²¹

²¹ Most of the proposals below had already been raised in the Hungarian proposals formulated in the framework of the Conference on the Future of Europe.

a) Establishment of a catalogue of competences

In order to achieve a sustained strengthening of the Member States' exercise of competences, it is justified to incorporate into the Treaties a more detailed catalogue of competences aligned with practical considerations. Although the categorization of competences already appears in the Treaties,²² the experience accumulated since 2009 shows that the current framework does not provide clear and foreseeable guidance for the actual exercise of competences, and has not proved capable of meaningfully reducing competence-related tensions. This is particularly problematic because the fundamental principles set out at the beginning of the Treaties—sincere cooperation, the equality of the Member States, subsidiarity and proportionality—are defining elements of the operating order of the shared exercise of competences and, at the same time, of the constitutional foundations of European integration. Accordingly, the purpose of the catalogue is to set out clearly and transparently (i) the areas in which Union action is capable of delivering genuine added value; (ii) the areas in which the Union exercises competences through its own institutions; (iii) the subject-matters that fall exclusively within the Member States; and (iv) the areas in which shared or flexible exercise of competences is justified. A catalogue of competences may help ensure that changes in Union competences do not occur as the result of informal, legally unfounded processes in the absence of explicit political decisions, but rather within transparent and verifiable frameworks. The catalogue may also contribute to the practical enforcement of the principle of conferral, as it can create a clearer separation between Member State areas of responsibility and those cases in which Union intervention is genuinely justifiable, thereby reducing interpretative disputes arising from blurred competence boundaries.

b) Strengthening the role of national parliaments: amendment of the Protocol on the application of the principles of subsidiarity and proportionality

It is justified to introduce red-card and green-card procedures²³ as a further development of the Early Warning System for national parliaments' subsidiarity scrutiny (the yellow-card and orange-card procedures). The current mechanism may require the Commission to review a proposal, but it does not, in itself, confer adequate powers on Member State parliaments.

Under a red-card procedure, Member States would have the possibility to reject a draft legislative proposal where at least 55% of national parliaments, in their reasoned opinions, oppose the Union

²² The division of competences is laid down in Article 2 TFEU, while Articles 3 to 6 set out the different categories of competence in greater detail.

²³ The “red card” mechanism was also raised during the United Kingdom's pre-Brexit renegotiation process, in the context of David Cameron's 2016 initiative.

proposal. Under a green-card procedure, Member States would be granted the right to initiate legislation where at least one-third of national parliaments support such an initiative.

c) Strengthening the powers of the European Council

For the European Union to function in a democratic and effective manner, strengthening the powers of the European Council is indispensable. The Member States' right to invoke the protection of their fundamental national interests and their constitutional identity must be expressly laid down. An appropriate legal procedure must be established for the enforcement of those rights. As a solution, this may be achieved through an "emergency brake clause" embedded in the legislative process: where a certain number of Member States, by way of a declaration, indicate that a given proposal endangers their strategic national interests or constitutional traditions, the procedure may continue only on the basis of a unanimous decision of the European Council. In addition, we propose that the Commission's obligation to submit legislative proposals requested by the European Council and the Council be expressly laid down.

d) The "Europe of Concentric Circles" model

In recent years, the demand for differentiated integration has re-emerged with renewed momentum even within the federalist discourse: a reform blueprint drawn up at the request of Germany and France, and, most recently, Mario Draghi has proposed moving towards a "two-speed Europe". This makes it warranted, in the debates on the future of the Union, to open a discussion also on a flexible system of cooperation reflecting a sovereigntist approach.

We propose the development and debate of an integration model that would replace the current logic with a multi-tier structure of cooperation. The starting point of the concept is that, in order to manage the internal tensions pulling the European Union apart and to avoid disintegration, integration should be reorganized around circles of cooperation. In the outermost circle would be those countries that seek cooperation in two areas: military security and energy security. The second circle would also encompass cooperation linked to the single market. In the third circle, the participating Member States would, alongside Euro area participation, also have a common budget. In the fourth, innermost circle, those Member States that are also open to a political and constitutional union would cooperate.

The model of a Europe of concentric circles could help ensure that the level of integration is determined by the conscious and sovereign decision of the Member States, and that any deepening of integration does not occur through mechanisms that undermine Member State competences or through competence creep.

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ECONOMIC POLICY

Oeconomus Economic Research Foundation

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Analysis of the European Semester Recommendations from the Perspective of Hungary's Economic Policy Sovereignty

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Executive summary

Over the past decade and a half, the European Semester has undergone a quiet but profound transformation. What was introduced in 2011 as a crisis management tool, primarily a "soft" coordination mechanism – a loose framework for fiscal and macroeconomic recommendations –, has gradually evolved into an economic policy governance platform that links Member States' policies to financial conditionality and medium-term commitments. As a result, the European Commission – the real driving force behind the Council – is increasingly becoming a de facto economic policy decision-maker: it not only assesses and "recommends," but also sets the direction for member state reforms through access to EU funds.

The main argument of this summary is that

- the European Semester's originally soft, recommendation-based rules have hardened in recent years;
- the RRF (Recovery and Resilience Facility) has been a "testing ground" for how country-specific recommendations can be translated into direct financial conditions;
- the next step is cohesion policy: under current plans, the disbursement of cohesion funds in the 2028-2034 budget cycle will be much more closely linked to the fulfillment of reforms and targets set in the European Semester;
- as a result, what is still a "recommendation" today will in practice become quasi-obligatory, and even a condition for receiving funds.

The scope for economic policy in Member States – including Hungary – will thus be narrowed, not formally but in practice: more and more policy decisions will have to fit in with a development path set at EU level and determined by the Commission.

1. The European Semester: from crisis coordination to control panel

The European Semester was established in 2010 as a lesson learned from the 2008 financial crisis and the subsequent European debt crisis. Its original objectives were to enable the early identification of fiscal and macroeconomic risks, to coordinate fiscal policies within the framework of the Stability and Growth Pact (SGP), and to provide basic guidance on structural reforms.

In the initial phase of the semester, the main features of the toolkit were soft law instruments, country-specific recommendations (CSRs), reports, scoreboards, peer pressure, and political shaming, but formal sanctions were rare. The focus also remained narrow: concentrating primarily fiscal balance, debt trajectories, and macroeconomic imbalances (MIP). Implementation levels were limited: according to the European Court of Auditors' 2020 report, only about a quarter of the CSRs were substantially implemented, with “partial progress” in other areas and little to no change in about 30% of the cases.

In other words: the Semester was initially a recommendation factory – producing important, technocratic documents, but with limited enforcement capacity. The Commission's diagnosis was present in national debates, but the political preferences and sovereignty of Member States remained visibly stronger.

From the second half of the 2010s, however, two interrelated processes began. On one hand, the focus broadened: the European Pillar of Social Rights was incorporated, education policy, healthcare, the pension system, social aid, housing policy, R&D, and the green and digital transition appeared, meaning that the semester now assesses not only the budgetary but almost the entire spectrum of public policy. On the other hand, conditionality mechanisms started to be reinforced. Country-specific recommendations were gradually linked to the use of funds, initially in a rather soft way (ex-ante conditions, "thematic concentration" in cohesion policy), and then, after the COVID-19 crisis, they became hard financial conditions through the RRF. The Semester is thus no longer a simple monitoring mechanism, but a complex economic policy package in which the Commission: formulates a common narrative on "what is good policy" in the EU; prepares detailed country diagnoses; makes recommendations; and then – increasingly – links resources to the degree of compliance with this scenario.

2. The logic behind the hardening of "soft" coordination

Formally, the country-specific recommendations within the semester still do not constitute binding EU law: they are not directives or regulations, but Council recommendations, which are not

automatically transposed into national law. However, their content is gradually becoming "harder" through three channels.

The recommendations are legally soft but practically hard signals, providing a basis for procedures under the Stability and Growth Pact (e.g., excessive deficit procedure), serve as a reference point in the context of the Macroeconomic Imbalance Procedure (MIP), and have been included in the preamble and conditions of numerous other EU legal acts (e.g., the Pillar of Social Rights, various directives, regulations).

Thus, although the recommendations themselves are not binding, their content is "filtered" into binding rules and procedures.

The real turning point however, is that the semester is becoming increasingly linked to the disbursement of EU funds: the so-called ex ante conditions already appeared during the 2014-2020 cohesion period, then in the 2021-2027 cycle, the logic that the country recommendations must be reflected in the Member States' partnership agreements and programs has been reinforced in cohesion policy and agricultural funding; and in the period following 2020, the RRF (Recovery and Resilience Facility) made the expectations of the semester an explicit, accountable condition.

This is where the "quality leap" comes in, elevating the previously softly coordinated recommendations to de facto binding criteria: if a Member State fails to deliver on the reforms and investment targets identified in the country report, it will not have access to the funds. This goes far beyond "getting a bad mark from Brussels."

3. New economic governance framework: net expenditure paths

The reform of EU economic governance adopted in 2024 (net expenditure paths, medium-term fiscal-structural plans) further reinforces this trend: (i) each Member State must submit a multi-annual expenditure path, which is assessed by the Commission and approved by the Council; (ii) these plans include major reforms and investments, largely in response to the challenges identified in the European Semester; (iii) Member States must report annually in "progress reports."

The legal form remains one of coordination, but the logic increasingly resembles joint budgetary "trajectory regulation," where the national government's room for manoeuvre is narrowing down through consultation with the Commission.

4. The RRF as a "testing ground": the semester crosses the red line

The EU's response to the COVID crisis, NextGenerationEU, in particular the RRF, has created a qualitatively new situation: it marked the first large-scale joint borrowing operation by the EU on

financial markets; it was the first time that the disbursement of funds has been so closely linked to predefined reform and investment milestones; and it was the first time that the European Semester has become the main gateway for disbursements, rather than just a background analysis system.

In the case of the RRF, each Member State had to submit a Recovery and Resilience Plan (RRP); these had to respond directly to the main challenges identified in the country-specific recommendations of the European Semester (e.g., pension systems, utility cost reductions, windfall taxes, independence of the judiciary, corruption, education reform, etc.). The Commission assesses the plans item by item, and the Council can only give its political approval based on a positive opinion from the Commission; payments are linked to the achievement of milestones and targets – if these are not met, there is no money.

This has turned the European Semester into a tool for retaliation and allows the Commission to link EU funds to the reforms it expects. It translates previously soft country-specific recommendations into hard financial conditions, and institutional conditions related to the rule of law and the rule of law (judicial independence, anti-corruption measures, etc.) are also incorporated into the same mechanism.

The examples of Hungary and Poland clearly show that this is no longer just a theoretical possibility: in the case of both countries, significant funds were frozen due to criticism of the rule of law and semester issues, and only a partial, phased release took place following political deals.

5. Competence creep through the RRF

The semester, originally intended for economic policy coordination, is gradually taking on constitutional significance. The Commission's executive power is increasing: it evaluates, it proposes, it decides on the authorization of payments, the role of the Council and, in particular, the European Parliament is being pushed into the background, raising questions of democratic accountability. The literature refers to this as competence creep: the EU Treaties are not formally changed, but through the Semester, the Commission is exerting substantial influence over areas (e.g., retirement age, welfare, housing policy, details of the tax system) traditionally within Member States competence.

6. The next step: the "semestralization" of cohesion policy

Current indications suggest that the conditionality logic tested in the RRF is not a one-off exception, but a precursor to future cohesion policy. In the debates surrounding the 2028-2034 multiannual financial framework (MFF), the idea is increasingly becoming stronger that

- cohesion funds (regional development, social inclusion, infrastructure investments)
- and agricultural aids (especially rural development funds)
- should be more closely linked to the Member States' medium- and long-term partnership plans, the content of which is largely determined by the recommendations of the European Semester.

The logic is as follows:

1. Member States prepare their national and regional partnership plans;
2. In these plans, they must demonstrate how they will address the main challenges identified in the Semester (e.g., energy market, housing, pension system, poverty, tax system distortions);
3. The Commission evaluates these plans;
4. The disbursement of funds is conditional on the Member State making substantial progress in implementing the committed reforms.

This means that cohesion policy could increasingly become (i) a means of exerting pressure on Member States' policies, (ii) the silent price of convergence support will be that the country essentially implements most of the reforms prescribed in the semester; if a government refuses to do so, it may face the loss of part of its EU funding.

Such instruments already exist (e.g. macroeconomic conditionality, rule of law mechanism), but future plans envisage a significantly closer, more automated linkage between the Semester and the use of cohesion funds.

7. What does all this mean for the economic policy sovereignty of Member States?

A dual accountability may arise between the voters and the Commission. Until now, Member State governments have been primarily accountable to their own electorate: if a given economic policy mix (e.g. utility cost reduction, interest rate caps, windfall taxes, family support, and their own pension policy) was popular with the majority, the government could obtain political authorization for it, even if Brussels criticized it from an "orthodox" point of view. However, as the semester becomes more stringent, a second, very real financial accountability relationship is created:

- the government must satisfy both the voters and the Commission;
- if there is a conflict between the will of the electorate and the expectations of the Commission, the government will have to navigate between the risk of losing funds and its domestic political legitimacy;

- ignoring the recommendations is no longer a risk-free political dissenting opinion, but a matter of billions of euros.

This duality is not unlawful, but it reinforces the impression that the EU – primarily the Commission – is slowly moving towards becoming an independent economic policy decision-maker with the power to sanction Member States with divergent models.

8. Thematic examples: energy market, tax system, pension

The country-specific recommendations of the semester now set out detailed expectations in areas such as:

- energy price regulation, utility cost reduction, phasing out fossil aids;
- reduction of sectoral special taxes (windfall taxes, retail tax, bank tax), creation of a simpler and more horizontal tax system;
- pension system: age limit policy, indexation rules, minimum pension, addressing income inequalities;
- housing policy: focus of support schemes, development of the social housing sector;
- poverty and aid policy, duration, amount and focus of unemployment benefits.

These are all areas that are traditionally classified as national policy decisions in the constitutions of the Member States. However, the semester and the associated conditionality mean that, on these issues:

- the Commission's preferred model becomes the EU norm (e.g. market energy prices, targeted aids, horizontal taxation, mixed indexation and higher minimum pensions, broader social transfers);
- Member States' "unorthodox" solutions (e.g., utility cost reduction, broad sectoral taxes, inflation-linked indexation and low minimum pensions, very short unemployment benefits) are subject to constant criticism and financial pressure.

9. Competitiveness versus pluralism

According to the EU's argument, stronger coordination and conditionality (i) improve the EU's competitiveness, (ii) reduce the risks of contagion caused by "bad" economic policies, (iii) and promotes convergence among Member States in terms of the welfare state and the green-digital transition. From the perspective of Member State sovereignty, however, the question is (i) how much pluralism the EU can tolerate: can multiple economic policy models coexist, or does the

Semester push the system towards a "one-way reform doctrine"; (ii) what democratic control will be exercised over the Commission's recommendations if they have such strong financial implications; (iii) how to ensure that Member States are not merely "executors" of the EU's central economic policy agenda, but also active shapers of it.

10. Key messages for decision-makers

1. The Semester is no longer just about monitoring, but is now the center of common economic policy: it covers the fundamental parameters of Member States' economic, fiscal, social, employment, tax, and pension policies, and the country report-recommendation pairing determines what the EU considers "right."
2. The RRF experience has shown that the Commission is capable of turning funds into disciplinary tools: in the recovery facility, the expectations of the Semester have been translated into concrete milestones; payments are linked to the fulfillment of reforms and institutional conditions. This logic is also expected to appear in cohesion policy.
3. The likely "semestralisation" of cohesion and agricultural funds is the next big step: according to the plans for the period after 2028, Member States will only have full access to funds if they substantially follow the recommendations of the European Semester in their partnership plans and their implementation. Soft coordination will thus become a fund-based, quasi-mandatory system of rules.
4. Member States' economic policy sovereignty will formally remain intact, but their actual room for manoeuvre will be reduced: governments cannot be prohibited from pursuing certain policies, but if they persistently deviate from the directions preferred by the semester, they will have to reckon with the risk of losing funds, facing sanctions, or increased political pressure.
5. It is the task of the political and professional community to strengthen the democratic control of the process: without the involvement of national parliaments, social partners, and the scientific and analytical community, there is a risk that the semester will function as a "black box": decisions are made in Brussels, which the Member States simply implement and then bear the consequences at the internal political level.

The rules of the European Semester were previously soft, and Member States' economic policies were ultimately decided at the national level. However, with the introduction of the RRF and the planned conditionality linked to cohesion funds, these rules are gradually becoming stricter and will become quasi-binding in the future through financial channels. In this new situation, the

European Union – and above all the Commission – will not only coordinate but also substantially shape the economic policies of the Member States, thereby raising issues that simultaneously affect the EU's competitiveness and the political and constitutional framework of national sovereignty.

1. A brief overview of the European Semester

The European Semester is the European Union's annual economic and social policy coordination framework, which aims to align Member States' budgetary, economic and social policy measures with EU objectives and rules. The Semester takes place in a recurring cycle each year, where EU Member States discuss their economic and budgetary plans together, and the European Commission prepares analyses, country reports and country-specific recommendations based on them. The European Commission sends the two main Member State-specific documents, namely the country report on the state of the national economy and the country-specific reports on the prevention of structural risk factors affecting the entire economy, to the members of the European Council, the Council of the European Union and the European Parliament. Focusing on its mission of cooperation, it promotes economic growth, job creation, macroeconomic stability, and responsible fiscal policy.

The main steps in the cyclical European Semester are as follows:

- November: the European Commission presents its Annual Sustainable Growth Survey and the Autumn Package, which sets out the economic, employment and social priorities for the coming period.
- Winter-Spring: the Commission prepares analyses and country reports, and evaluates the national reform programmes and budget plans submitted by the Member States.
- Spring: each Member State submits its own National Reform Programme.
- May-June: the Commission issues country-specific recommendations with tailored economic and fiscal policy guidance for each country.
- Summer-Autumn: Member States incorporate these recommendations into their budget plans and policies for the following year.

1.1 The circumstances and rationale behind the creation of the European Semester

The European Semester was established in 2010, with its first full cycle starting in January 2011. The main reason was the global financial and economic crisis of 2008, which highlighted the fact that EU Member States are highly interdependent economically and made it clear that the level of coordination of economic, fiscal and social policies was not sufficient to prevent or mitigate the negative effects of the crisis.

Date of creation:

- 2010: official introduction of the European Semester.
- 2011: launch of the first cycle with analyses and coordination of Member States.

Reasons for its creation:

- The 2008 financial crisis made it necessary to strengthen economic policy governance.
- Its aim: to ensure better coordination of Member States' policies, sustainable growth, macroeconomic stability, responsible fiscal policy and a faster response to crises.
- The new framework allows for greater transparency, more systematic monitoring, and a more coordinated response to the EU's economic challenges.

The European Semester is therefore a structural response to the lessons learned from the crises, with more support from the Member States' policies to the economic stability and development of the EU as a whole, while it also means for the continuous monitoring of various policies.

1.2 Brief history of the European Semester (2011-2025)

The global financial crisis of 2008-2009 highlighted the need for greater coordination among EU countries in addressing socio-economic problems. In 2010, the EU established the European Semester to highlight country-specific risk factors through regular Member State analyses before they spread and develop into a structural crisis affecting the entire integration organization. The European sovereign debt crisis, which began in 2009 and peaked in 2012, highlighted the need for the European Semester. However, over the past decade and a half, the initiative has shown that it is not the most appropriate and effective tool for addressing country-specific crisis symptoms. The consultation system, initially created to eliminate crisis-triggering risks, has become a tool for the European Commission to gradually assume more and more competences. The phenomenon, known as competence creep, was disguised as a more effective response to structural risks.

When the European Semester was created, EU policies underwent extensive reform. At the same time, new instruments were created to manage emerging crises and assist Member States with financial/liquidity problems, such as the European Stability Mechanism.

The European Semester is about coordinating and repeating the procedures of these instruments on a cyclical basis. The criteria for the European Semester recommendations include the Maastricht criteria, i.e. the convergence criteria relating to price levels and indebtedness. One of the main functions of the Semester was to assess the budgetary positions of Member States. The Macroeconomic Imbalance Procedure (MIP) was introduced after 2011 and has since been part of the European Semester as a monitoring/correction framework. Its aim was (and essentially still is) to enable the EU to identify, prevent and address potentially harmful macroeconomic imbalances that could jeopardize the economic stability of a Member State, the euro area or the EU as a whole.

The next significant milestone in the development of the European Semester was the incorporation of the European Pillar of Social Rights into the monitoring system in 2017. This meant that the monitoring tool, which had previously focused solely on economic issues, was supplemented by the social dimension of the EU. This process is also an integral part of the European integration process. The EU leadership has moved from initially only coordinating common economic affairs to a broader role. Thus, as the integration process progresses, the areas of supervision at EU level leadership are expanding. The pillar of EU social rights contains 20 principles. These can be divided into three categories: equal opportunities and access to the labour market, fair working conditions, and social protection and social inclusion. As part of the European Semester, the Social Scoreboard is compiled annually. Member States' reform programmes and EU recommendations now directly assess and promote the goals of social welfare, poverty reduction, job creation, and improving quality of life. The practical consequence of this is that Member States must pay greater attention to the minimum wage, work-life balance, a healthy working environment for employees and the environment, childcare, and social services. Due to the multifaceted nature of the areas involved, the authors of the European Semester have now begun to comment on areas that fall strictly within the competence of the Member States, such as education and health, pension systems, welfare systems, employment policy, and cohesion measures to combat poverty.

Subsequently, the EU-level response to the economic crisis caused by the coronavirus pandemic opened the next chapter of the European Semester. The joint EU borrowing under the Recovery and Resilience Facility (RRF) has in itself raised the EU to a higher level of integration. The European Semester became the main implementation framework for the programme. Parallel to the economic crisis caused by the pandemic, signs of Europe's competitiveness lag from its

competitors began to multiply. To address this competitiveness lag, country-specific recommendations since 2020 include advice on innovation, digital transformation, and sustainability. In 2022, these were further expanded to include green and digital priorities.

The effectiveness of the country-specific recommendations is mixed: Member States' willingness to implement them (in a system without sanctions) has declined over time, and to remedy this, the Commission has applied stronger conditionality since 2019 and greater financial incentives since 2020.

1.3 Overview of Hungarian-language literature on the European Semester

In their study *Recommendations and their Fulfilment in the European Semester*, Bíró-Nagy and Laki (2021) examine the implementation of the European Semester's Country Specific Recommendations (CSRs) using the example of the Visegrad countries (the Czech Republic, Poland, Hungary, and Slovakia) in a European comparison. The main findings and content of the study are as follows:

- The European Union introduced the mechanism for coordinating economic policies in 2010 with the aim of addressing the consequences of the financial crisis and promoting sustainable growth and macroeconomic stability. The Commission makes recommendations to Member States, but their implementation depends on the active participation of national governments. The semester is an annual cycle based on economic analysis and country reports.
- On average, the Visegrad countries show moderate performance in implementing EU recommendations, ranking in the second half of the EU member states. In the longer term, however, EU recommendations have a significant impact on Member States' public policy decisions, so compliance is beneficial for all EU member states.
- Policy differences: the implementation rate of the recommendations varies by policy area, with financial, fiscal, and employment recommendations being more likely to be implemented than those related to taxation, for instance.
- Effectiveness, problems: compliance with the recommendations has been declining over the years, which is related to the protection of Member State sovereignty and the fact that national governments are not always willing to accept the solutions proposed by the Commission. According to annual monitoring, compliance was around 40% between 2011 and 2014, and even lower thereafter.

- Nature of the Semester: a hybrid mechanism combining hard rules and softer coordination elements. The role of parliaments and democratic control is controversial, with technocratic instruments dominating.
- Recommendations for improving effectiveness: the study suggests that the European Semester should focus on truly relevant issues, reducing the administrative burden and communicating better on the points raised in Member State debates.

Another study examines the European Semester and the role of trade unions. According to the authors, the European Semester is a mechanism for coordinating the economic and fiscal policies of EU Member States, linked to the EU 2020 strategy and the Stability and Growth Pact. The process takes place in two six-month cycles, repeated annually, and aims to ensure that the economic and reform plans of each Member State are in line with EU priorities, reducing the risks arising from overly divergent national economic policies.

In this system, the role of trade unions is to cooperate with the European Commission throughout the preparation of the reports. In addition, they have a key role in the cycles starting at the end of February, when the country reports are reviewed:

- They familiarize themselves with and process the content of the country reports, with particular regard to economic, social, and budgetary issues affecting employees.
- They develop their position on reform policies and other measures by involving experts.
- They call governments to discuss the priorities of the national reform programme with trade unions and employers in the framework of tripartite social dialogue, thereby asserting the interests of employees.
- Their aim is to ensure that trade union views are reflected in the country-specific recommendations prepared by the European Commission.

In 2016, the European Trade Union Confederation (ETUC) published guidelines and a toolkit to support trade unions in this process and recommended that tripartite liaison offices be set up in each Member State to facilitate regular consultation between the government and the social partners.

A third study and report analyzes the significance of the European Semester country reports and their role in social, academic, and decision-making dialogue, with a particular focus on Hungary.

- The role of the European Semester country reports: the country reports are key elements of the European Semester, that has been in place since 2010 to coordinate EU economic

policies at EU level. The reports analyze the economic and social situation of each Member State and make recommendations for a 12-18 month period to promote sound public finances, macroeconomic balance, employment, growth, and structural reforms and investments.

- Scientific and decision-making dialogue: At a public presentation held at the headquarters of the Hungarian Academy of Sciences, it was emphasized that public and wide-ranging discussion of the reports — involving government officials, researchers, diplomats, analysts, and business leaders — is essential for professional consensus and further progress. Academy President László Lovász pointed out that, in addition to supporting policy decisions, the scientific community also has a responsibility and role to provide forward-looking, rational, and effective responses to global challenges.
- Common goals and strategic recommendations: the country report is not only a situation analysis, but can also provide a basis for developing medium- and long-term strategic recommendations, especially on socially sensitive and forward-looking issues. The scientific support provided by the Hungarian Academy of Sciences helps decision-makers to develop well-founded policies, based on scientific facts.
- Outstanding achievements and challenges: Researchers in Hungary and at the MTA have achieved outstanding results in EU research tenders, although there is still a lag compared to the "old" EU Member States. The academy supports cooperation between the V4 countries to address common problems and improve EU tender systems.
- The role of debate and consultation: László Lovász emphasized that honest, constructive debate and professional consultation are essential for development and effective problem solving. The country report provides an opportunity for this broader public discourse, which can help to set strategic directions.

The European Court of Auditors' 2020 report analyzes the implementation of the European Semester country-specific recommendations (CSRs) and the difficulties associated with them, and its main findings are as follows:

- Low implementation rate: between 2011 and 2018, around 26% of CSRs were implemented significantly or in full, a further 44% showed some progress, but 30% showed limited or no progress.

- Inadequate justification and feedback: recommendations often fail to explain why a particular reform is important, and the Commission does not always provide written feedback on the shortcomings of national reform programs.
- Slow progress on poverty and research: although the Europe 2020 strategy has achieved six important goals, little progress has been made in reducing poverty and increasing research and development spending. Several Member States lacked recommendations on tackling poverty, while the number of people living in poverty increased.
- Weak social dimension: the report calls for greater emphasis on social considerations and sustainable development goals in the Semester process.
- Strengthening the link between EU funds and recommendations: closer alignment between EU funding and country-specific recommendations is needed to improve the effectiveness of implementation.
- Emergence of rule of law issues: some country reports addressed rule of law issues, such as judicial independence and corruption, indicating an expansion of the scope of the European Semester.

The European Court of Auditors' 2020 report makes the following recommendations:

- More attention should be paid to social and research areas.
- Stricter monitoring and more transparent evaluation are needed.
- Written feedback should be provided on national reform programs.
- Country-specific recommendations should be clearer and more justified.

According to data from the European Court of Auditors, around a quarter of country-specific recommendations have been implemented substantially or fully, and a further 44% have seen at least "some progress". However, in 30% of cases, little or no progress has been made. This also indicates that compliance with the recommendations is not mandatory and that the degree of implementation varies. The analysis points out that the Commission does not always accurately assess the situation in Member States, which can lead to inaccurate economic forecasts. One example is the case of Hungary in 2013, where the Commission forecast a more conservative deficit and GDP growth figures than the actual reality later. Similarly, in the case of Austria, certain fiscal risk forecasts proved to be inaccurate, which was also influenced by the experience of the COVID-19 pandemic.

The European Semester has undergone several changes since its inception, and today it places increasing emphasis on employment and social policy recommendations, for example in relation to retirement age. While fiscal, microeconomic, and macroeconomic issues are on one side, structural reforms in line with the Europe 2020 Strategy play a significant role on the other. This expanding focus indicates that the European Semester is no longer just about economic policy coordination, but about a more complex policy management.

Several studies in the Economic Review (Közgazdasági Szemle) have addressed the issue of integration and the European Semester in relation to Hungary's 20 years of EU membership. One of the studies in the journal provides an overview of European Union and Hungarian research and development (R&D) strategies, as well as the impact of the 2019 European Semester country report on R&D. The main findings are as follows.

European Union research and development strategies: Under the Lisbon Treaty, the EU has limited competence in the field of R&D, but in line with the Europe 2020 strategy's "Innovation Union" initiative, it seeks to promote innovation, with particular focus on climate change, energy efficiency, health, and demographic challenges. The Horizon 2020 program supports R&D activities with a budget of €79 billion between 2014 and 2020, followed by a 25% increase (€100 billion) in the 2021-2027 period, with the aim of facilitate market access to innovative ideas and creating jobs. The Horizon Europe programme aims to maintain the EU's global leadership in R&D.

According to the study entitled "Coordination of EU employment policies in the European Semester," the central tool for coordinating EU employment policies is the European Semester, which serves to harmonize the economic and social policies of the European Union's Member States. The study finds that mechanism enables the EU to address employment challenges in a unified manner, promoting the modernization of labour market structures and sustainable, inclusive growth. The findings of the present review indicate that, in practice, the European Semester serves less as a coordination framework genuinely designed to promote economic growth and more as an instrument for exerting pressure on the Member States.

The European Semester analyzes the macroeconomic situation and employment policies of member states on an annual basis and then formulates country-specific recommendations. The focus is on structural reforms, increasing labour market participation, developing skills, and strengthening social inclusion. The recommendations cover improving employment opportunities for young people, women, and disadvantaged groups, as well as adapting to the changing needs of the world of work.

Coordination places great emphasis on harmonizing national reform programs and common EU goals. The coordination of employment policies promotes the resilience and adaptability of labour markets, which are also challenged by the digital and green transitions. In addition, the Semester supports the integration of skills development strategies aimed at meeting labour market needs and increasing competitiveness.

Through the coordination of European employment policy, Member States work together to create jobs and ensure fair working conditions, while adapting to global economic changes and demographic challenges. The Semester is thus not only an economic tool, but also a tool for social integration in the EU.

The study entitled *The Impact of the European Semester on Hungary's Economic Policy* reviews the country-specific reports and recommendations for Hungary prepared annually by the European Commission between 2011 and 2020, which focused on economic challenges, fiscal planning, and structural reforms.

Based on the analyses, the European Semester had a moderate impact on Hungary's economic policy. The content of the country-specific recommendations partly diverges from Hungary's national reform programmes, and their implementation is in principle voluntary and not mandatory.

Another important finding is that the Commission often underestimated Hungary's economic performance in its forecasts, for example in 2013, when the proposed budgetary austerity measures proved to be counter resistant, as the actual data showed better economic performance.

The low rate of implementation of recommendations is not unique to the EU and is mainly due to the fact that in many cases the proposals concern sensitive policy areas that fall within the competence of Member States and are politically difficult to reform. The effectiveness of the Semester is therefore limited, and it functions more as a political tool than as an actual economic policy coordination mechanism.

Overall, the European Semester has contributed to Hungary's European economic policy directions more as a factor exerting political pressure, while Hungary would have achieved a significant part of the strategic objectives on its own. The functioning of the system clearly shows that economic integration can only strengthen its recommendations and coordination capacity in the Member States with the help of political instruments.

Other authors have researched the effects of the European Semester on Hungary's macroeconomic policy. It is well known that during the Semester, the Commission prepares annual analyses of the

macroeconomic situation in the Member States and then formulates country-specific recommendations, which are approved by the Council of the EU. Member States take these recommendations into account when presenting their national reform programs, but the recommendations are not legally binding, so their implementation is voluntary.

In the case of Hungary, the analysis shows that the European Semester had a moderate impact on economic policy during the period in question. Although the Commission's recommendations provide policy guidance, implementation is moderate and the differences in content compared to the national reform programs are not significant. The country-specific recommendations did not represent a notable change in Hungary's economic policy, partly due to the political interests of Member States in the coordination process.

Furthermore, in several cases, the Commission's forecasts underestimated Hungary's economic performance, as illustrated by the 2013 recommendations, in which the Commission proposed more conservative macroeconomic parameters than those that actually materialized. This contributed to the fact that following the recommendations was not always appropriate or reasonable in the domestic context.

In addition, the European Commission has proposed structural reforms in a number of countries that fall partly within the competence of the Member States, making them politically sensitive and difficult to implement in a uniform manner. As a result, the implementation rate of the recommendations is generally low, and Hungary is no exception in this regard.

As part of the 2024 European Semester, the Council of the EU approved country-specific recommendations for the economic, social, employment, structural, and fiscal policies of each Member State. This process serves to coordinate the economic and fiscal policies of the Member States, contributing to sustainable growth and improved employment in the EU economy.

- This year, the European Semester cycle is aligned with the newly introduced EU economic governance framework. Accordingly, Member States will prepare their national medium-term fiscal-structural plans in Autumn, setting out their expenditure trajectories and key reforms and investments. The country-specific recommendations focus on which reforms and investments should be included in these plans, particularly in countries where the fiscal adjustment period is extended from four to seven years, thereby reducing the annual adjustment burden.
- Introduced in 2011, the European Semester serves as a tool for coordinating Member States' economic, fiscal, and employment policies and addressing emerging economic challenges. The European Commission prepares country-specific recommendations on an

annual basis, providing policy guidance for maintaining sound public finances, increasing employment and promoting economic growth. If a Member State does not follow these recommendations, it is required to provide an explanation to the Council.

- The newly approved recommendations concern the country-specific policies of individual Member States, including Hungary, and detailed documents on these are available on the official websites of the European Union.

The European Semester has a significant impact on the European Union's research, development and innovation strategy, which is why the link between the two areas is also becoming increasingly important in Hungarian literature. The European Union's research, development, and innovation (R&D&I) strategy plays a fundamental role in the growth and competitiveness of the EU economy, with a particular focus on the construction and completion of the European Research Area (ERA). The aim of the ERA is to create a unified research area open to the world, where scientific labour, knowledge, and technology can flow freely, facilitating the management of common social and economic challenges.

- Between 2015 and 2020, the EU developed its R&D&I system in line with the priorities set out in the ERA agenda, enhancing the efficiency of national research systems, supporting cross-border cooperation, promoting researcher mobility, and encouraging gender equality and open access to scientific results. The Europe 2020 strategy sets out three main pillars of growth: smart, sustainable and inclusive growth, with research and innovation playing a key role in serving the knowledge-based economy and social inclusion. One of the key targets of the strategy is to increase R&D spending to 3% of GDP by 2020.
- As part of the Innovation Union initiative, the EU is stepping up its funding for research and innovation, particularly to address socio-economic challenges (e.g. climate change, health, energy efficiency). EU research programs such as Horizon 2020 support scientific excellence, industrial competitiveness, and the resolution of societal problems, particularly by developing the innovation capabilities of small and medium-sized enterprises.
- As part of the European Semester, the EU continuously evaluates Member States' R&D&I policies and strategies and makes country-specific recommendations to ensure more effective innovation systems, modernize education systems, and secure the next generation of researchers. According to the European Commission, this monitoring contributes to the alignment of national strategies with EU objectives and promotes the exploitation of synergies between the Structural Funds and EU research programs.

The European Commission's 2024 Autumn Semester Package is the first major set of documents under the new EU economic governance framework, which aims to ensure macroeconomic stability and sustainable and inclusive growth in the Member States. The framework introduces simpler, more transparent rules that assess Member States' fiscal discipline based on a single key operational indicator, the multiannual net expenditure path. The aim is to allow fiscal adjustments to be made on a risk-based basis, taking into account specific reforms and investments.

- The 2024 Autumn Package coincides with the slow recovery of the EU economy, which will be reinforced in the future by investments from the NextGenerationEU Recovery and Resilience Facility and other EU funds. Member States' medium-term plans are considered credible roadmaps based on the triple pillar of fiscal sustainability, growth-enhancing reforms and priority public investments.
- In the European Commission's view, the Semester supports the strengthening of the resilience, competitiveness, and security of the European economy, particularly in addressing global geopolitical challenges. It also promotes the green and digital transitions and the strengthening of the EU's security capabilities.
- The Council and the Eurogroup, in approving the elements of the package, will oversee the medium-term plans, which Member States will implement, supported by annual progress reports, promoting continuous implementation and maintaining economic stability.
- The European Commission considers that this reform package is a significant step forward in the development of EU economic governance, which promises a more sustainable, inclusive, and competitive economic future for the European Union.

2. The relationship between the European Semester and Member States' economic policies

2.1 The European Semester as an economic policy package

The 2008 financial crisis brought to light the weaknesses in economic policy coordination within the European Union. There was no effective mechanism for coordinating fiscal, macroeconomic, and structural policies among Member States, which contributed to the deepening of the crisis. The European Semester was originally established to address this shortcoming, but it has since been used as an instrument for strengthening compliance pressure on the Member States and has become one of the central pillars of the EU's economic governance.

The European Semester is a regular, annual cycle in which the European Commission analyzes the budget plans, economic trajectories, and reform programs of the Member States. In this multi-stage coordination process, EU-level objectives and policy strategies are directly linked to Member State policies. The European Semester's practice of country-specific recommendations, supported by implementation monitoring, represents a shift towards the creation of a common economic policy governance platform compared to the previous fragmented EU governance structures.

The European Semester functions as a complex policy package covering several dimensions of economic policy. The annual recommendations were limited to ensuring fiscal discipline and macroeconomic balance at the beginning of the coordination mechanism, but were gradually extended to employment policy, social and education policy, health, innovation, and the green and digital transition. According to the Brussels position and the assessment of the EU institutions, especially the Commission, the multidimensional approach makes economic policy coordination more comprehensive and steers Member States towards structural reforms that serve the competitiveness of the EU as a whole.

The European Semester is institutionalized by an EU regulation, but the documents created within its framework are not legally binding. Thus, the contents of Commission communications and Council recommendations based on Commission proposals are not binding on Member States.²⁴ At the same time, the recommendations of the European Semester can be linked to the guidelines of binding EU frameworks (such as the Stability and Growth Pact (SGP) and the Macroeconomic Imbalance Procedure (MIP)). Through these, and through the allocation or withholding of EU funds, the EU may even impose sanctions on Member States that deviate significantly and persistently from the recommendations.

The political function of the Semester is to ensure regular, structured economic policy communication between the Commission, the Council, and the Member States. This joint standard-setting also influences the government decisions of individual countries – albeit to varying degrees – and increases the convergence of national policies. The European Commission's recommendations are often incorporated into Member States' reform programs, especially in countries that receive significant financial support from the EU (e.g., through the Recovery and Resilience Facility).

²⁴ Zeitlin – Vanhercke, 2014

2.2 The legitimacy of sovereign Member State economic policy

Within the framework of the European Semester the EU institutions seek to influence the economic policy decisions of the Member States so that they are more closely aligned with the Union's policy priorities, while presenting this as a means of promoting economic stability and development objectives. However, the legitimacy of sovereign Member State economic policies cannot be questioned, either in terms of legitimacy or effectiveness.

Legitimacy

Economic policies developed at national level are directly linked to citizens through parliamentary elections and democratic accountability. Their legitimacy is based on democratic decision-making and procedures laid down in constitutions. If Member States are able to shape their policies through their own decisions, citizens can identify more closely with the decision-makers, thereby strengthening their legitimacy. National parliaments therefore play a central role in establishing the legitimacy of the EU's common monetary and fiscal policies.²⁵

Since decision-making at the national level is more visible, direct, and easier to communicate, it is more likely to build trust among citizens, provided that the quality of governance otherwise meets political expectations. The lasting existence of political trust can contribute significantly to economic development at the regional level in the EU.²⁶ However, decisions made at the EU level are less closely linked to citizens' choices, and centralized mechanisms are overshadowed by a democratic deficit. Thus, Member States' economic policies have a legitimacy advantage over efforts to develop a common, unified economic policy.

Effectiveness, efficiency

Political decision-makers in each Member State are more familiar with the specific characteristics of their own countries, their economic structure, cultural factors, political realities, and institutional capacities. This enables them to develop economic policy interventions that are better suited to the environmental conditions of their country. In contrast, centralized EU governance frameworks can formulate more universal recommendations that may not necessarily take all relevant country-specific circumstances into account to an adequate extent.²⁷ Member State policies are more adaptable and respond more flexibly to local challenges, which can be an advantage in terms of efficiency in Member State economic policy.

²⁵ Neyer, 2015

²⁶ Muringani et al., 2024, pp. 2059-2089

²⁷ Marzinotto et al., 2012

The success or failure of their policies in parliamentary elections has much more immediate political consequences for Member State governments, so they are more motivated to implement the reforms they have set out to achieve. If the government is accountable to its voters, the political will to deliver on election promises may be stronger. In contrast, EU coordination frameworks, including the European Semester, offer more indirect incentives (assessments, recommendations), which are less likely to ensure the intensity of implementation.

The effectiveness of implementation is also influenced by the availability of the necessary institutional capacity. The institutional channels that deal with the formulation and implementation of economic policy decisions, such as ministries, parliamentary committees, and professional organizations, are typically available at the Member State level. This institutional proximity can improve coordination, feedback, and the speed and compliance of corrections. In contrast, EU-level coordination systems are more complex, involve more actors, and their implementation often depends on the administrative capacity of Member States, which can vary from country to country. In addition to institutional distance, this heterogeneity can also reduce the effectiveness of the EU framework.

2.3 The impact of the European Semester on Member States' economic policies

Coordination as a crisis management tool

The lesson of the 2008 crisis is that the consequences of irresponsible fiscal or macroeconomic policies in a single Member State can quickly and effectively spread to other Member States. Cross-border economic effects are particularly intense among members of the monetary union. Coordination through the European Semester can help reduce the extent of negative effects and community risks.

The efficiency of the internal market and the stability of the euro require that Member States do not pursue competing policies that destabilize the community.²⁸ The European Semester, as a platform for coordination and consultation, has the task of translating the objectives set out in EU strategies and agreements into action at the level of each Member State. Without coordination, differences in investment and employment policies among Member States may increase, leading to political tensions and distortions in the internal market. Country-specific recommendations and the monitoring of their implementation may serve to optimise the structural reforms of the Member States at Union level.

²⁸ Vanhercke – Verdun, 2021

The European Semester could serve as the EU-level response to external shocks and crises. The Union-level review of national policy packages and the country-specific recommendations issued in that context may increase the transparency of economic policy measures, which in turn may lead to greater discipline in planning and implementation. The European Semester may therefore serve as a structural lesson drawn from the crises of the recent past and seeks, through coordination and continuous monitoring, to ensure that Member States' policies provide better support for the economic stability and development of the EU as a whole.

Limited impact

At the same time, the European Semester has no substantive, legitimate authority to override Member States' economic policy decisions and therefore cannot be treated as a genuine common economic policy framework. The basic direction and details of Member States' economic policies continue to be determined by national parliaments and governments. The country-specific recommendations of the European Semester are not binding, and the European Court of Auditors' 2020 report²⁹ notes that their implementation is selective. According to the report, between 2011 and 2018 around 26% of the recommendations were implemented to a substantial extent or in full, a further 44% recorded some progress, while 30% showed limited or no progress at all. In some cases, Member States merely adjust reforms already under way retrospectively to the recommendations formulated in the Semester.

As we have already pointed out, according to a 2020 study³⁰ analyzing the implementation of recommendations by Member States, the four Visegrad countries performed similarly on average over five years. Looking at the EU as a whole, they all belong to the second half of the field, achieving slightly below-average progress in implementing the recommendations at the national level. The rate of implementation of the recommendations varies by policy area, with fiscal and employment policy recommendations being more likely to be implemented than, for example, those related to taxation. At the same time, the implementation of the recommendations has shown a downward trend over the years. This is linked to the protection of Member State sovereignty and to the fact that national governments do not in every case defer to the solutions proposed by the Commission, since they retain their own policy discretion.

The willingness of Member States to deviate from the recommendations is reinforced by specific cases where the Commission's inaccurate assessment of the situation has led to incorrect economic

²⁹ European Court of Auditors, 2020

³⁰ Bíró-Nagy – Laki, 2020, pp. 7-34

forecasts.³¹ For example, in 2013, there was a significant discrepancy between the Commission's deficit and GDP growth forecasts for Hungary and the actual outcome. Similarly, in the case of Austria, some of the fiscal risk forecasts proved to be inaccurate, which were also modulated by the experiences of the COVID-19 pandemic.

3. The relationship between the European Semester and the RRF

The European Semester's approach has undergone a significant transformation as a result of the coronavirus pandemic. The European Semester has been expanded to cover political issues targeting Member State regulations and measures that the Commission considers problematic from a rule-of-law perspective. The Commission has linked and continues to link Member States' participation in financial support programs, in particular their access to the Recovery and Resilience Facility (RRF), to the implementation of reforms required in country-specific recommendations.³² The European Commission strictly monitors all payment requests and the achievement of milestones,³³ and only transfers EU funds once the reforms, investments and related targets have been achieved. Thus, the European Semester has become the main implementation framework for the RRF program, the two are in close symbiosis with each other. However, this turns the European Semester into a tool for retaliation. It may also come up that the European Semester is seeking to replace the economic policies of the Member States, which would risk violating the rule of law and significantly exceed the competences laid down in the EU Treaties. Moreover, not only are RRF payments to a given Member State tied to economic recommendations, but the implementation of non-economic recommendations related to the rule of law and other institutional conditions has also become a condition for RRF payments.³⁴

Linking the disbursement of RRF funds to the implementation of the Commission's recommendations set out in the European Semester is the most visible manifestation of the EU's competence creep; however, it is not the only tool the EU uses to enforce its expectations. This is supported by the fact that legally non-binding legal acts, such as country-specific recommendations or other documents, such as the content of the Declaration on the European Pillar of Social Rights, are enshrined in relevant legislation as conditions for access to certain sources of funding and for budgetary planning, thus making their implementation enforceable.

³¹ Bagi, 2023

³² Fromont – Van Waeyenberge, 2025

³³ Department of Public Expenditure, Infrastructure, Public Service Reform and Digitalisation, 2025

³⁴ Bokhorst, 2021

As already mentioned, under the RRF, in order to receive funds, Member States' recovery plans must be adapted to address the challenges set out in the country-specific recommendations. In addition, as part of the economic governance framework, Member States must show in their medium-term fiscal and structural plans (MTFSPs) how they will implement the key reforms and investments identified in the European Semester. Furthermore, these country-specific recommendations are also taken into account in access to the Structural Funds, for example by setting appropriate ex ante conditions, although according to a 2019 study³⁵ commissioned by the European Commission and the European Parliament, the effectiveness of conditionality is moderate. Although the institutional possibilities for incorporating the expectations set out in the European Semester are in place, in practice this is implemented inconsistently and to a limited extent. Even if there are links, they are too general, so there is still plenty of room for strengthening conditionality.

The linking of the European Semester and the RRF has created a strong set of constraints that goes beyond the original purpose of the Semester, which is economic policy coordination. This system allows politically charged issues to strongly influence the process. If the Commission considers that a given recovery plan (RRP) or medium-term fiscal plan (MTFSP) does not meet these expectations, it will not issue a positive assessment, and in this case the Council has no possibility to act because it cannot review or override the Commission's subjective decision. Thus, the Commission's dominance prevails in decision-making, which amounts to a kind of unilateral control over the approval of financial support for Member States.

In addition, according to press reports,³⁶ in the 2028-2034 EU budget cycle³⁷, the payment of cohesion funds³⁸ (e.g., regional development, social and economic convergence support) will also be more closely linked³⁹ to the reform and performance requirements set for Member States in the European Semester: according to the plans, the current cohesion policy funds would be part of national and regional partnership plans. Compliance with the recommendations of the European Semester and the implementation of targeted reforms would play a key role in these plans. In addition to the resources earmarked for cohesion funds, agricultural subsidies⁴⁰ (in particular direct payments and rural development funds) will also be incorporated into national and regional

³⁵ Scheinert - van Lierop, 2019

³⁶ National News Agency, 2025

³⁷ European Commission, Directorate-General for Communication, 2025 (July 16th)

³⁸ Rodríguez – Pose, 2025

³⁹ Baccini, 2025

⁴⁰ Fortuna, 2025

partnership plans. These essentially mean that Member States will only be able to access the full amount of subsidies if they comply with the recommendations of the European Semester.

For the first time in the history of the European Semester, the RRF has been accompanied by stricter rules and clear expectations on the part of the EU, with less consideration given to the positions of Member States and with the Commission's ideas prevailing. The RRF was probably a testing ground for the future shape of cohesion policy, as according to current EU plans, there will be clear reductions in cohesion funding if a Member State fails to meet EU expectations. In addition to EU economic interests, political motivations have also emerged and may continue to do so in the future (an example of this is Poland, where the relationship between the current Polish government and the EU has changed significantly with the change of government, which has also affected current EU expectations).

Several international studies have examined the implementation of the European Semester's country-specific recommendations and the linking of RRF payments in recent years.

Cambridge University Press published Louise Fromont and Arnaud Van Waeyenberge's September 2025 study,⁴¹ on the relationship between RRF disbursements and the European Semester. The authors explain that the European Semester was originally designed to coordinate economic, fiscal, and social policies in the EU. However, the crisis caused by the coronavirus pandemic and the introduction of the Next Generation EU recovery package (of which the RRF is a central component) have further strengthened the role of the Semester, particularly in addressing risks to the rule of law. RRF funding is closely linked to the implementation of the country-specific recommendations set out in the European Semester, meaning that Member States must submit and implement recovery and resilience plans that address the economic and rule of law challenges identified by the Semester. The Commission will assess the plans, which will then be approved by the Council, and RRF funds will only be disbursed if the objectives set are met. This link is strong and implies conditionality that goes beyond economic policy coordination: through the European Semester, rule of law requirements, alongside fiscal and structural reforms, have concrete financial implications. The instruments of the Semester, such as the EU Justice Scoreboard, which monitors the independence of judicial systems and anti-corruption measures, are regularly used to track reforms. At the same time, the authors point to democratic and constitutional risks: the Commission has significant executive power through the European Semester, while the Council

⁴¹ Fromont – Van Waeyenberge, 2025, pp. 872-881

and, in particular, the European Parliament have a lesser role, creating an imbalance between EU institutions and raising questions about democratic accountability.

Similarly, David Bokhorst examined the link between RRF resources and Semester recommendations in his 2021 study⁴². He found that the Recovery Fund (RRF) introduces strong conditionality into the reform processes, in that the disbursement of EU funds depends on how Member States implement the country-specific recommendations and reforms set out in the Semester. This link reinforces the Commission's enforcement role, but at the same time raises questions about the legitimacy of the EU, as the pressure exerted by the Commission may pose challenges in terms of national sovereignty and democratic control, raising concerns about democratic representation.

These concerns are not only supported by the two studies cited above. Several other international studies also point out that linking the RRF and the European Semester increases the European Commission's enforcement role, while posing challenges in terms of democratic accountability, transparency of the mechanism, and the sovereignty of Member States (e.g., Bekker, 2021;⁴³ Fabbrini, 2024;⁴⁴ Baroncelli, 2024⁴⁵). Based on the authors' recommendations, it would be particularly important to involve national parliaments more closely in the process and to move away from their subordinate role: it would be important for them to play a sufficient role in both the development of plans and the approval and implementation of reforms, thereby increasing democratic accountability. Certain studies also emphasise the importance of involving genuinely independent and professionally recognised social partners in the RRF and Semester processes so that financial support genuinely responds to economic and social challenges, which in turn would enhance the effectiveness of such support. Another noteworthy concern is the Commission's significant, almost monocratic role in the granting of funds, which raises legal and political concerns due to the relationship between the competences of the EU institutions and national sovereignty.⁴⁶

⁴² Bokhorst, 2021, pp. 101-117

⁴³ Bekker, 2021, pp. 175-185

⁴⁴ Fabbrini, 2024

⁴⁵ Baroncelli, 2024

⁴⁶ Somosi – Farkas, 2024, pp. 3–30

4. EU recommendations on Hungary's economic, social, employment, structural and fiscal policies

4.1 The Commission's position on Hungary's economic and financial situation

According to the European Commission, Hungary is experiencing macroeconomic imbalances. Rapid wage growth in recent years has undermined cost competitiveness, and inflationary pressures remain stronger than in the rest of the EU, while the economic recovery is slow and subject to downside risks.

The budget deficit has fallen in 2024, but remains high and is not expected to improve significantly in 2025 and in 2026. The gross debt ratio is not declining, and debt service expenditure and gross borrowing needs remain high.

The slight increase in the general government deficit in 2026 mainly reflects the impact of the extension of tax exemptions for mothers and wage increases and bonuses in the public sector. According to the Commission's estimates, the budgetary stance, including both national and EU-funded expenditure, will be expansionary in 2026, at 1.0% of GDP.

Starting in 2016 – with the exception of 2024 – annual budgets have been adopted extremely early, which has reduced the reliability of macroeconomic and budgetary forecasts. Frequent and significant revisions to budgetary targets mean that the budget does not provide a stable basis for market participants and casts doubt on the credibility of medium-term budgetary plans. The mandate and operational capacity of the Hungarian Fiscal Council remain limited. New structures for managing public funds, such as public interest asset management foundations, weaken fiscal oversight as they appear to operate without effective control mechanisms.

Other concerns of the Commission

In the Commission's view, measures to stimulate domestic demand pose a risk to the sustainability of the external balance. The relationship between banks and the state has become closer due to tax policy measures that encourage domestic banks to purchase government debt. This constitutes implicit fiscal pressure and market distortion. Tax exemptions encouraging domestic banks to purchase government bonds have increased the risk, as the proportion of government securities within bank assets. This is a new element in the Commission's rhetoric, as it previously strongly recommended that Member States borrow from their domestic banking systems rather than from

external sources. Recently, however, they see a strong risk in the interdependence of the executive power of Member States and the banking system.⁴⁷

The Commission considers that the weak business environment remains one of the main obstacles to innovation. The regulatory environment is extremely unstable, which makes long-term business planning difficult. The public and stakeholders are not consulted on important draft legislation, as these are often submitted to parliament as individual representatives' motions rather than government proposals, meaning that public consultation is not required for such draft legislation.

According to the Commission, regulatory unpredictability is also characteristic:⁴⁸

- excessive state involvement in the economy,
- a discriminatory atmosphere towards certain companies (especially those with foreign owners),
- low administrative efficiency,
- a high perception of corruption
- and lack of competition in key sectors.

In the Commission's opinion the market structure is concentrated, with only a few companies competing in certain markets. Many services are entrusted to state-owned or private companies that operate without competition. The state participates in business transactions and squeezes private players out of the market by acquiring or facilitating the acquisition of large companies with subsidized financing. Through various state interventions, owners, mostly foreign, have been forced to sell their businesses, thereby facilitating the creation of state-owned or government-affiliated "national champions." The growing presence of private equity funds creates new challenges. This corporate structure is particularly used by individuals with ties to the government. Social exclusion is increasing and poverty is worsening, especially among children, the elderly, and people with disabilities. Wealth inequality has increased significantly. "Poverty indicators are overall better than the EU average, but worse for children in large families, low-skilled workers, the elderly, people with disabilities, and Roma. The situation of the poorest groups is particularly unfavourable due to low tax progressivity, weak social transfers, and untargeted support systems."⁴⁹

⁴⁷ Szabó, 2025

⁴⁸ Uo.

⁴⁹ Uo.

In the Commission's view and in line with its preference for multi-rate tax systems, the Hungarian tax system favours high-income households, while most social support is provided in the form of tax allowances. The Commission calls on Hungary to take measures to reduce income inequalities, particularly with regard to the long-term sustainability of the pension system, which may affect tax credits, eligibility conditions, or specific types of taxes (e.g. tax exemptions for mothers, separate taxation or support for pensioners' incomes).

Below, we provide an overall assessment of Hungary's economic, social, employment, structural and fiscal policy in connection with the Recommendation issued by the Council of the European Union on 1 July 2025. According to the Council's own narrative, these recommendations are intended to strengthen sustainable public finances, economic growth, competitiveness and social cohesion. The present review finds that the soundness of this framing and the conclusions drawn from it are open to challenge on several points. It also finds that certain expectations reflected in the recommendations are in several respects not aligned with Hungary's national interests. The expectations formulated for Hungarian economic policy are therefore as follows:

1. Increase defense and security spending, in line with debt sustainability requirements, and use the flexibility provided to increase defense spending. In addition, enhance overall defense preparedness. In order to eliminate the excessive deficit, align net expenditure with the maximum growth rate recommended by the Council on February 18, 2025, and use the concession granted under the national exemption clause to increase defense spending. Background to the recommendation: The period covered by the activation of the national exemption clause (2025-2028) allows Hungary to review the priority order of government expenditure or increase public revenue so that the sustained increase in defense spending does not jeopardize fiscal sustainability in the medium term.
2. Phase out the remaining emergency energy support measures, in particular before the 2024-2025 heating season. Background to the recommendation: According to the Commission's spring 2025 forecast, while the net budgetary cost of emergency energy support measures was 1.0% of GDP in 2024, this cost will fall to 0.5% of GDP in 2025. Subsidies to utility companies to compensate for losses caused by residential energy price caps remained in place. Emergency energy support measures were not phased out before the 2024-2025 heating season. This is not in line with the Council's/Commission's recommendation. According to the report, residential energy prices in Hungary are heavily subsidized by the state, which does not specifically refer to utility price reductions. They object that utility

price reductions are not targeted subsidies for those most in need, but rather universal benefits, and therefore do not help to reduce energy poverty.

3. Gradually eliminate remaining price caps, interest rate caps, and equivalent measures to minimize distortions and increase the effectiveness of monetary policy. Background to the recommendation: Monetary policy is tight, but its effectiveness is weakened by government intervention: subsidies and loans to households and businesses are still not targeted at the right groups, and the regulation of lending rates limits the effectiveness of monetary policy. It is generally expected from banks to lower lending rates. Strive for effective coordination and clear demarcation of macroeconomic policies to ensure fiscal and external sustainability.
4. Strengthen medium-term budgetary frameworks, align the preparation of annual budgets with the fiscal year, and limit discretionary powers in annual budget execution. Background to the recommendation: Annual budgets are adopted extremely early, which has reduced the reliability of macroeconomic and budgetary forecasts.
5. Improve the long-term sustainability of the pension system, primarily by reducing income inequalities, while preserving its adequacy. Background to the recommendation: The minimum pension has remained unchanged in nominal terms since 2008 and does not provide adequate pensions for people with short service records and low average earnings.
6. Urgently accelerate the implementation of the recovery and resilience plan, as expanded by the REPowerEU chapter, and to that end, implement as soon as possible the measures necessary to protect the EU's financial interests.
7. Accelerate cohesion policy programs (ERDF, JTF, ESF+, CF), paying particular attention to opportunities following the mid-term review.
8. Optimize the use of EU instruments (InvestEU, European Platform for Strategic Technologies) in order to improve competitiveness.
9. Improve the regulatory framework and increase competition in the goods and services market – particularly in retail – by: avoiding arbitrary administrative interventions (price caps, sales margin restrictions, mandatory discounts, bans on selling food 48 hours before its expiry date, and mandatory online price reporting); the application of legislation tailored to specific legal entities that gives certain businesses an unjustified advantage or disadvantage, and market-distorting, state-subsidized transactions, and reduce the use of emergency measures to the absolute minimum.

Background to the recommendation: Policy measures and high taxes are also undermining the competitiveness of retailers. There should be less reliance on temporary windfall taxes. A more stable and predictable tax policy is needed, rather than periodic, ad hoc special taxes such as the windfall tax (the sectors most affected include banking, energy, retail, construction materials, insurance, telecommunications, and utilities).

Sector-specific taxes disproportionately affect larger, often foreign-owned companies and are therefore not in line with EU provisions on freedom of establishment.

Although price caps on food products were gradually phased out in 2024, in 2025 the government capped the margin between retail purchase prices and sales prices for a wide range of food products.

10. Avoid legislation that creates unjustified competitive advantages or disadvantages for legal entities and minimize emergency measures.
11. Encourage the development of capital markets, with particular regard to tax and regulatory incentives. Background to the recommendation: Recent policy measures, such as tax exemptions for long-term bonds available to retail investors or tax breaks for real estate investments, have also hampered the development of capital markets.
12. Strengthen the innovation framework for the public sector and businesses by improving the predictability of public R&D spending and targeting SMEs more effectively within existing measures.
13. Accelerate the diversification of fossil fuel supplies in order to gradually eliminate dependence on Russian sources, and take concrete steps to phase out fossil fuel subsidies, with a particular focus on excise tax subsidies on diesel fuel and subsidies that hinder the electrification of the residential sector (this is indirectly a tax reform, as it involves tax breaks and changes to the excise tax structure). Background to the recommendation: In Hungary, subsidies for fossil fuels – such as the utility cost reduction programme, the value-added tax reduction for district heating with natural gas, and the excise tax refund for agricultural use of diesel fuel – are economically inefficient, perpetuate dependence on fossil fuels and do not encourage the electrification of the residential sector. Reducing and phasing out these subsidies would be in line with EU commitments and could help Hungary to curb government spending.
14. Increase flexibility and competition in the electricity sector, strengthen the balancing market, and stimulate cross-border electricity trade.

15. Improve the resilience of water management through natural water retention and strengthened administrative capacities, and improve the circularity of the economy, in particular by expanding waste treatment capacities.
16. Improve educational outcomes and increase the share of people with tertiary education, and increase the participation of disadvantaged groups, in particular Roma, in quality mainstream education by further increasing the attractiveness of the teaching profession and the share of secondary school graduates entering tertiary education.
17. Improve access to effective active labour market measures, in particular by providing further training and retraining opportunities for the most disadvantaged groups, and ensure effective social dialogue. Improve the adequacy of social benefits and unemployment benefits and ensure access to basic services for all. Background to the recommendation: The average duration of unemployment exceeds 12 months. With only three months of unemployment benefits, the time available to find a suitable job or suitable training opportunities is limited, which increases the risk of low-quality jobs, long-term unemployment, and poverty.
18. Provide targeted support to low-income households through housing support measures and increase the supply of housing, including social housing. Background to the recommendation: Housing subsidies and preferential loan programs continue to distort the housing market and increase upward pressure on housing prices. Strong demand, also fueled by government stimulus measures, has led to a significant increase in housing prices in 2024. Housing prices rose by 230% between 2010 and 2024. Housing subsidies and preferential loan programs continue to distort the housing market and increase upward pressure on housing prices. The stock of social housing is small and declining, and low-income households have limited access to housing support in the absence of clear and targeted government housing policy support.

On taxation issues, the Commission has formally objected to the Hungarian retail tax, which discriminates against foreign-owned companies and does not comply with EU rules on freedom of establishment. The Commission has called for a radical amendment or abolition of the retail tax, as Hungary committed to withdrawing it in its solidarity and recovery plan, but no progress has been made.

Recommendations for the Hungarian tax system:

1. Hungary should introduce permanent fiscal measures and rely less on temporary windfall taxes or investment cuts (i.e., a more stable and predictable tax policy is needed, rather than temporary, ad hoc special taxes such as windfall taxes).
2. The Commission emphasizes that tax policy measures encouraging domestic banks to purchase government debt play a significant role in financing public debt (this constitutes hidden fiscal pressure and market distortion).
3. To reduce competition and market distortion and promote the development of market-based capital markets, the recommendation: encourage the development of capital markets through tax and regulatory incentives, with particular regard to fair competition and the minimization of administrative/regulatory burdens.
4. The Commission calls on Hungary to take measures to reduce income inequalities, particularly with regard to the long-term sustainability of the pension system, which may affect tax allowances, eligibility conditions or special types of taxes (e.g. tax exemptions for mothers, separate taxation or support for pensioners' incomes).
5. Gradually phase out subsidies for fossil fuels, in particular subsidies related to excise taxes on diesel fuel, and eliminate subsidies that hinder the electrification of the residential sector (this is indirectly a tax reform, as it involves changes to tax allowances and the excise tax structure).
6. Minimize legislation and tax policy measures that give certain businesses unjustified advantages and others disadvantages, as these have a market-distorting effect.
7. Diversify tax revenues and examine the long-term sustainability of the tax system in view of the ageing society, with particular regard to the future financing of the pension system.

Specifically on issues affecting sovereignty, the European Commission has repeatedly objected to the illegality of Hungary's "Sovereignty Protection Act" (Act LXXXVIII of 2023 on the Protection of National Sovereignty) and has initiated proceedings against it, claiming that it violates EU law. The case has been brought before the Court of Justice of the European Union, and the EU is closely monitoring the Hungarian government's actions in relation to this law.

4.2 Utility cost reduction

4.2.1 Its place and raison d'être in the economic policy mix

It is widely known that there are two main groups of economic policy instruments, which can be supplemented by a third. Fiscal policy affects the economy through the state budget (taxation,

spending, subsidies), while monetary policy influences money supply, interest rates and inflation through the central bank. These two can be complemented by income policy and price regulation, which means that the state intervenes directly in the development of wages, prices, and certain incomes.

The institution of utility cost reduction belongs primarily to the tools of income policy and price regulation, but it also affects several other areas. By definition, a price regulation tool is a measure whereby the state sets official prices for public utility services (electricity, gas, water, etc.), thereby directly influencing consumer prices, i.e., the measure fulfills the function of a price policy tool. In addition, the state restricts the functioning of the market by not allowing market prices to develop freely. In addition, such measures are also considered economic policy instruments with social policy objectives, aimed at improving the income situation of households and, in particular, protecting those on lower incomes. From this point of view, it is worth noting that it lies at the intersection of income policy and social policy.

In addition to the above, its fiscal implications should also be highlighted. Although it does not take the form of direct budgetary expenditure, it can be considered indirect state aid. The state can compensate for the profits of public utility companies or the price of energy imports, which means it can constitute hidden budgetary support.

The utility cost reduction in Hungary is a series of government measures introduced in 2013 with the aim of reducing the utility charges paid by households, primarily for electricity, natural gas, district heating, water, sewage, waste collection, and other public utility services. The government introduced regulated prices (utility prices) for these services, meaning that instead of market prices, residential consumers could obtain energy and public utility services at lower prices set by the state.

The primary goal was to reduce the burden on households, especially those with lower incomes. It was also a means of curbing inflation, and strengthening political stability by making public utility prices more predictable.

From August 2022, the system was modified with the introduction of reduced prices for average consumption, while above-average consumption is subject to market prices. This was mainly due to the explosive rise in European energy prices (gas and electricity). In the case of electricity, the discounted price applies to consumption of up to approximately 210 kWh/month, while in the case of natural gas, the discounted price applies to consumption of up to approximately 1729 m³/year.

4.2.2 The European Commission's position on utility price reduction

The Commission has criticised Hungary's utility price reduction scheme on several grounds, arguing in particular that it runs counter to the principles of the internal market and EU competition law. The primary criticism relates to market distortion and anti-competitive practices, and according to the EU's position, this is a case of state-determined pricing. One of the fundamental principles of the EU internal market is free competition and market pricing, but utility price cuts introduce centrally determined official prices for public utilities, which (i) distort prices from market equilibrium, (ii) hinder the entry of new service providers into the market, (iii) and curbs investment and innovation in the energy sector. According to the EU's argument, this results in market distortion, reduced competition, and a potential decline in service quality and efficiency. In addition, there is also the issue of the prohibition of state aid. Article 107 of the Treaty on the Functioning of the European Union (TFEU) states that state aid which distorts competition and favours certain undertakings is prohibited. The essence of the system, known as utility price reduction based on official pricing, is that public utility providers must supply natural gas and electricity to residential consumers up to their average consumption at a predetermined tariff. The state compensates service providers for any losses incurred as a result of fluctuations in the market price of energy sources and electricity. According to the EU, this constitutes a serious distortion of competition. The EU considers this system to be hidden state aid, which should be approved by the EU institutions. The third argument is that it violates the principles of the Energy Union. The aim of the European Energy Union is to ensure that energy prices are determined by market forces and that countries encourage energy efficiency and sustainability. According to the Commission's own narrative, the utility price reduction scheme maintains artificially low prices and therefore does not incentivise restraint in consumption. It also hinders the green transition because cheap energy weakens the incentive to shift to renewable sources, and it makes it more difficult to integrate energy systems into the EU market, particularly in the areas of natural gas and electricity. On that logic, the scheme runs counter to the direction of Energy Union liberalisation and climate objectives. Lastly, fiscal sustainability concerns have also been raised, since the utility price reduction scheme places a significant burden on the state budget, especially when market energy prices rise sharply. The Commission's concern is therefore that the measure distorts budgetary balance and is not sustainable in the long term, particularly during periods of crisis such as the 2022 energy crisis.

4.2.3 Hungary's position on utility price cuts

Since its introduction in 2013, the Hungarian government has emphasized that the primary and most important principle is to protect households and ensure livelihood security. The main objective of utility cost reduction is to protect the population from fluctuations in market energy prices and to ensure the predictability of basic living costs. The argument is that energy is not merely a market product, but an essential public commodity, and therefore the state has a duty to intervene if the market threatens people's everyday living conditions. According to the government's argument, Hungarian families must be protected from war inflation and skyrocketing energy prices. Reducing utility costs is not an ideology, but a guarantee of the everyday security of the Hungarian people.

Behind these messages lies a more serious economic policy argument, according to which national self-defense (sovereignty) measures are required instead of market mechanisms. According to the government's argument, the liberalized energy market preferred by the EU is unable to ensure stable and affordable prices, so national intervention is a "self-defense" tool with which Hungary protects itself from often speculative market movements. This thinking is clearly based on the principle of "sovereignty": Hungary itself decides how much its citizens pay for energy and does not allow this to be determined solely by the market or foreign service providers.

Utility price cuts enjoy broad public support in Hungary because (i) they have directly and noticeably reduced household expenses, (ii) they have brought political stability, especially during the 2014 and 2018 election periods, (iii) it has created a system that the government considers to be "fairer" than the free market model, which would favor the wealthier. According to official communications, utility price cuts are not a market distortion but a fair correction: Hungarian families receive assistance and protection against the excessive profits of multinational companies.

In addition, the utility price cuts are not only of social but also of strategic importance, because the security of energy supply cannot be relied solely on market mechanisms; by strengthening state ownership (e.g., purchasing shares in MVM, FGSZ, and E.ON), a more stable, domestically controlled energy system can be created. Following this logic, Hungary is taking the energy sector into "the hands of the nation" and reducing its dependence on imports, especially in times of geopolitical crises.

4.2.4 Economic policy impacts (budget, households, affected industries, national economy)

The reduction in utility costs places a significant direct and indirect burden on the state budget, as the state must compensate energy suppliers for the difference between market prices and the prices

reduced by the authorities. This can amount to hundreds of billions of forints per year, especially during periods of energy price spikes. When energy prices are high, government spending rises rapidly, which increases public debt and makes the budget more vulnerable to external shocks. An interesting example was the period 2022-2023, when the amount spent on utility subsidies in Hungary exceeded HUF 1,000 billion, which corresponded to approximately 1.5-2% of GDP. On one hand, this amount is a budgetary burden, and on the other hand, it is state support for households.

The real objective of the utility cost reduction system is precisely to improve the quality of life and income situation of households and to reduce the proportion of people living in energy poverty. In the short term, the measure reduces household expenditure, increasing disposable income. In addition, from a political point of view, it stabilizes consumer satisfaction.

In addition to the household sector, the reduction in utility costs particularly affects the energy industry, the infrastructure development sector, and the green technology sector. Energy companies suffer revenue losses due to regulated prices, which limits their investments, maintenance, and network development. Low profits also reduce the sector's attractiveness for investment.

At the national economic level, utility price cuts have a long-term impact on the economic structure and macroeconomic balance. In the short run, they curb inflation, but delayed adjustment to market prices can cause a sudden shock if the level of support is reduced. Increased energy imports and distorted price structures may increase the current account deficit. Low energy prices may discourage efficiency-enhancing investments, which reduces long-term competitiveness. By contrast, utility price cuts may improve domestic demand in the short run, thereby mitigating the economic downturn.

4.3 Interest rate caps

4.3.1 Interest rate freeze in the Hungarian economy and economic policy

The interest rate freeze in Hungary is a government measure that primarily caps the interest rates on variable-rate residential mortgage loans at a specified level to protect debtors from sudden and large increases in market interest rates.

The institution of the interest rate freeze has been in effect in Hungary since December 24, 2021,⁵⁰ when the government decided to fix the interest rates on residential mortgage loans. The interest

⁵⁰ See [Erstebank.hu](https://www.erstebank.hu)'s information on interest rate freeze

rate freeze is a mandatory regulation that applies to existing variable-rate loans.⁵¹ From November 1, 2022, it was extended to fixed-rate, non-subsidized mortgage loans with a maximum interest period of 5 years.⁵² The interest rate freeze is currently in effect until the end of December 2025. This means that between January 1, 2022, and December 31, 2025, the reference interest rate applied to the loans and financial leases concerned cannot be higher than the reference interest rate valid on October 27, 2021. The repayment installments for the loans concerned are thus "frozen" at the level specified by law, preventing a significant increase based on current market interest rates.

The interest rate freeze does not fix the interest rate, but rather the underlying reference interest rates used to calculate the interest rate. This limits the extent of the interest rate increase but does not prohibit it. This is important to note, as it can be considered a softer market measure.

The relevant loan products are residential mortgage loans tied to the reference interest rate, home creation interest-subsidized home loans, supplementary and mortgage bond-financed interest-subsidized home loans, residential financial leasing contracts for house purchases, and 3-, 4 and 5-year fixed-rate, non-subsidized mortgage loans (e.g., home loans, free-use loans).

The interest rate freeze was introduced due to accelerating inflation and to protect households from the negative effects of the high yield environment (both inflation and the resulting increase in the base rate would have led to a significant increase in repayments in the case of variable-rate mortgage loans). Banks are normally entitled to adjust the fees and costs associated with their products to consumer prices over the past year (indexation).⁵³ In 2021, inflation accelerated to an average of 5.1%, meaning that credit institutions could have increased their customers' burdens by as much as this.⁵⁴ The interest rate freeze protects against this, as the reference interest rate used for indexation was fixed based on data from October 27, 2021. This means that the interest rate applied by banks and the fees calculated on this basis cannot be higher than in October 2021. Inflation continued to rise in 2022, so the interest rate freeze saved significant amounts of money for those who repaid their previous loans.

The interest rate freeze in Hungary can be considered primarily an extraordinary, temporary economic policy measure, which belongs to the toolkit of price caps (price freezes) and market correction measures, but also affects welfare policy. It is not a classic monetary policy tool, but a

⁵¹ Kárdási, 2024

⁵² Erstebank.hu

⁵³ See money.hu's article on interest rate freeze (May 22nd, 2023):

⁵⁴ Hungarian Central statistical Office: Consumer price index by main consumption groups and consumer price index for pensioners 1961-2025

form of fiscal-governmental intervention that provides extra protection in the financial sector. As the interest rate freeze directly protects borrowers from excessive repayment increases, it also supports the stability of the financial system. It is a countercyclical crisis management measure using an intervention price cap, which serves to prevent social crises and protect consumers. It fits in well with the Hungarian government's economic policy, namely the principle of protecting the population, primarily against inflation, and preventing another residential credit crisis (foreign currency loan crisis in the early 2010s). It is also an important element of economic policy in protecting families, ensuring their well-being, and creating housing security.

4.3.2 Criticisms in the European Semester and the Hungarian government's position

The 2025 country-specific recommendations included a recommendation that Hungary shall "gradually remove remaining price and interest rate caps and equivalent measures in order to reduce distortions and facilitate the smooth transmission of monetary policy [...] Monetary policy is tight, but its effectiveness is weakened by government interventions: subsidies and loans to households and companies are still not targeted at the right groups, and the regulation of lending rates limits the effectiveness of monetary policy."

At the same time, the recommendation ignores the positive effects of the measure, both for the population and the financial sector, and the interest rate freeze does not necessarily cause great damage to monetary transmission, as we will explain later.

Without the interest rate freeze, according to government information,⁵⁵ tens of thousands of families could have lost their homes due to increased mortgage payments. Without the interest rate freeze, families' loan interest rates could have risen significantly, to levels of over 25%, and mortgage payments would have been on average more than 80% higher. The interest rate freeze affected approximately 350,000 families and more than 286,000 mortgage contracts. Between the introduction of the interest rate freeze and June 2025, savings of nearly HUF 330 billion were generated, leaving families with that much more money. The social benefit of the measure is that it reduces the risk of housing crises, evictions, and social impoverishment resulting from indebtedness, especially in crisis situations. The repayment installments of those affected remained stable and did not increase dramatically, which makes family budgets more predictable. The measure helps to maintain household consumption, as families can spend more instead of incurring additional expenses, which ensures economic recovery.

⁵⁵ Ministry of National Economy, 2025

In addition to protecting families, the interest rate freeze also protects the stability of the domestic banking system, which has been spared significant losses on non-performing residential loans. The measure thus strengthens financial stability and avoids the risk of a financial crisis. Families' outstanding capital debt amounts to HUF 1,210 billion, while the interest rate freeze protects nearly one-fifth of the total retail mortgage loan portfolio. The interest rate freeze introduced in 2022 did not cause any damage to the profits of the Hungarian banking system. The sector is stable, and despite the interest rate freeze and the bank tax, the sector's profits were HUF 339 billion in 2022, HUF 1,457 billion in 2023, and HUF 1,242 billion in 2024, as this was offset by other fixed-rate loans and services. For this reason, it is not true that banks are not lending because of the interest rate freeze. They have the resources, as the value of residential sight deposits and current account deposits increased by HUF 1,600 billion in one year due to the improving income situation and the dynamic rise in wages.⁵⁶

The effectiveness of monetary policy and monetary transmission also make it important to examine the institution of the interest rate freeze. A common criticism, as expressed by the Commission in its country-specific recommendations, is that the interest rate freeze impairs monetary transmission and thus the effectiveness of the central bank in combating inflation. The interest rate freeze naturally restricts the interest rate channel, but from the perspective of domestic monetary policy, this is not the most important channel; rather, it is the exchange rate channel through which, for example, base rate increases can have a greater and more direct impact on inflationary processes.⁵⁷ Moreover, the MNB is no longer in a period of interest rate increases.

The MNB began its interest rate reduction⁵⁸ cycle in October 2023, and the central bank base rate has been 6.5% since September 2024. In the case of an interest rate reduction cycle, the interest rate freeze does not restrict the central bank's measures, i.e., banks can reflect the decline in key interest rates in their lending rates, so it does not hinder monetary transmission in this direction. Monetary policy interest rate reduction cycles normally have an effect on residential lending rates and encourage borrowing, investment, and consumption.

4.4 Subsidized loans

In listing the policy challenges, the Council document criticised Hungary's economic policy practice in the wording of point (21) within an evaluative framework under which it is considered objectionable that Hungary makes subsidised loans widely available to households and

⁵⁶ Molnár, 2025

⁵⁷ Uo.

⁵⁸ The Hungarian National Bank's Base rate history database

undertakings and regulates mortgage interest rates by administrative means. According to the present review, both the premises underlying that classification and the conclusions drawn from it are open to challenge on several grounds. We therefore set out in detail the government measures and central bank programmes in force in 2024–2025 to which the criticism of the Council of the European Union may relate.

4.4.1 Subsidized loans available to households

Childbirth incentive loan:

The aim of the government loan program is to support young couples who are about to start a family. It is part of a set of government measures aimed at addressing the demographic crisis in Hungary, and is part of the family and youth policy toolkit. A subsidized, personal loan that becomes partially interest-free upon the birth of the desired children. This loan scheme is popular among members of the government's priority target group for social policy.

CSOK Plus:

This housing finance scheme, which replaced the previous CSOK (Family Home Creation Discount) system, was introduced on January 1, 2024. The aim of the program is to encourage people to have children and to support young families in obtaining housing. The scheme offers interest-subsidized loans, and the state also waives part of the principal debt if the desired children are born. The loans are provided to young couples by commercial banks, with the state paying the banks the difference between the market interest rate and the fixed, preferential interest rate.

Home renovation loan program:

This program, which is also financed by the European Union, provides support for the renovation and energy modernization of family homes. The scheme is a combination of non-repayable grants and interest-free loans. The ratio of cash support to loans depends on the income situation in the district where the residential property is located. It is a complex government support tool that contributes to the achievement of social, energy and housing policy objectives.

Home Start Program:

The aim of the program is to support people who are buying their first home and want to own their own home. The scheme is a tool targeting the housing crisis, and is accessible to a wide range of society. It is an interest-subsidized mortgage with a fixed interest rate until the end of the term, which customers take out from commercial banks, with the state paying the difference between

the market and fixed interest rates to the banks. The program was introduced on September 1, 2025, and the Council's recommendation formulated in July 2025 could not yet address this.

Programs supporting people living in small settlements:

The government has also launched and operates additional targeted support schemes for social groups living in small settlements who are at greater risk of poverty. Examples include the Rural Home Renovation Program and the Rural CSOK, which are social policy programs tailored to the specific circumstances and needs of communities living in small settlements, with the potential to promote inclusion and create opportunities. The schemes combine non-repayable state subsidies and interest-subsidized loans.

4.4.2 Effects and criticism of subsidized lending to households

Between 2019 and 2024, more than 260,000 couples made use of the Childbirth incentive loan, and in these families 221,000 children were born during this period.⁵⁹ The CSOK Plus program also contributed to achieving family policy objectives and addressing the demographic crisis. As a result of systemic family policy measures over the past decade, the total fertility rate (TFR), which had begun to rise, reached 1.55 by 2023, the third-best result among EU countries, although still far from the 2.1 needed for natural reproduction.⁶⁰ However, the protracted European war, the inflation crisis, rising energy prices, and the overall negative perceptions did not have a beneficial effect on the birth rate, the TFR fell to 1.38 in 2024.⁶¹

Between 2019 and 2025, the Rural CSOK program helped more than 50,000 families living in small settlements to build homes, in value of HUF 300 billion.⁶² The program contributed to reducing regional inequalities, strengthening social cohesion, and increasing the resilience of social groups at risk of poverty.

The subsidized mortgage programs contributed to an increase in home purchases. The housing loan portfolio grew by 13% in Hungary in 2024.⁶³ Subsidized loans increased the purchasing power of households and stimulated domestic demand and consumption. The revival of the housing market boosted employment in the construction sector in the short term.

The Council document criticizes the practice of subsidized lending to households in order to achieve social policy objectives in general, referring to the market-distorting effect of state aid,

⁵⁹ Government of Hungary, 2024

⁶⁰ Eurostat's data on total fertility rate

⁶¹ Hungarian Central Statistical Office's data on birth and death rates in Hungary

⁶² See the Hungarian Village Program's website

⁶³ Hungarian Central Statistical Office's data

but does not provide a detailed critique. The subsidized loan programs had a positive impact on families with children, young people planning to start a family, people living in small settlements, and those carrying out energy efficiency upgrades in their homes.

4.4.3 Subsidized loans available to companies

Széchenyi Card Program:

The Széchenyi Card Program⁶⁴ is one of the Hungarian government's most important corporate support instruments, created specifically to help micro, small and medium-sized enterprises (SMEs). Under the program, the government provides businesses with preferential financing for investment purposes, as well as working capital and liquidity loans. Some of the loan products are subject to state interest subsidies, so the net customer interest rate is more favorable than the market rate. In 2024 and 2025, the level of preferential interest rates was further reduced and the upper limit of loans in the program was increased.

Export promotion loan programs:

As part of the government's SME support framework program named after Sándor Demján,⁶⁵ launched in November 2024 with a budget of HUF 1,410 billion, additional subsidized loan schemes are available to businesses in addition to the Széchenyi Card Program. Under the Export Promotion Loan Program, loans with more favorable interest rates than those available on the market can be obtained to finance investments that expand export capacity and green investments. Under the investment support loan program, foreign market investments, company start-ups, and company acquisitions are eligible for support through preferential interest rates.

Growth Credit Program:

The Growth Credit Program (NHP)⁶⁶ is the Hungarian central bank's business financing program, which provides loans at preferential interest rates to SMEs. The aim of the program is to encourage investment, technological development, and capacity expansion, thereby increasing the competitiveness of businesses.

4.4.4 Effects and criticism of subsidized lending to companies

When using subsidized loans, the financing costs for businesses are lower than market alternatives, which contributes to their increased competitiveness, investment growth, and capacity expansion.

⁶⁴ See the website of the Széchenyi Card Program

⁶⁵ See the website of the Demján Sándor Program

⁶⁶ See the Hungarian National Bank's summary on monetary policy

Investment funds enable more businesses to hire new staff, so subsidized loans indirectly contribute to job retention and expansion.

The Council document criticizes the Hungarian practice of subsidized lending to businesses in general, from a neoclassical economic policy perspective that rejects all forms of active state intervention. It does not discuss the economic stimulus effects of subsidized loans, referring instead to the market-distorting effect of state aid and suboptimal capital allocation. It objects to the fact that the proportion of subsidized loans remains higher than before the COVID-19 pandemic.

Subsidized loans to households and businesses are widely used and well-documented economic policy tools in European Union countries. They contribute to maintaining macroeconomic stability, increasing investment, stimulating demand, creating jobs, and increasing social welfare in line with social policy objectives. Only subsidized loan schemes that comply with EU state aid rules may be introduced in EU Member States.⁶⁷ The Council document does not dispute the regularity of Hungarian subsidized loan programs, nor does it question their fiscal sustainability.

4.5 Food prices, retail trade, administrative measures

4.5.1 Background, place and justification of the measures in the economic policy mix

Food prices have risen significantly in Hungary over the past 3-4 years. On an annual basis, they rose by 26% in 2022 and 2023, while in 2024 the price increase slowed to below 3%, and in the first half of 2025 they rose again by between 5% and 6%. Inflation was particularly noticeable in the case of basic food products, such as flour, cooking oil, eggs, and milk. High food inflation was exacerbated by rising world market prices, the energy-intensive nature of the food industry, and low productivity.

In its March 2025 Inflation Report, the MNB explained that, based on long-term experience, domestic food inflation is more sensitive to international influences than the price indices of other countries in the region. The most important reasons for this include the energy intensity and low productivity of the food industry.

According to MNB's September 2025 analysis, international food prices continue to rise. The price increase is mainly observed in vegetable oils, dairy products, and meat products. Within dairy products, butter and cheese have become the most expensive, caused by declining livestock numbers and growing demand in Asia. The rise in vegetable oil prices is mainly supply-driven:

⁶⁷ Cannas – Ferraro – Van de Castele, 2023

sunflower and rapeseed harvests were more moderate in the last season, while an increasing proportion of palm oil production is being used for biofuel production. Among meat products, global beef prices reached a new high this year, partly due to stronger import demand from China and the US.

All of Europe faces challenges, primarily in citrus and apple production, but there are also problems with peach, apricot, cherry, and sour cherry production.⁶⁸ Furthermore, the drought is also affecting corn and potato yields.⁶⁹ In the longer term, according to a 2024 study by Kotz et al.,⁷⁰ the 2022 summer heatwave could increase food inflation in Europe by 0.4-0.9 percentage points, which could intensify in the coming years, and further climate change could increase food inflation pressure in Europe by as much as 30-50% by 2035.

The rise in world market prices has been felt throughout the domestic supply chain, with producer prices in the food industry also rising significantly. The largest price increases were recorded for product groups whose world market prices also rose more sharply.

As part of its economic policy measures, the government is constantly striving to curb price increases, especially food prices, in order to protect households. These measures can be classified as fiscal policy interventions, primarily price policy (price regulation) and competition policy, and in many cases also include welfare policy instruments, but they also serve to inform consumers and improve the availability of information. The various measures are briefly explained in the following paragraph, followed by a more detailed analysis of their various effects and justifications.

4.5.2 Criticisms in the European Semester and the Hungarian government's position

Food price freeze:

- The consumer prices of certain basic food products have been capped by the authorities, thereby directly intervening in market pricing.
- Type of economic policy: price policy (direct price control).
- This served to protect the population against sudden price increases, especially in times of crisis or supply shocks.

Fuel price freeze:

⁶⁸ Kiszaludy, 2025

⁶⁹ Portfolio.hu, 2025 (July 28th)

⁷⁰ Kotz – Levermann – Wenz, 2024, pp.551-557

- The government set a maximum price for certain fuels. The aim was to control travel costs.
- Type of economic policy: price policy (direct price control).
- In the short term, it reduced end-user expenses and served to protect the population against high (and often rapidly changing) fuel prices.

Utility cost reduction:

- Official prices for public utilities (e.g., gas, electricity, water), thereby reducing the burden on households.
- Type of economic policy: price policy with welfare policy elements.
- Mainly to protect the population, avoiding sudden energy price shocks and supporting consumer safety.

Mandatory discounting:

- Traders are required to reduce prices (by 10-15%) for certain products.
- Type of economic policy: price policy, competition policy.
- Stimulates price competition, forces retailers to reduce prices. More market-friendly than direct price regulation, but involves additional administrative costs.

Online price monitor:

- A digital platform where retail prices are continuously monitored and published, thereby encouraging price competition and transparency.
- Type of economic policy: competition policy, market regulation, and consumer protection.
- Increases market transparency, helps reduce overpricing, and indirectly curbs inflation.

Margin freeze:

- The retailer's margin has been maximized for certain products, i.e., pricing tied to the purchase price has been introduced.
- Type of economic policy: pricing policy, competition policy.
- Prevents the emergence of profit-driven inflation (price-profit spiral).

Voluntary price reduction:

- Based on a government request or agreement, stores/chains voluntarily reduce prices.
- Type of economic policy: competition policy (soft regulation).

- Assumes constructive participation by market players, allows for flexible market adaptation, but is less effective when profit interests are strong.

The rationale for anti-inflationary measures stems mainly from the fact that protecting the purchasing power of the population, ensuring access to basic products, and maintaining consumer safety are essential in times of economic instability. These measures reduce inflation in the short term and give the economy time to adjust.

The European Union has criticized these government interventions in the functioning of the market in its country-specific recommendations, calling for their swift withdrawal. "[...] avoid arbitrary administrative interventions (price caps, sales margin restrictions, mandatory discounts, bans on the sale of food 48 hours before its expiry date, and mandatory online price reporting), the application of legislation tailored to specific legal entities that provides unjustified advantages or disadvantages to certain businesses, and market-distorting, state-subsidized transactions." At the same time, these measures were essential to protect the population from inflation and to help certain social groups. Meanwhile, the individual measures are not specific to Hungary; other EU Member States have also applied them or are applying them.

The European Union's economic policy, including fiscal policy, ultimately falls within the competence of the Member States, as there is no single, integrated EU fiscal policy.⁷¹ This means that national fiscal measures – such as margin caps, taxation or budgetary rules – are essentially the responsibility of the Member States, and the EU has no power to directly regulate or override them. Detailed, specific fiscal decisions and their implementation remain at the national level, and the EU can only intervene if the measures violate EU law or internal market rules. Therefore, the Hungarian government's economic policy measures, which we will discuss below, are essentially a matter for national competence. Overall, fiscal policy at EU level mainly plays a coordinating and supervisory role, but the vast majority of actual fiscal measures remain within the competence of the Member States, so EU jurisdiction does not fundamentally extend to national price and fee regulations, unless they violate EU law.

4.5.3 Food price freeze

The price policy measure began in Hungary in the fall of 2021 and remained in effect until July 31, 2023, then it was gradually phased out. The essence of the price freeze was that the prices of certain basic food products (such as sugar, flour, cooking oil, eggs, chicken breast) were restricted by the authorities, with price increases halted or frozen at a given level. It prevented excessive

⁷¹ See the European Parliament's summary on the EU framework for fiscal policies

price increases for the most essential products. It provided protection primarily to lower-income households and can therefore be considered a welfare policy measure.

As a result of Hungary's inflation-reducing measures, the rate of price increases in the country was more prolonged than in other countries, and due to price freezes, inflationary pressure was not sudden and shocking, but gradual.⁷² In addition to slowly "releasing" the rate of price increases to the population, the various price freezes were intended to help the most vulnerable segments of the population.

Price shocks affecting food and energy prices hit low-income earners the hardest, even causing a livelihood crisis.⁷³ Moreover, these social groups, whose incomes mostly come from wages and pensions, are less able to protect themselves against inflation in terms of income or savings. This is why inflation is called the "tax on the poor." Thus, not only does the inflation perceived by the population differ (or may differ) from official inflation data, but there may also be significant differences in perceived inflation between social groups, depending on their consumption patterns. Research shows⁷⁴ that the more modest a household's income, the greater the weight of basic necessities (e.g., food, utility costs) in its consumer basket, for which spending is the least flexible. This means that these products will be purchased regardless of price (of course, they can be replaced with cheaper alternatives or purchased in smaller quantities, but at the end of the day, people will still buy bread, for example⁷⁵). However, higher-income households use market services proportionally more (e.g., culture, hospitality) and also have higher savings.

A decline in consumption in the lower income deciles may also affect consumption in the higher income deciles above them. If consumption in the lower deciles declines, this may reduce total market demand for certain products (e.g., food, basic services), which may trigger a chain reaction in the consumption of higher-income groups. This is confirmed by general economic theories (e.g., Keynesian consumption function): changes in consumption within an income group affect total aggregate demand, so a decline in the lower strata can spread to the economy as a whole, including the consumption of higher-income groups. According to some studies, the increase in income inequality has adverse macroeconomic effects, as the decline in consumption among poorer segments of the population restrains economic growth, which in the longer term also impairs the income prospects of higher-income groups.⁷⁶

⁷² Erdélyi – Horváth, 2023

⁷³ Erdélyi, 2022

⁷⁴ Adamecz-Völgyi – Ónózó, 2026

⁷⁵ Molnár, 2014

⁷⁶ Stiglitz, 2016

In the short run, the price freeze moderated the increase in food prices and reduced the burden on the population. The price cap reduced the price of the affected products by 10-15%, with a direct impact of 1.2 percentage points on food prices.⁷⁷ At the same time, in the longer term, retailers passed on the losses to the prices of other products, and there were also restrictions on the range of products available.⁷⁸

Overall, the price freeze was a quick and direct tool to curb the rise in prices of basic food products. It provided meaningful help to the population in alleviating the cost of living.

International examples: Croatia introduced price caps on basic food products and household goods from 2023, and Serbia and Argentina have introduced measures similar to those in Hungary. At the same time, Poland, one of the European Union member states, also intervened, responding to the increased prices by temporarily (for six months) abolishing VAT on food.⁷⁹ However, it is also worth noting that, according to estimates,⁸⁰ retailers in Poland passed on roughly half to three-quarters of the VAT reduction to prices. In a high inflation environment, retailers partially "absorbed" the VAT reduction, i.e., they increased their previous margins, so the full tax reduction did not reach consumers.

It is also important to note that Hungary already had a reduced VAT rate for certain foods, with chicken, pork, and milk already taxed at 5%.

4.5.4 Fuel price freeze

In Hungary, the fuel price freeze came into effect on November 15, 2021, when the government set a maximum price of HUF 480 per liter for 95 octane gasoline and diesel fuel. This measure is also a price-regulating fiscal policy intervention. The measure was extended several times and remained in force until December 31, 2022. Initially, the freeze applied to everyone, but later it was limited to cars with Hungarian license plates, and quantity restrictions were also introduced (e.g., 100 liters per refueling) to curb fuel tourism.

The price cap had a significant inflation-reducing effect on retail purchases (direct effect of price restrictions: -2.5 percentage points of inflation), but in the case of market-priced products, we could observe a significantly faster price increase in response to changes in raw material costs and tax rates (market prices applied to transport companies from March 2022 and to companies from August).⁸¹ Following the lifting of the fuel price freeze, the contribution of fuels to excess inflation

⁷⁷ Balatoni, 2022

⁷⁸ See MNB's deep analysis on actors behind domestic food inflation

⁷⁹ Németh, 2022a

⁸⁰ See data of sciencedirect.com

⁸¹ Balatoni, 2022

also increased (from 2023). The measure achieved significant consumer savings and had a price-stabilizing effect (according to some calculations, households were able to save an average of HUF 12,000 per month), although it caused losses for gas stations.⁸²

Following the phasing out of the fuel price freeze, no new direct price cap was introduced in Hungary, but the government continuously monitored market price developments and compared domestic prices with regional levels (averages in neighboring and Central European countries).⁸³ If Hungarian fuel prices significantly exceeded this regional average, the government indicated that it could intervene, but this was not necessary, as market-based pricing prevailed without official intervention.

Similar measures to reduce fuel prices were taken in several other European countries.⁸⁴ Poland made fuel VAT-exempt, Belgium, the Netherlands, and Sweden reduced VAT on fuel, Ireland and Romania reduced excise duty, Italy and the United Kingdom reduced fuel tax, while Germany reduced the so-called energy tax. In France, prices were reduced by the authorities and transport companies received subsidies. Similar measures were introduced in Spain, where the price of diesel was reduced and the government decided to provide support to the transport sector. In addition, funds were allocated to help the sector in Italy. Besides Hungary, Croatia and Slovenia also introduced price cap on fuel.

4.5.5 Utility cost reduction

Introduced in Hungary in 2013, it has been helping domestic households ever since. Essentially, it involves reducing the prices of energy and public utilities for end consumers to the official price, which means regulated prices instead of market prices (electricity, natural gas, district heating, water supply, waste collection and chimney sweeping fees). The measure was therefore a fiscal policy step, state intervention in market prices, with welfare policy elements. The main aim of price regulation is to reduce the overhead costs of the population and thus protect household incomes.

The measure directly contributed to a lower Hungarian consumer price index, as the reduction in energy prices curbed inflationary pressures, which were particularly significant compared to other countries due to rising energy prices. As a result of the utility cost reduction, energy prices in Hungary became among the lowest in the EU. We have written about this measure in a separate chapter (Chapter 3.1).

⁸² See MNB's deep analysis on actors behind domestic food inflation

⁸³ See the Hungarian Central Statistical Office's Fuel price statistics of September 2025

⁸⁴ Németh, 2022b

4.5.6 Mandatory discounting

Mandatory discounting was introduced in June 2023, requiring stores (with sales of over HUF 1 billion) to offer certain products (such as poultry, dairy products, bread, and fresh vegetables) at 10-15% below their previous lowest price. This price regulation measure was in effect until June 30, 2024. The aim of the measure was to fix the price of basic food products at a discounted level in retail stores, thereby protecting the purchasing power of households, especially those in lower income brackets. Mandatory discounting was a price and competition policy measure (and indirectly, through its support for the most vulnerable social groups, a welfare policy measure as well).

The measure significantly stimulated price competition and contributed to curbing food inflation, which fell to 1% on an annual basis.⁸⁵ Mandatory promotions and the online price monitoring system together played a significant role in reducing Hungarian inflation to single digits and later to around 4%. The government phased out mandatory promotions on July 1, 2024, but continues to operate the online price monitoring system in order to maintain price competition.

4.5.7 Online price monitoring

The online price monitoring system is a free online database operated by the government and the Hungarian Competition Authority (GVH),⁸⁶ which aims to enable consumers to compare the prices of food products at major retail chains (six retail chains, 1,231 stores nationwide). Within the fiscal policy framework, the online price monitoring system can be interpreted as a competition policy measure and a tool for market regulation and consumer protection, as it increases price transparency, helps reduce overpricing, and stimulates competition in the market. Online price monitoring is more of a regulatory and supervisory fiscal tool, which aims to stabilize price levels and keep consumer spending under control through indirect state intervention, thereby representing a moderate fiscal burden and contributing to macroeconomic stability. This type of intervention contributes to economic sustainability without resorting to direct financial transfers.

The system was launched on July 1, 2023, and its impact on the market has been growing steadily since then. Retail chains with net sales exceeding HUF 100 billion per year are required to provide data. It basically lists prices in over 60 product categories, and has since expanded to 100 categories and thousands of products.

⁸⁵ Ministry of National Economics, 2024

⁸⁶ Hungarian Competition Authority, 2023

The online price monitor strengthens competition between retail chains, promotes price moderation, and protects the interests of consumers.⁸⁷ It makes shoppers more informed, increases consumer awareness and price sensitivity, as the system enhances consumers' access to price and product information, and saves shoppers money and time.

As a result, retail chains have become more competitive and have essentially switched to daily price reductions. According to calculations, the online price monitoring system reduced food inflation by 1.11 percentage points between the end of July 2023 and February 2024.⁸⁸ The most significant and monetarily measurable impact of the system was during the winter months. Between December 2023 and February 2024, the online price monitoring system reduced food inflation by an average of 1.45 percentage points. This represented savings of HUF 19.4 billion for Hungarian households during the three months under review.

The system has also attracted international interest. In Slovakia, for example, a similar system based on this model will be introduced in July 2025.

It is important to note that in its 2025 country recommendations, the European Commission calls on Hungary to increase competition in the goods and services market, particularly in the retail sector. The domestic tool for this has been the online price monitor since 2023.

4.5.8 Margin restriction (margin freeze)

The margin freeze is a fiscal measure in Hungary. It came into force on March 17, 2025, and is currently valid until February 28, 2026. The margin freeze limits the gap between the purchase price and the selling price.⁸⁹ According to the rule, the margin may not exceed the average margin applied in January 2025 and may be no more than 10% for the food categories concerned. The government later extended the margin freeze to other products: from May 19, the measure will also target drugstore chains selling household goods, with a maximum margin of 15% on certain products.

The margin freeze in Hungary applies to retail stores with annual net sales exceeding HUF 100 billion. The stores affected are retail chains that fall into this revenue category, so not all small shops or local stores are required to apply the margin cap, but mainly large chains that are in a dominant market position.

⁸⁷ See MNB's deep analysis on actors behind domestic food inflation

⁸⁸ Hungarian Competition Authority, 2024

⁸⁹ Horváth – Pásztor, 2025

The aim of the regulation is to prevent the largest players in the market from applying unreasonably high margins on basic food and drugstore products (and making unreasonably high profits), thereby protecting Hungarian families from unfair price increases by multinational companies.

The margin freeze is a fiscal regulatory tool, specifically a pricing and competition policy tool (and indirectly, through its support for the most vulnerable social groups, a welfare policy tool) which, as part of the fight against inflation, limits margins at the retail level, thereby indirectly moderating consumer prices. This reduces inflationary pressure and increases purchasing power, while the state does not intervene with direct budgetary expenditure but limits the profits of market players. Overall, it prevents the emergence of profit-driven inflation (price-profit spiral).

In its 2025 country-specific recommendations, the European Commission criticized Hungary's margin freeze measure, primarily because it targets foreign-owned retail chains, which could violate the freedom of economic activity and result in unequal treatment. According to the European Commission, margin restrictions lead to market distortions and competitive disadvantages.

At the same time, the margin freeze is legitimate and necessary from an economic policy perspective, as the measure aims to quickly and effectively counteract high food inflation, which directly and severely affects families, especially those in the lower income brackets. The government considers it a temporary crisis measure that supports families and buys time for deeper economic reforms.

The margin freeze is part of the Hungarian government's economic policy in the sense that, in order to stabilize the economy and protect the population, preserve and increase their purchasing power, the prices of basic products are centrally controlled, moderating inflationary pressures. This price control tool is also linked to welfare policy and is part of a complex package of price and market regulation measures that the government is using to reduce the burden on the population while stimulating domestic consumption and protecting consumers. The margin freeze is also a more targeted tool that is better aligned with market processes.

Before the measure was introduced, it was suggested that retailers would reduce the quantity of loss-making goods in order to minimize their losses,⁹⁰ but the government ruled out this possibility by stipulating that the quantity of goods sold in the selected product groups could not be less than the quantity sold previously. Although price freezes can theoretically cause shortages, this is not the case with this measure, as the 10% margin gives retailers the necessary leeway to make a profit.

⁹⁰ Exterde, 2025

Following its introduction, it led to a significant price reduction for the products concerned.⁹¹ According to an April survey – based on online price monitoring data – around 1,000 products became cheaper, by an average of nearly 20%. The system supports the increase in the purchasing power of the population, while also helping to curb overall inflation, protecting the most vulnerable social groups. Contrary to earlier expectations, retailers are not passing on their losses to other products, and cross-pricing is not typical.⁹² Under the impact of the measure, suppliers have not raised their prices on average, so the prices of margin-capped products have remained realistically low.

Several international examples⁹³ demonstrate the legitimacy of margin freeze, as this method of price regulation is a well-known market regulation tool across continents.

- In France, for example, in 2018, during Emmanuel Macron's first presidential term, the EGAlim regulation set a minimum profit margin of 10 percent for retailers of food products. The aim of this measure, which at first glance seemed illogical and price-driving, was to support the country's farmers. In order to protect the interests of food producers, the extent of in-store promotions was also limited; a maximum of a quarter of the quantity sold could be sold at a discount of up to a third of the original price. In order to gain a competitive advantage that would make small shops unviable, wholesalers (the five largest retail chains together have a market share of over 80 percent) were also forced to artificially increase their profit margins.
- In Israel, the profit margin on basic food products (bread, milk, salt, butter, eggs) has been limited to between 4 and 6 percent since 1956. The range of products covered by the regulation varies depending on the rate of price increases.⁹⁴ Although the regulation is similar to the Hungarian version that is now temporarily in force, it differs in that it does not set a specific maximum profit margin, but rather a committee consisting of officials from the Ministry of Economy and Finance (and in some cases the Ministry of Health) and representatives of the sectors concerned, and interest groups. (Generally, a profit margin of 4-6 percent is left to retailers.)
- At the end of 2024, North Macedonia also limited the profit margin for 102 product groups, representing a total of more than 1,000 products.⁹⁵ For flour, eggs, and oil, the profit margin

⁹¹ Erdélyi, 2025c

⁹² Szász, 2025

⁹³ Horváth – Pásztor, 2025

⁹⁴ See Israel's Ministry of Economy and Industry's data on prices of price-controlled consumer products

⁹⁵ Koha.net, 2025 (February 18th)

cannot exceed 5 percent; for meat and canned foods, for example, it cannot exceed 10 percent; and for hygiene products, vegetables, and fruits, it cannot exceed 15 percent.

- In addition to basic consumer goods, many countries apply profit margin restrictions to certain types of insurance. One such service in Switzerland is the health insurance system that provides basic medical care, from which financial institutions cannot profit. Another service area characterized by restrictions on insurers' profits is compulsory motor vehicle insurance.
- Outside Europe, it is worth mentioning Argentina, Brazil, Pakistan, and India, where profit margins on basic food products have been restricted, at least temporarily, over the past decade.

4.5.9 Voluntary price reductions

In 2025, the government held talks with several major market players to encourage them to voluntarily reduce (or freeze) prices. This is considered a soft regulation within competition policy instruments. It requires the constructive participation of market players and allows for flexible market adaptation, but is less effective when profit interests are strong.

On one hand, as a result of government negotiations,⁹⁶ telecommunications⁹⁷ and financial⁹⁸ service providers, as well as insurance companies,⁹⁹ have voluntarily frozen their prices. The positive effects of this have been visible since spring, with the annual inflation rate for services slowing down steadily. Telecommunications providers have agreed not to raise internet, television, and mobile phone subscription fees until July 1, 2026, or, where they have already raised them, to return them to their levels at the beginning of the year. In the case of insurance companies, an agreement was reached to freeze home insurance premiums between July 1, 2025, and June 30, 2026, meaning that insurance premiums will not increase during this period, provided that the insurance coverage remains unchanged.

Voluntary price restrictions were also introduced on July 1 for certain medicines as a result of government negotiations with industry players (34 high-turnover over-the-counter and non-prescription medicines and 10 prescription medicines that are not subsidized).¹⁰⁰ Under the

⁹⁶ See Portfolio.hu's article on April 4th, 2025a

⁹⁷ See Portfolio.hu's article on April 4th, 2025b

⁹⁸ See Portfolio.hu's article on March 29th, 2025

⁹⁹ Tar, 2025

¹⁰⁰ See Origo's article on July 7th, 2025

commitments, the prices of the medicines concerned will be voluntarily reduced to their December 31, 2024 levels and will remain in effect until the end of June 2026.¹⁰¹

4.6 Windfall taxes

The European Semester's 2025 country-specific economic policy recommendations do not directly mention the complete rejection of windfall taxes. However, they indirectly refer to their inappropriateness. According to the report, Hungary should rely less on taxing exceptionally high returns caused by temporary, extraordinary market conditions. Special taxes are criticized not only for their financial unsustainability but also for their distortive effect on competition. This tax policy measure gives certain companies a market advantage, while putting others at a disadvantage. They argue that sectoral special taxes distort the Hungarian tax system, discourage corporate investment, reduce legal certainty, and undermine the long-term predictability of market trends.

Improving the predictability of the Hungarian tax system is a recurring theme in the European Commission's economic policy recommendations. To this end, they are calling for the abolition of special taxes and temporary windfall taxes.

A windfall tax is a special tax imposed by the state on corporate taxpayers in cases where a company makes unexpectedly large profits that are significantly higher than those justified by market forces. This is usually due to an emerging crisis, a short-term decline in the number of competitors or market share, or other unforeseeable circumstances. Windfall profits are usually not the result of the company's own risk-taking or development/expansion, but rather the result of external factors. The windfall tax takes away the extra profit that the company made in an unusual market environment. In Hungary, the money collected this way is usually used to fix the causes of the crisis and help out social groups that were negatively affected by it. The Hungarian government's objective is to ensure that companies cannot pass on the economic burden of the windfall tax in full to consumers and customers. The method of calculating the tax rate varies from sector to sector.

In Hungary, a windfall tax was introduced in certain sectors on the basis of Government Decree 197/2022. (VI. 4.), which came into force on July 1, 2022. These sectors included energy, banking and insurance, and retail. The introduction was originally intended to be temporary for the remainder of 2022 and for 2023.

As a result of changes in the global energy market, an energy price crisis unfolded in Hungary in 2022-2023. The main cause of this, in addition to the Russian-Ukrainian war, was the restructuring

¹⁰¹ Uo.

of the international crude oil and natural gas supply system due to several armed conflicts in the Middle East. This shift in focus was compounded by sanctions imposed in response to Russian aggression. The situation was further exacerbated by the OPEC organization, which brings together the largest Middle Eastern oil-exporting countries, keeping global oil prices artificially high by cutting production quotas. In this situation, large Hungarian energy companies found themselves in a privileged position thanks to cheap oil from Russia. Taking advantage of this competitive edge, Hungarian energy companies made significant windfall profits. The Hungarian government used the funds collected from special taxes on oil refineries, fuel retailers, and other energy suppliers (electricity and gas providers) to maintain utility price reductions for households. As a result of the reduction in household energy bills, Hungary has the lowest proportion of people living in energy poverty in the European Union.

Mostly due to rising energy prices and changes in consumer behavior caused by the coronavirus pandemic, all countries in the European region were hit by a two-year period of inflation. In the fight against inflation, the European Central Bank and other central banks on our continent raised their base rates. Through monetary transmission, this has led to an increase in the overall interest rate environment. As a result, the returns of banks and insurance companies have also increased.

During the period of inflation, players in the retail sector also made windfall profits. Their additional income was boosted by the so-called price-price spiral, i.e. when, without being justified by an increase in corporate costs, all companies raise their prices, hiding behind the price increases of other market players. Consumers are more forgiving of these deliberate price increases. The sector's extra revenue was further boosted by the weak competition within the sector, which is characteristic of the whole of Europe. In most EU countries, a significant part of the market within the retail sector is covered by only a few companies operating in an oligopolistic market structure.

The windfall tax is not unique to Hungary; it is applied in many countries across Europe. According to The Tax Foundation Europe and Oeconomus' own compilation, the following countries have introduced a windfall tax:

- During the 2022-2023 energy crisis, Poland also applied a sectoral surtax, mainly on energy market players.
- In the Czech Republic, a 60 percent windfall tax was imposed on the energy and banking sectors.
- A similar special tax is levied on interest income in Lithuania.

- In Spain, a 4.8 percent special tax was also imposed on interest income. In this Mediterranean country, companies with annual revenues of at least €1 billion were also subject to a 1.8 percent windfall tax in the energy sector.
- In Slovakia, a 30% special tax was introduced in 2024 due to outstanding interest income, raising the effective tax burden on the sector to 45% by 2027.
- Similar to Hungary, Italy has also imposed special taxes on the energy and financial sectors.
- In addition to these countries, the United Kingdom and Germany have also considered introducing sectoral special taxes in recent years. In the UK, it would have been applied to fuel traders, while in the EU's largest economy, it would have been applied to LNG traders and renewable energy producers.
- In France, a regulation similar to the windfall tax was planned: companies employing at least 5,000 people would have been urged to use their outstanding profits to reward their employees instead of buying back shares to drive up the share price.

In Hungary, this is not the first time that a sectoral special tax has been introduced in the last three years. During the European sovereign debt crisis between 2010 and 2012, a bank tax and an energy tax were introduced to improve the budget balance.

Despite the recommendations of the European Commission, the Hungarian government has repeatedly extended the windfall taxes imposed at the beginning of January 2022 in recent years. In the summer of 2024, they signaled their intention to phase out special taxes affecting the pharmaceutical and telecommunications sectors.

The Tax Foundation compiles an annual summary of windfall taxes.¹⁰² In March 2022, due to rising energy prices, even the European Commission recommended the use of windfall taxes in connection with the REPowerEU program.¹⁰³ In October of the same year, the Council of the European Union also accepted the proposal to introduce a special tax on energy producers operating with exceptionally high profit margins.¹⁰⁴ Energy sources operating with such high margins include renewable energy sources, nuclear power plants, and lignite-fired power plants. The windfall tax was called a "social contribution" and was distributed among energy companies using fossil fuels, which were struggling to cope with the significant increase in fuel prices. Sixteen

¹⁰² Enache, 2025

¹⁰³ Communication From The Commission To The European Parliament, The European Council, The Council, The European Economic And Social Committee And The Committee Of The Regions-REPowerEU: Joint European Action for more affordable, secure and sustainable energy

¹⁰⁴ Council of the European Union's press release on September 30th, 2022

of the 27 Member States collected the predetermined higher profits. To date, in addition to Hungary, the Czech Republic, Lithuania, Romania, Slovakia, and Spain have maintained the special taxes that were imposed on the energy sector at that time.

4.7 Housing market

In Hungary's case, the housing market and housing policy played a role in these recommendations in several respects, as the affordability and sustainability of housing is a fundamental socio-economic goal. Hungarian housing policy received less emphasis in the 2024/2025 European Semester, but it was nevertheless criticized on several points.

The real estate sector has traditionally been considered one of the key sectors of the national economy, ensuring stability and growth. In recent years, the Hungarian government has contributed to this with a number of social policy measures, primarily aimed at helping young people and families in Hungary to purchase real estate:

- Family support programs (e.g., CSOK, Home Renovation Support)
- Discounted home loans (e.g., Otthon Start Program)
- Tax breaks (e.g., income tax exemption for mothers)
- State construction programs (e.g., Housing Capital Program)
- Conversion of previous foreign currency-based loans into forints, thereby facilitating their repayment

The Hungarian real estate market has gone through many difficult periods. Following the change of regime, there was a severe slump in the sector, then from the upturn in the 2000s we reached the 2008 global financial crisis, which hit our country at the end of that year and really took effect in 2009. Our gross domestic product fell by 6.7 percent, and the housing market and lending suffered a significant decline, which was further exacerbated by the foreign currency loan crisis. Under left-wing governments, the country accumulated a significant amount of foreign currency-denominated debt, which brought with it considerable instability, and they were unable to deal with the resulting crisis.

A total of 1.2 million Hungarians fell into the debt trap, with a combined loan portfolio worth HUF 5,000 billion. Following the crisis, a slow but steady correction began in 2012. The volume of investments gradually increased, and the number of housing market transactions reached a decade-long peak in 2015. The new Fidesz government considered it a priority to mitigate the after-effects of the change, which it did through a number of social policy measures: in 2015, it introduced the

family home creation discount (csok), and in 2016, it reduced the VAT on new homes from 27 percent to 5 percent. The final step in crisis management was the conversion of foreign currency loans into forints in 2015, which affected around half a million mortgage contracts. This measure significantly reduced the vulnerability of the banking system and the country, allowing the Hungarian economy to return to a stable growth path.

Apart from the temporary shock caused by the Covid-19 pandemic, the Hungarian housing market has grown steadily over the past decade and a half. Demand has increased significantly, driving up property prices, and although supply has been slow to adapt to the new circumstances, the Hungarian government is consciously working to stabilize the real estate sector through housing construction programs and new investments.

4.7.1 EU recommendations on housing policy

Hungarian housing policy was raised in several points in the country-specific recommendations of the European Semester (and in the Commission's country report preceeding them). The 2024/2025 recommendations placed particular emphasis on reducing "market distortions." For example, in its recommendations, the Council suggested that Hungary should gradually remove the remaining price and interest rate caps and implement targeted measures to support low-income households in the housing sector. (A combined reading of the two recommendations suggests that the aim is to abolish the preferential 5% APR cap and gradually phase out any state-subsidized loan schemes.) The country report also emphasized that the proportion of Hungarian households spending more than 40% of their income on housing has increased, which the preamble to the recommendation attributed to the "lack of targeted support." Overall, the EU's recommendations focused on macroeconomic sustainability and increasing market competition, pointing out that state subsidies for the Hungarian housing market could have a market-distorting effect in the long term. The approach adopted by the Commission and the Council is deficient in several respects, as it fails to take sufficient account of the specific features of the domestic housing market, financial considerations, and the functions of subsidised schemes. Consequently, the recommendations endorse a housing structure and incentive system that do not fully align with the domestic housing model and the legitimate social preferences associated with it.

4.7.2 Hungarian response and measures

For years, the Hungarian government has consistently maintained its position that this level of state intervention is necessary to improve the standard of living of the Hungarian population, with particular regard to young people and families or those wishing to start a family.

Accordingly, a number of support programs were introduced or expanded in the period 2020-2025, many of which stimulate not only the demand side but also the supply side. Among these, it is worth mentioning the following:

- 5% VAT: Between 2016 and 2019, and then again between 2021 and 2026, a value added tax of only 5% was introduced for newly built apartments.
- Rural CSOK: Launched in 2019, the Rural CSOK provides non-repayable subsidies for housing construction and renovation in small settlements.
- Housing Capital Program: In December 2024, the government announced the New Economic Policy Action Plan, which also included the Housing Capital Program. Under this program, the state will provide HUF 300 billion in direct subsidies (non-repayable state aid) to real estate development funds. The multiplier effects of the program could result in HUF 800-1,000 billion worth of housing construction projects. According to forecasts, this could mean 30,000 new homes in the next 3-5 years. The main goal is to build at least 25,000 homes per year in Hungary again. The real estate funds that win the tender can use the funds not only for residential properties, but also for the construction of social housing and dormitories.
- In the case of residential construction, construction and property acquisition will be exempt from tax (from 2023).
- In January 2025, the Rural Home Renovation Program was launched in settlements with fewer than 5,000 inhabitants, under which applicants can obtain a non-repayable grant of HUF 3 million and an interest-subsidized loan of HUF 6 million.
- Finally, there is the Home Start Program (OSP), the most significant state program to date. From 2025, real estate developments with at least 250 apartments, in which at least 70 percent of the apartments meet the OSP criteria, will become priority investments for the national economy. The projects concerned will be subject to a faster and simpler legislative procedure, reducing the administrative burden on companies and the time required for processing, and they will also benefit from other simplifications.

International overview

Some aspects of Hungarian housing policy differ from most Western European practices. While many EU Member States rely mainly on rental housing programs and social housing subsidies, Hungary uses both household subsidies and market incentives. This is no coincidence, as Hungary

has one of the highest rates of home ownership in the world: more than 90 percent of the population owns their own property.

The wide range of tax breaks and subsidies tailored to homebuyers (e.g., CSOK) and interest-subsidized loans constitute a level of state intervention that few EU countries can match. Programs promoting property ownership, which are characteristic of Hungary, are less common in Western Europe, where tenant support schemes are more typical. Nevertheless, several EU countries have introduced various forms of family support, but the combination of domestic instruments is much more diverse and provides more favorable conditions for millions of Hungarians.

The Hungarian housing market and housing policy have taken on a prominent role in recent years, mainly with a view to providing housing for young people and families. The government is promoting home ownership through a number of measures (CSOK, Home Start Program, etc.), while the EU is urging the elimination of market distortions by abolishing these schemes and introducing targeted measures to support low-income households. New programs, such as the Housing Capital Program, aim to expand supply and accelerate housing construction. The Home Start Program, the most significant scheme in the history of the Hungarian real estate market, plays a major role not only in stimulating demand but also in expanding supply. If the effects of Home Start are as expected, an upturn may begin. The Home Start Program could undoubtedly be an important milestone in the history of the domestic real estate market, with a significant impact on the housing market in the short term and on the economy as a whole in the longer term. For this reason, the Hungarian government is consistently standing by its current housing policy, which has provided significant assistance to tens of thousands of Hungarian families over the past 10 years.

4.8 Tax system

The EU is not a general tax authority: taxation is, as a general rule, a matter for Member States, and the EU may only intervene on the basis of powers expressly conferred on it by the Treaties. In practice, this happens through three main channels: (i) indirect taxes: this is where the EU has the strongest influence (VAT, excise duties), (ii) direct taxes: limited EU competence (corporate tax, personal income tax), (iii) negative integration: restrictions on Member State tax rules. In other words, the European Union has limited powers with regard to the tax systems of Member States. For certain types of taxes (consumption taxes and other indirect taxes), directives are adopted by unanimous decision of the Council. For example, in the case of excise duties, the minimum tax rate for the products concerned and, in the case of VAT, the number and minimum value of reduced rates. The purpose of the directives is to ensure competition and harmonize the internal market.

With regard to indirect taxes, the European Union's objective is to harmonize Member State regulations. However, the actual determination of tax rates is the responsibility of the Member States. In contrast, the European Union's objective with regard to direct taxes (e.g., income tax, corporate tax) is convergence. Examples of this are the system of taxation applicable to parent companies and subsidiaries, the Interest and Royalty Directive, or the Directive on the tax treatment of mergers of companies. Apart from these, tax legislation is largely the responsibility of the Member States' legislators.

In the case of Hungary, in recent years the Commission and the Council have regularly addressed the high budget deficit, "unorthodox" sectoral special taxes, subsidies for fossil fuels, and the fact that the tax-transfer system only reduces income inequalities to a limited extent. This framing reflects the Commission's and the Council's own evaluative framework, which cannot be regarded as convincingly substantiated in several respects.

At the same time, the Hungarian government consistently describes its economic policy narrative as a "work-based society," a "family-friendly tax system," and a "competitive, low-tax rate model." This raises the question of what the latest (2025) European Semester recommendation says about Hungary from a taxation perspective.

The 2025 recommendation does not formally prescribe "tax reform," but rather sets out six points of economic, employment, and social policy recommendations. Several of these have direct or indirect tax policy implications.

4.8.1 Fiscal path, deficit, and tax system

Recommendation 1 concerns fiscal policy: Hungary must adhere to the net expenditure path approved by the Council in February 2025 in order to eliminate the "excessive deficit" in its budget. Most of the energy price support measures should be phased out. The medium-term budgetary framework should be strengthened, and discretionary in-year budgetary adjustments should be limited.

From a tax system perspective, this sends the message that: (i) fiscal balance cannot be based on ad hoc tax measures in the long term, (ii) government spending and tax revenues must be placed within a medium-term, predictable framework, as opposed to tax and subsidy rules that often change from one year to the next. The 2024 country report and the summary of the 2025 report show that the expansionary policies of recent years – tax cuts, pension and wage subsidies, price and interest rate freezes – have simultaneously boosted consumption but also increased inflation, deficits, and debt burdens.

4.8.2 Social justice and the Hungarian tax system

One of the findings in the explanatory memorandum to the 2025 recommendation is that the Hungarian tax system favors high-income households, with a significant proportion of social benefits coming in the form of tax credits, while the lowest benefits (e.g., employment replacement benefits) are very low by European standards, and benefits slightly reduce poverty and inequality. Point 6 of the recommendation therefore explicitly calls for: (i) an increase in the level of social assistance and unemployment benefits, improved access to basic services (health, housing, energy), and housing subsidies targeted more towards low-income households.

Translated into tax terms, according to the EU, in the current Hungarian model (i) an increasing proportion of the flat-rate personal income tax and family allowances goes to households where earnings are already high (and there is something to "write off"), (ii) in contrast, very low-income groups – who have almost no taxable income – receive relatively little direct support. The Commission suggests that the Hungarian tax and transfer system is overly biased towards the middle class and higher-income families and does little to reduce social exclusion.

4.8.3 Sectoral special taxes, competition, and legal certainty

In the reasoning accompanying the Commission's 2025 recommendation, the Commission presents the facts in a distorted manner and identifies as leading weaknesses of the Hungarian business environment (i) the complexity of administrative procedures, the unpredictability of legislation, including frequent amendments and the "permanent state of emergency", and the growing role of sector-specific taxes. At the same time, the assessment is generalising in nature and distorts the overall picture by disregarding the domestic economic policy environment.

Specifically, sectoral taxes accounted for approximately 2.7% of GDP in 2023, mainly affecting sectors such as banking, energy, wholesale, retail, telecommunications, and insurance. According to the Commission, these taxes disproportionately affect large, often foreign-owned companies and make the tax system complex and fragmented. In line with this, the Commission is also critical, albeit cautiously, of the special retail tax, which it is investigating on the basis of a complaint lodged by the Austrian company Spar and the Austrian government to determine whether the tax discriminates against foreign chains. Recommendation 3 therefore states that Hungary should (i) avoid arbitrary administrative interventions (price freezes, margin caps), not adopt "tailor-made" rules that favor or disadvantage certain companies, reduce the proportion of emergency decree governance, and apply extraordinary measures only to the extent necessary.

Logical conclusion: from a tax policy perspective, the Commission prefers broad-based, horizontal, transparent taxes to sectoral, ad hoc, "crisis tax" levies.

4.8.4 Energy and environmental policy: tax breaks and fossil fuel subsidies

Recommendation 4 relates specifically to energy and climate policy, but has significant implications for tax policy. Hungary remains heavily dependent on Russian gas and oil imports (gas >70%, crude oil >80% from Russia in 2024). According to the Commission, the volume of subsidies supporting fossil fuels is significant, and there is no credible phase-out schedule before 2030. Specifically, they mention (i) the utility cost reduction system, the reduced VAT rate for natural gas-fired district heating, and the excise duty refund on diesel fuel in agriculture.

The Commission considers these to be economically inefficient, not conducive to energy savings and electrification, and a significant burden on the budget. Relying on that position, it recommends (i) the gradual phasing-out of fossil fuel subsidies and the restructuring of excise duties and other tax policy instruments in a way that encourages more environmentally friendly consumption patterns. Yet these proposals are driven not by considerations of policy efficiency but by ideological preferences that may serve to strengthen the Commission's room for manoeuvre and influence. A striking contrast is that the Hungarian government is at the same time planning inflation-indexed tax increases from 2025 onwards, for example on fuels, alcohol and tobacco, primarily for revenue-raising purposes rather than on the basis of an explicit climate-policy rationale.

4.8.5 Capital markets, savings, and taxes

According to the explanatory memorandum, the Hungarian capital market is underdeveloped: stock market capitalization is approximately 18% of GDP (EU average ~68%), and recent measures – such as tax-free retail government securities – tend to crowd out corporate securities investments. Recommendation 3 therefore calls on Hungary to increase tax and regulatory incentives for capital market investments, while strengthening regulatory predictability and competition. The message is clear: the current policy (very favorable government bond taxation + fiscal deficit) prioritizes government financing at the expense of private capital investment, which will hold back productive investment in the longer term.

4.8.6 In contrast, what does the Hungarian government say about the tax system?

The Hungarian government's official documents (convergence program, medium-term fiscal plan) and interpretations appearing in the pro-government press paint a fairly coherent picture of the tax system. Its key concepts are (i) a work-based society, (ii) a family-friendly tax system, (iii) low

taxes for competitiveness, and (iv) sectoral "windfall" taxes to finance crisis management and utility cost reductions.

4.8.6.1 "A tax system that values work" and employment

Based on the convergence program sent by the government to the EU, the government argues that the number of people in employment has increased by about one million since 2010, with employment remaining steadily at around 4.7 million, thanks to the government's consistent reduction of taxes on labour. The specific elements were as follows:

- personal income tax has become a flat rate, currently at a uniform 15%,
- the employer's social contribution tax was reduced to 13% in several steps,
- the 1.5% vocational training contribution was abolished, and its benefits were incorporated into the social contribution tax,
- administration was simplified by combining individual contributions.

According to the government, the reduction in tax rates has increased employment, contributed to the "whitening of the economy," and made the system significantly simpler.

4.8.6.2 Family-friendly tax policy and demography

A central element of the government's narrative is the enforcement of family and demographic policy through taxation: (i) family tax allowances for children (on personal income tax and social contributions) – the more children, the greater the tax base reduction, (ii) increased allowances for families raising chronically ill or severely disabled children, (iii) allowances for first-time married couples, (iv) personal income tax exemption for mothers raising four or more children, (v) personal income tax exemption for young people under 25, (vi) personal income tax exemption for mothers under 30.

According to the government, these measures help to encourage people to have children earlier, improve the financial situation of households with several children compared to those without children, and contribute to the development of a "family-friendly social model." Beyond this, the tax policy dimension is also strong in the area of housing, with the exemption from stamp duty on homes purchased with CSOK and the introduction of the CSOK Plus interest-subsidized home loan. According to the convergence program summary, "thanks to the discounts and subsidies, families have higher incomes, which helps the convergence of households with children.

4.8.6.3 Low corporate tax and competitiveness

The government consistently communicates that Hungary has had a flat corporate tax rate of 9% since 2017, which is the lowest in the EU, and that this rate is an important tool for attracting foreign investment and competitiveness. According to the government narrative, the low corporate tax rate, moderate employer contributions, and—at least at the legislative level—simple structure (flat-rate personal income tax, unified contributions) together show that Hungary's tax system is competitive and investor-friendly.

4.8.6.4 "Windfall taxes," defense contributions, and sectoral levies

One of the most controversial elements of the Hungarian tax system is the "windfall tax"/sectoral special tax package introduced in 2022. In Government Decree 197/2022, the government imposed temporary special taxes on windfall profits in several sectors (banks, energy, retail, insurance, telecommunications, airlines, etc.), with the aim of collecting approximately HUF 800 billion additional revenue per year, promising to use it to maintain utility price reductions and finance national defense/funds.

The Prime Minister and the government communicated this as meaning that banks, energy companies, and other affected sectors had realized "windfall profits" due to the energy price explosion, inflation, and the cycle of interest rate hikes, so it was "fair" that they should bear a greater share of the burden of "wartime" in order to protect households (utility cost reductions) and increase defense spending. Although these taxes were originally intended to be temporary for 2022–2023, the government has extended them to several sectors beyond 2024 and introduced a new "defense contribution," while signaling a gradual phase-out of special taxes on the pharmaceutical and telecommunications sectors from 2025, but maintaining levies on banks and retailers. The government therefore considers these taxes to be a targeted crisis management tool, which is both a source of revenue and a political message to "multinationals" and "companies generating windfall profits," but at the same time has attracted significant criticism from the banking sector and investors for its unpredictability and "punitive nature."

4.8.6.5 Deficit reduction, tax increases, and the macroeconomic framework

According to the government's convergence program and communications, growth is expected to be around 2.5% in 2024 and 4% in 2025, with the GDP-to-deficit ratio gradually falling to around 3%, while the public debt ratio is expected to be around 63% by 2028. As part of this, the government promises to cut spending, but at the same time it will introduce inflation-linked increases on several taxes (e.g., fuel, alcohol, tobacco, and vehicle taxes), extend some sectoral

taxes, and impose new burdens (e.g., foreign exchange transaction fees). The government is therefore sending the message that it will not withdraw tax cuts on taxes that “burden labour” (personal income tax, social contributions), but will concentrate additional burdens on narrow, well-defined sectors in order to achieve fiscal balance.

4.8.7 European Semester and the government's position

According to the EU the aim of the European Semester is to coordinate EU economic and fiscal policies in order to ensure sustainable growth, stability and sound public finances, prevent excessive imbalances and budget deficits, and provide guidance to Member States on how to address economic and social challenges. It also points out that the main objectives of the tax system are macroeconomic stability, sustainable (green) growth and social inclusion. Accordingly, the tax system should ensure deficit and debt control, avoid excessive distortion of market competition, reduce inequalities, and support the green transition. In contrast, according to the Hungarian government, the main goal is a work-based society and demographic turnaround. To this end, the tax system should encourage employment, support families raising children, and make the country competitive (through low tax rates).

The EU tends to prioritize a "horizontal" and progressive model, while the government favors a "targeted, family- and work-oriented" model. The two perspectives are not necessarily mutually exclusive, but the practical emphases differ markedly.

4.8.7.1 Structure of the tax system: horizontal vs. sectoral

In the EU, the principle is a broad tax base, few exceptions, and few sectoral surtaxes. In contrast, the Hungarian system has too many sector-specific levies (2.7% of GDP), which complicate the system and particularly affect large, often foreign-owned companies, while the perpetuation of extraordinary legal regulations ("states of emergency") causes legal uncertainty for companies.

The Hungarian government's principles include keeping basic taxes (personal income tax, social contributions, corporate tax) low and simple, and that sector-specific taxes should be seen as a crisis management tool, temporary and targeted, which places the "burden of wartime" on companies realizing windfall profits, protects households from market prices (financing utility cost reductions), and contributes to the financing of national defense objectives.

In the eyes of the EU, these windfall taxes constitute systemic distortion, while in the eyes of the Hungarian government, they are a tool of political and economic justice. The two sides view the same phenomenon (special taxes) within completely different conceptual frameworks.

4.8.7.2 Justice and redistribution

According to the EU, the Hungarian tax and transfer system has a limited impact on reducing poverty and inequality, with significant shortcomings particularly in the areas of child poverty and minimum income benefits. The tax system favors higher-income households, as they are the ones who can take full advantage of tax breaks. In contrast, according to the Hungarian government's narrative, family tax breaks and exemptions improve the relative situation of families with children, while work-related benefits (tax breaks for employees, targeted social contribution allowances) follow the principle of "work instead of welfare," and the social policy goal is not to strengthen income redistribution in general, but to give preference to those who have children and work.

The EU speaks the language of "social rights" and "inclusion," while the government speaks the language of a "work-based society" and "family support." In practice, this means that the EU would increase minimum benefits and non-work-related benefits, while the Hungarian government would rather expand tax breaks for employees and families.

4.8.7.3 Competitiveness and business environment

The Hungarian government emphasizes that low corporate taxes, declining employer burdens, and the creation of thousands of jobs together prove that the environment is investment-friendly, and that "strategic agreements" and individual subsidies are part of a successful investment attraction policy. The Commission measures competitiveness in terms of the general business climate, stable regulation, and competition; the government, on the other hand, considers the volume of large investments and low tax rates to be the main indicators of competitiveness.

4.8.7.4 Green transition: taxes, subsidies, and energy structure

The EU criticizes Hungary for its long-term fossil fuel subsidies, urges it to reduce its dependence on gas and oil, and calls for the gradual phasing out of fossil fuel subsidies (utility price reductions, VAT relief on gas, diesel excise duty refunds). The Hungarian government treats utility price reductions as a national policy achievement and, instead of phasing out fossil fuel subsidies, has so far financed low residential energy prices with sectoral taxes, framing its energy policy primarily in terms of security of supply and utility price protection rather than "green" tax policy.

According to the EU, the tax system should rationalize fossil fuel consumption from both a budgetary and climate policy perspective; according to the Hungarian government, utility cost reduction is a cornerstone of protecting living standards, which would be politically and socially difficult to abandon.

The Hungarian government's narrative emphasizes that (i) taxes on labour have been reduced, (ii) the tax system is family-friendly, (iii) Hungary has the lowest corporate tax rate in Europe, and (iv) sectoral taxes are fair "windfall profit levies" that finance household protection and national defense spending.

These two perspectives are not entirely compatible. The EU expects a horizontal, rule-based, progressive, and green-oriented tax system, while the Hungarian model is based on targeted, family- and work-oriented tax breaks and special taxes focused on narrow sectors, while maintaining fossil fuel subsidies.

What is new about the 2025 recommendation is that it incorporates the general criticisms of previous years (special taxes, poverty, fossil fuel subsidies) into the renewed EU fiscal framework. This means that the debate surrounding the Hungarian tax system is not only a matter of policy, but also a test of the EU's joint economic governance.

4.9 Labour market

4.9.1 Work-based society

Since 2010, the Hungarian government has been treating the concept of a "work-based society" as a conscious and comprehensive economic and social policy guideline.¹⁰⁵ Its main feature is that, instead of a welfare-based society, it prioritizes work, job creation, and employment, emphasizing the moral and material value of work and its role as the foundation of social order. The essence of a work-based society is that work should provide opportunities for individual and family prosperity. The state links family support and tax breaks to work, and welfare benefits are minimized, with the aim of reintegrating people into the labour market. The moral value of work and its ability to provide a decent livelihood are central elements, which are also linked to Hungarian Christian social traditions. The development of a work-based society has made work attractive and has also reached out to groups that were previously excluded from or inactive in the labour market (e.g., women, students, young workers, older workers).

Several economic action plans and measures have been introduced to create jobs, including tax breaks, public employment programs, and incentives for foreign investment.

Hungary's public employment program has been one of the largest labour market and social tools since 2010 for the employment of the long-term unemployed and disadvantaged groups.¹⁰⁶ As a result of the restructuring of public employment, the public work program, public service work,

¹⁰⁵ Nagy, 2024

¹⁰⁶ HETFA Research Institute, 2018

and public benefit work were discontinued on January 1, 2011, and replaced by a unified public employment system.¹⁰⁷ This employment relationship provides job opportunities with state support, mainly in settlements where there are few or no jobs on the open market.

The primary objective of public employment is to help people living in poverty and social exclusion who are eligible for employment replacement benefits during their period of public employment so that they can take up employment in the primary labour market. The funds provided have not only enabled the involvement of thousands of disadvantaged job seekers in public employment, but have also ensured and continue to ensure the development of municipalities (through community development and value-creating tasks, e.g., road maintenance, waste disposal, agricultural production). At the peak of the program, in 2015-2016, nearly 250,000 people were employed in public works on a monthly basis. From 2017, this number gradually decreased, but the program did not end and continues to provide employment opportunities, especially for disadvantaged groups (66,500 people were employed in July 2025).

In addition, several other programs have played a role in expanding domestic employment and activating groups on the margins of the labour market.

- From Work to Work and From Public Employment to the Competitive Sector programs: helping those who have recently been laid off or left public employment to find new jobs.
- Job Protection Action Plan 2013: aimed to preserve jobs and create new ones by reducing the burden on employers, primarily with a view to employing groups at a disadvantage in the labour market, such as those under 25, those over 55, and unskilled workers. The program offered employers discounts on their social security contributions and vocational training contributions, which provided a financial incentive to hire disadvantaged people. The program also helped long-term job seekers get back into the workforce.
- Job protection tax incentives: for the employment of new entrants to the labour market and support for the long-term unemployed. Incentives for the employment of people with changed working capacity (e.g., rehabilitation contribution) and other special groups.
- Under the Economic Protection Action Plan: in 2020, job protection wage subsidies were available to support reduced working hours.
- From 2022, young people under the age of 25 will be exempt from paying personal income tax on their wages.

¹⁰⁷ See Hungary's Ministry of Interior Affairs's information on the current status of Public Work Scheme (PWS) in Hungary

- Workers' loan program: From 2024, young workers aged 17-25 will be able to take out interest-free, freely usable state-guaranteed workers' loans of up to HUF 4 million if they undertake work in Hungary.
- Support for young farmers: special support and grant opportunities for young people starting out in agriculture or becoming new farmers.
- Pensioners' income from employment is subject to only 15% personal income tax, and neither employers nor pensioners themselves have to pay social security contributions.
- Restructuring of fringe benefits, increasing the limits of the SZÉP card from 2012 (accommodation, catering, leisure).
- Simplification of tax administration and tax returns in several stages to reduce the tax burden, simplification of contributions.

In addition to numerous government measures, the reform of the tax system¹⁰⁸ also supports¹⁰⁹ work¹¹⁰ in Hungary: greater emphasis has been placed on consumption and turnover taxes (e.g., VAT, excise duties), as these types of taxes have less distortionary effects on the economy and market functioning. In contrast, taxes (and contributions) on labour and capital cause greater distortion in the decisions of economic actors (labour supply, investments), in the efficient functioning of the market, and thus in economic growth, so these have been reduced; encouraging work (15% personal income tax) and business start-ups and investments (9% corporate tax).

The reduction in taxes and contributions on labour has led to lower production costs, which has stimulated labour demand and improved corporate profitability.¹¹¹ Furthermore, the competitiveness of the entire Hungarian economy has also improved, as lower employer burdens attract foreign companies and investments. The flat tax rate system has reduced the tax burden on work, thus encouraging more and more people (including those with higher incomes) to take up employment.¹¹² Following its introduction – including the impact of other government programs to encourage work – the willingness to work increased, with more and more people leaving their inactive status and starting to work.

Between 2010 and 2024, employment among the population aged 15-74 in Hungary increased by 20%, or more than 800,000 people (4.7 million are employed), while the employment rate rose from 51% to 65.1% in the age group concerned (there was a similar dynamic expansion in the 15-

¹⁰⁸ Shaw, 2021

¹⁰⁹ Miles-Ferretti – Roubini, 2010, pp. 721-744

¹¹⁰ Cohen – Chen – Wang, 2021, pp. 337-378

¹¹¹ Szabó, 2019

¹¹² Erdélyi, 2025b

64 age group, with the employment rate rising from 57% to 75.1%). The number of inactive people (those who are not working and are not actively seeking work) decreased by 1 million. The number of unemployed people decreased by 250,000 between 2010 and 2024, and the unemployment rate halved (from 10.8% in 2010 to 4.5% in 2024, making Hungary the country with the 9th lowest unemployment rate in the EU). Higher employment (coupled with steady wage growth) also increased household disposable income, which stimulated consumption and thus economic growth. As a result, the Hungarian employment rate is higher than the EU average and higher than in many other countries in the region.

4.9.2 Disadvantaged groups in the labour market and support for them

Like Europe, Hungarian society is also ageing. The proportion of people over 65 is 20.5% (below the EU average), and the median age in Hungary is 44.5 years (2024). By 2050, the population is expected to be around 8.5 million,¹¹³ and the proportion of people of working age may fall from 65% to 59%. By 2030, the working-age population may decline by 300,000, meaning that the labour pool from which employers can recruit will shrink. As a result, with the aging of society—in line with European trends—increasing attention is being paid to activating groups in Hungary that were previously on the margins of the labour market (and considered disadvantaged): students, young employees, retired employees, women, parents raising young children, people with disabilities, Roma employees, and the long-term unemployed. Hungarian employers and the Hungarian government are increasingly taking this trend and opportunity into account and have significantly supported (and continue to support) their integration into the world of work in recent years.

Despite the declining number of people aged 15-24,¹¹⁴ the number of economically active people in this age group increased significantly until 2016, and in the following years, economic activity declined at a slower rate than the population decline. Overall, therefore, there are positive developments in the labour market participation of young people, with more and more people in this age group entering the world of work. Within the economically active population, the number of employed persons has increased compared to 2009 (264,000 were employed in 2024) and the number of unemployed persons has decreased (2024: 47,000) in recent years, with labour shortages also playing an important role. In 2024, a stable 30% of the 15-24 age group was employed in Hungary (27.2%), compared to only 18.7% in 2009. Although the unemployment rate for this age group rose in 2023-2024, the stable employment rate also means that more and more

¹¹³ Őri – Szabó, 2024, pp. 183-203

¹¹⁴ See data on the youth employment in Hungary made by Erdélyi on July 4th, 2023

people are starting to actively look for work after being inactive (2012: 27.8%,¹¹⁵ 2024: 15.2%). Young people who have completed their studies (secondary and higher education graduates) have a good chance of entering the labour market: 95% of higher education graduates find work within 1-3 years, while 82% of secondary education graduates do so.¹¹⁶

Numerous government measures and benefits help young people find work (worker loans, social contribution discounts for those entering the labour market, housing subsidies). From January 1, 2022, the income of those under 25 will be tax-free up to the average wage, thus encouraging them to take up employment. If a young person's monthly earnings exceed this amount, they only have to pay personal income tax on the amount exceeding the average wage. As a result, the gross and net wages of most young people are the same.

Thanks to advances in healthcare and the increasing importance of health preservation, not only has life expectancy at birth increased in Hungary, but many members of the older generation are able to reach retirement age in good physical and mental health.¹¹⁷ This allows them to continue working longer than previous generations. In Hungary, the number of people aged 65 and over in employment has been rising steadily and dynamically since 2015: while in 2015 the Hungarian Central Statistical Office (HCSO) recorded nearly 35,000 people aged 65-74 in employment (2025), by 2024, nearly 125,500 people in this age group were working, meaning that their numbers had increased more than three and a half times. Between 2015 and 2024, the number of employees aged 65 or over increased by an average of 15% per year, while for the 15-64 age group, this growth was between 1-2% in the years examined. Furthermore, not only did the number of people over 64 in employment increase – as would logically follow from an aging society – but their employment rate also rose. The employment rate measures the ratio of employed people to the population in that age group. This rate rose from 4.6% (65–69-year-olds) and 2% (70-74 year-olds) in 2015 to 14.6% and 7.2% respectively in 2024 in Hungary, i.e. more than three times higher from 2015 to 2024.

In Hungary, various contribution discounts are used to encourage the employment of pensioners, both on the part of employees and employers.¹¹⁸ From January 1, 2019, the earnings of retired employees are subject only to a 15% personal income tax. This means that their earnings are contribution-free, i.e., they do not have to pay the 18.5% social security contribution, while employers are also exempt from paying the 13% social contribution tax on pensioners' earnings,

¹¹⁵ Uo.

¹¹⁶ See data on the employment rate of young people not in education or training by educational attainment in Hungary made by Erdélyi on June 24th, 2024

¹¹⁷ Erdélyi, 2023

¹¹⁸ See Officina's article: <https://officina.hu/gazdasag/53-nyugdij-melleleti-munka>

which will remain unchanged from January 1, 2022.¹¹⁹ Overall, this means that, assuming an unchanged gross income, the net income of retired employees is 18.5% higher, while the employer's wage costs may be 13% lower than in the case of non-retired employees over the age of 25.

Parents raising young children, especially mothers, are supported in returning to work through a range of benefits and services. Nurseries, where parents can leave their children in safe hands, help mothers return to work. Since 2010, the number of nurseries in Hungary has more than tripled – nursery services are available in 1,130 municipalities, and the total number of nursery places has increased to 65,000.¹²⁰ Parents with young children living in less developed regions can claim a maximum of HUF 50,000 per month per child to cover the costs of nursery or daycare. For families in special circumstances (single parents, refugees, parents raising chronically ill children), this amount may be HUF 65,000 per child. In addition, working mothers are eligible for income tax exemptions and allowances (income tax exemption for women raising three or more children, family tax allowance, employment alongside Infant Care and Childcare Allowance, and tax exemption).¹²¹ Since 2013, the Job Protection Action has been promoting the employment of parents with young children by reducing the wage costs of employers who employ parents with young children, among others (social contribution relief for 2 years).

The Hungarian government has radically transformed its Roma policy, placing emphasis on creating opportunities and economic independence rather than providing welfare assistance, as was the case after the change of regime. Through the introduction of work-based social measures and a change in attitude after 2010, unemployment among Roma fell from 40% to 20% in ten years.¹²² The employment rate among Roma women increased by nearly 10 percentage points between 2015 and 2024 (from 31% to 40%), while the employment rate among Roma men rose from 48.8% to 58.4%.¹²³ Today, 200,000 Roma men and women are employed in the country. According to the data, the rate of public employment among Roma fell from 40% to 15.9%, while the rate of households without employment fell from 30% to 17%, which indicates progress not only in economic but also in social integration. The NEET rate (neither in employment nor in education and training) improved by nearly 7 percentage points among Roma men, and an improvement was also recorded among women. In the case of early school leavers, the opposite pattern can be observed, with the greater improvement being found among Roma women.

¹¹⁹ See Nyugdijguru's article on March 12th, 2023

¹²⁰ See család.hu's article on November 11th, 2024

¹²¹ See család.hu's article on September 19th, 2025

¹²² Olekszij, 2025

¹²³ Szegedi, 2025

Addressing low educational attainment is crucial. The Actively for Knowledge program, which provides more than HUF 10 billion in support to people without basic education, specifically targets Roma communities. The Women's Opportunity initiative strengthens the labour market participation of Roma women, with a particular focus on those living in small settlements. The Opportunity Workshops program offers small businesses the opportunity to provide practical training and create jobs, thereby stimulating the local economy. Scholarship systems that reward better academic performance motivate young people to study. Currently, 90% of Roma have a basic education, and the government's goal is to develop marketable, specific skills: close cooperation between the educational, economic, and social sectors, as well as infrastructure development in small settlements, are essential for lasting success. According to government reports, the 47% dropout rate among Roma youth in secondary school is a serious problem, and targeted education and business development programs are needed. Strengthening the social economy and reviewing public sector careers, such as law enforcement or teaching, could open up new opportunities for Roma.

From a labour market perspective, primarily due to our aging society and the resulting labour shortage, people with disabilities can represent a significant labour market reserve and exploitable labour resource. According to the results of the 2022 Hungarian census, 50% of people who classified themselves as "disabled or severely limited" were employed (according to data from a 2019 international survey, the employment rate of people with disabilities in Hungary is close to the OECD average as well as to the EU average).¹²⁴

In Hungary, persons with disabilities receive various types of support (e.g., disability benefits),¹²⁵ and the state uses various financial and tax instruments¹²⁶ and subsidies to assist and encourage the employment of persons with changed working capacity in the open labour market. Under the rehabilitation contribution scheme,¹²⁷ employers with more than 25 employees must employ at least one person with changed working capacity for every 25 employees (5% quota). If they fail to do so, they must pay a so-called rehabilitation contribution, which is nine times the minimum wage. There are also social contribution tax allowances, whereby a full contribution allowance can be claimed for the employment of persons with changed working capacity. This means that the 17.5% contribution does not have to be paid for persons with changed working capacity up to 200% of the minimum wage.¹²⁸ A corporate tax base reduction item can be applied to companies

¹²⁴ Erdélyi, 2024a

¹²⁵ See Hungary's State Treasury's information on disability benefit

¹²⁶ See ertekvagy.hu's article on primary labor market employers

¹²⁷ See ertekvagy.hu's information on rehabilitation contribution

¹²⁸ Nagy – Szabó – Petrus (2020)

– based on Act LXXXI of 1996¹²⁹ – where the average number of employees does not exceed 20. In the case of employing persons with changed working capacity, the pre-tax profit may be reduced by the monthly wage paid to the employee with changed working capacity, but not exceeding the minimum wage valid on the first day of the tax year. Employment expansion subsidies provide wage-type subsidies to employers who meet the eligibility criteria for the employment of new employees with changed working capacity. In addition to and as a result of all this, more than 560 organizations and businesses of various sizes participate in so-called protected employment in Hungary, which are specifically accredited employers of employees with changed working capacity.¹³⁰ Workplaces receive this accreditation if the employer provides temporary or permanent employment and at least 30% of its employees are persons with changed working capacity.¹³¹

There is a significant negative impact at both the individual and societal levels when an individual has been actively seeking employment for at least 12 months, i.e., when they are long-term unemployed. In Hungary, there were 76,000 long-term unemployed people¹³² in 2024, representing 34.6% of unemployed people aged 15-64.¹³³ In 2010, their number was 230,000, nearly half of all unemployed people. This was due to economic growth, a strengthening labour market, and the government's active labour market policy. Active labour market programs, training, retraining, wage subsidies, and transfers from public employment helped the long-term unemployed reintegrate into the labour market.¹³⁴

In Hungary, severely disadvantaged workers receive wage subsidies if they manage to find a job, in order to promote their employment and facilitate their placement, as employers are sometimes less willing to hire people who have been out of work for a long time.¹³⁵ On one hand, employers who sign a contract with a severely disadvantaged worker can receive wage subsidies for the first four months.¹³⁶ This subsidy amounts to 50% of the disadvantaged employee's wage, and the maximum amount per employee may not exceed 150% of the mandatory minimum wage per month. In return, the employer receiving the subsidy must continue to employ the subsidized employee for two months after the four-month subsidy period. On the other hand, severely

¹²⁹ Hungary's Act LXXXI of 1996 on corporate tax and dividend tax

¹³⁰ See Hungary's Government Offices information on accreditation of employers who employ workers with changed working capacity

¹³¹ See Hungary's Public Procurement Authority's list of protected workplaces

¹³² See the Hungarian Central Statistical Office's data on the number of unemployed persons by duration of job search, by gender

¹³³ See the Hungarian Central Statistical Office's data on percentage of long-term unemployed among unemployed persons aged 15–64

¹³⁴ See egyuttfejlodunk.hu's article on December 17th, 2024

¹³⁵ Erdélyi, 2024b

¹³⁶ Csiszer, 2024

disadvantaged employees may receive a wage supplement equal to 30% of the mandatory minimum wage for the first six months of their employment.

4.9.3 Commission proposals and government position on the labour market

In light of the labour market results and challenges of the past 15 years, it is worth reviewing the Commission's proposals for Hungary. The country-specific recommendations under the 2025 European Semester, without regard to domestic labour market results and the policy instruments already in place, stated that Hungary should “improve access to effective active labour market measures, in particular by providing upskilling and reskilling opportunities for the most disadvantaged groups, and ensure effective social dialogue. Improve the adequacy of social benefits and unemployment benefits and ensure access to basic services for all.” The preambles explain that “(a) the average duration of unemployment exceeds 12 months. The limited duration of unemployment benefits, which is only three months, restricts the time available to find a suitable job or appropriate training opportunities, which increases the risk of low-quality jobs, long-term unemployment, and poverty.”

Two main areas of the Commission's proposals are worth examining from the perspective of Hungarian economic policy: the system of retraining and further training, government support for these, and the situation regarding unemployment benefits. These systems fall under active and passive labour market measures.

The aim of active labour market measures is to help the unemployed return to the labour market as quickly as possible. These include retraining and further training, labour market counseling, job search assistance, wage subsidies and public employment, employment incentive programs such as job creation and business start-up support programs, as well as mentoring and services to help the unemployed integrate into the labour market. These measures actively involve the unemployed, improving their skills and increasing their chances on the labour market, which supports employment and economic growth in the long term.

Passive measures provide financial security during periods of unemployment, but do not necessarily directly encourage a return to work: unemployment benefits (jobseeker's allowance), social assistance, and other cash benefits in the event of unemployment. These benefits provide protection and support to unemployed people, but do not actively promote their integration into the labour market in the long term.

Together, these two elements form the complete set of employment policy instruments, with active measures helping people find work more quickly and passive measures providing social security.

Within fiscal policy, government measures supporting retraining and further training (lifelong learning) are part of active labour market policy and can also be considered strategic training and human capital development measures aimed at strengthening the flexibility and competitiveness of the labour force in the long term. These measures are typically considered fiscal investments that pay off in the longer term. In recent years, the Hungarian government has provided a number of subsidies for workplace training, jobseeker training, and retraining and further training for other disadvantaged groups. All of these were in place before the Commission's proposals. The Hungarian government considers it important that the various training programs reach as many people as possible, especially those who are in a more difficult situation. It is therefore working to make these programs more accessible so that even more people can take advantage of them.

The duration of unemployment benefits in Hungary is relatively short, with unemployed people receiving a 3-month jobseeker's allowance. In terms of its classification, unemployment benefit is basically a passive labour market measure, but since it encourages people to find work as soon as possible, it is also partly an active labour market measure (creating a balance between active and passive elements). It is also linked to elements of welfare policy. The aim of the three-month unemployment benefit is to prevent it from becoming a permanent source of income (unemployed people should not live on benefits) and instead to encourage active job search and employment, and to find work as quickly as possible, which is the basis of a work-based society. At the same time, it should also provide a social safety net for those who have lost their jobs. In addition to jobseeker's allowance, the unemployed can also claim other benefits and services from the state to help them find work as quickly as possible.

4.9.4 The importance and status of retraining and further training in Hungary

Lifelong learning (LLL)¹³⁷ is an essential prerequisite for employees to remain employable, competitive, and mobile in the 21st-century labour market. Lifelong learning is key to successfully adapting to rapid technological (e.g., automation, artificial intelligence, green transition) and social (e.g., aging society) changes. Beyond the individual level, lifelong learning is now also a fundamental social and economic interest: it is one of the keys to the growth, adaptability, innovation capacity, and social well-being of developed countries. According to Eurostat data from 2024,¹³⁸ an average of 14% of adult EU citizens attended training in the four weeks prior to the survey, while 12% of Hungarians did so (ahead of the Czech Republic and Poland).

¹³⁷ Erdélyi, 2025a

¹³⁸ See Eurostat data on participation rate in education and training

In recent years, Hungary has seen development and modernization in the areas of workplace training and adult education. The adult education system has undergone significant changes¹³⁹ in recent years: training courses have become more flexible and better aligned with labour market needs, and there is increasing support for vocational retraining, partial vocational training, and short courses (reskilling and upskilling are also emerging and growing in Hungary). Employers are also playing an increasingly important role in targeted training, and the government is offering more and more support and targeted programs, especially in the field of digital skills (e.g., free second profession and vocational training under GINOP Plus). The data for the latter is also encouraging: nearly 60% of 16-74 year olds have at least basic digital skills, which is higher than the EU average (55.5%, 2023).¹⁴⁰

The positive effects of training modernization are reflected in participation rates. The proportion of 25-64-year-olds participating in adult education (lifelong learning)¹⁴¹ in Hungary jumped from 7.1% in 2015 to 12% in 2024 (participation rate in the four weeks prior to the survey). In 2024, 13.2% of women and 10.4% of men participated in education and training.¹⁴²

4.9.5 Government programs supporting LLL

The Hungarian government has also recognized the importance of LLL and therefore supports retraining and further training with several programs, especially for disadvantaged groups. Within fiscal policy, government measures supporting lifelong learning primarily include strategic training and human capital development measures, as well as active labour market policy tools for economic development, which aim to strengthen labour flexibility and competitiveness for long-term economic growth. These measures are typically considered fiscal investments, which are expenditures that pay off in the longer term, as opposed to expenditures that represent direct consumption or social assistance.

Under various workplace training programs (e.g., GINOP Plus-3.2.1-21), domestic companies can receive up to HUF 100-150 million in state support for training their employees. This program provides non-repayable grants to micro, small, medium, and large enterprises for the professional and soft skills training of their employees.

At the same time, special attention must be paid to disadvantaged groups. Even before the Commission's recommendations, Hungary has supported and continues to support the most

¹³⁹ Uo.

¹⁴⁰ See the European Commission's Report on Hungary, 2025

¹⁴¹ See Hungary's Central Statistical Office's data on lifelong learning

¹⁴² See Eurostat data on participation rate in education and training

disadvantaged groups with a number of further training and retraining opportunities: the long-term unemployed, the low-skilled, Roma youth, older workers, people with changed work abilities, and NEET youth (neither in employment nor in education and training).

Under the GINOP Plus 3.1.1-23 – Expanding the labour supply program provides wage subsidies, housing and travel assistance, and retraining support to help disadvantaged people (those with low qualifications, the long-term unemployed, and older people) integrate into the labour market (aged 30-64).¹⁴³ Retraining is also eligible for individual support in the form of adult education. In 2024, more than 12,000 job seekers received support, and the integration of 77,000 people is planned for the next period. The Public Employment to Competitive Sector program provides special retraining and labour market reintegration support for those who wish to move from public employment to the competitive sector. Flexible learning paths, mentoring, and direct wage subsidies help the target group. More than 20,000 people have already been integrated.¹⁴⁴ Job seekers also receive training support. The National Employment Service provides significant financial support to those participating in training courses: in 2025, the minimum job search incentive allowance for training will be 70% of the mandatory minimum wage.¹⁴⁵

Special attention is paid to NEET youth (aged 15-30, not in education, employment or training): under the Youth Guarantee Plus, personalized wage subsidies (50% (max. HUF 250,000/month), 4-6 months), housing support (max. HUF 186,000/month, max. 12 months), travel support (HUF 10-12,000/month), and individual retraining and psychological counseling opportunities.

For long-term job seekers, low-skilled workers, Roma, people over 50, and people with changed work abilities, there are complex programs that include not only professional support, but also mental and social support, mentoring, counseling, and tailored training paths.¹⁴⁶

4.9.6 Unemployment benefits in Hungary

In Hungary, the duration of unemployment benefits (i.e., jobseeker's allowance) was reduced to three months (90 days) in 2012.¹⁴⁷ This significantly shortened the previous period of up to nine months (270 days). The measure is linked to the concept of a work-based society, according to which people should earn their living from work rather than from benefits. The aim is to ensure that unemployment benefits do not become a permanent source of income and that the system encourages active employment and faster job placement instead.

¹⁴³ See fizetesekek.com's article on May 26th, 2025

¹⁴⁴ See egyuttfejlodunk.hu's article on December 17th, 2024

¹⁴⁵ See National Employment Service's information on calculation of job search allowance available for training

¹⁴⁶ See egyuttfejlodunk.hu's article on December 17th, 2024

¹⁴⁷ See Officina's information on unemployment benefit

Unemployment benefits are passive in nature, but their incentive system means that they can also be considered an active labour market policy, i.e., they serve to balance active and passive labour market support, complementing the objectives of welfare policy. The short duration of support encourages the unemployed to find new jobs as soon as possible, thereby reducing the rate of long-term unemployment and minimizing dependence on passive benefits. The aim of the measure is to ensure that benefits do not become a permanent form of livelihood, but rather a temporary safety net that supports active job search, mobility, and workplace adaptation. The system encourages workers to be more independent (and responsible) and to adapt quickly to changes in the labour market, which also supports balanced economic growth. At the same time, it maintains a social safety net for those who have lost their jobs. In addition to jobseeker's allowance, there are a number of other options available to help unemployed people find work.

Unemployment benefits are closely linked to retraining and further training, as job seekers make greater use of training, retraining opportunities, and mentoring support.¹⁴⁸ During and after the period of unemployment benefits, the government provides substantial support for the retraining and training of the unemployed in order to improve their chances on the labour market (e.g., GINOP Plus, the Pillar project entitled "Expanding and Developing the Labour Supply," and the Youth Guarantee Plus project¹⁴⁹). The various GINOP programs (for people aged 15-29, 30-64) also provide wage subsidies (equivalent to 70-150% of the minimum wage), mobility (travel) support, childcare cost reimbursement, and training-related job search incentives. In addition, people who have been registered as job seekers for one month can also apply for housing support, which is intended to facilitate mobility between the workplace and the place of residence. The allowance helps with the cost of rent. Support is also available for starting a business in Hungary: in several counties, jobseekers can receive an amount equivalent to several months' minimum wage and a one-off grant of up to HUF 3 million to start a new business.¹⁵⁰

4.10 Poverty, income and wealth disparities

4.10.1 Risk of poverty and social exclusion among the Hungarian population

In the preamble to its recommendation concerning Hungary, the Council of the European Union stated, on the basis of its own specific indicators and evaluative framework, that in Hungary “social

¹⁴⁸ See the Government Office of Győr-Moson-Sopron Counties' information Labor market programs to assist job seekers will continue in 2025

¹⁴⁹ See National Employment Service's information on expanding and developing the labor supply

¹⁵⁰ See vállalkozzokosan.hu's information on support for unemployed entrepreneurs

exclusion is increasing and poverty is worsening, particularly among children, older persons and persons with disabilities.”

In contrast, the Hungarian government's economic policy addresses and reduces the risk of poverty and social exclusion through several components, which have been introduced in the form of strategic programs, family support, labour market integration, and measures linked to economic growth. All of this is based on the two main focuses of the Hungarian government's economic policy: supporting families and strengthening a work-based society.

On one hand, the government has achieved significant results in reducing the number of poor families with children, supported by the expansion of family support systems, the doubling of family tax allowances, and an economic policy action plan to increase the purchasing power of families' incomes. Since 2010, the risk of poverty among households with children has been halved,¹⁵¹ and the budget for family support, child protection, and child welfare benefits will exceed HUF 3,750 billion in 2025, which is a significant increase compared to previous years.¹⁵² This amount significantly exceeds the level of support prior to 2010, representing more than a threefold increase. In 2010, family support and child protection expenditures amounted to only about HUF 960 billion at the national level.¹⁵³ The most important elements of the family support system include (to mention only the most important measures) tax and contribution allowances, personal income tax exemptions, various CSOK loan options, child incentive support, free and discounted institutional child catering, and free textbooks.

Reintegration into the labour market is key to alleviating poverty, which is also the basis of the concept of a work-based society and an important welfare policy tool. Between 2010 and 2024, the number of people in employment increased by nearly one million, while the unemployment rate fell by half. The government is focusing on increasing employment and helping to improve the situation of workers through various programs, such as worker loans and the Home Start Program to support young people starting their lives.

An important element is that the Hungarian National Social Inclusion Strategy 2030¹⁵⁴ provides a unified framework for combating poverty and social exclusion, with a particular focus on the social and economic integration of the Roma population and other disadvantaged groups. The strategy covers several areas of intervention, such as childhood, education, employment, housing, and regional inequalities, which are supported by comprehensive government policies and programs.

¹⁵¹ Magyar Nemzet, 2025

¹⁵² Act XC of 2024 on the central budget of Hungary for 2025

¹⁵³ See csalad.hu's article on December 28th, 2020

¹⁵⁴ Hungarian National Social Inclusion Strategy 2030

At the same time, the support and further advancement of disadvantaged groups remains a key priority in Hungary. This is demonstrated by the positive results achieved by Hungary between 2010 and 2025 and by the fact that the country continues to move in the direction of further progress.

A person is at risk of poverty or social exclusion if they are affected by at least one of the following indicators: relative income poverty, severe material and social deprivation, and very low work intensity.¹⁵⁵ In other words, the indicator examines income, material deprivation, and labour market exclusion together. According to the latest report by the Hungarian Central Statistical Office (HCSO), the situation of deprivation has improved significantly in Hungary since 2015. While in 2015, 30.6% of the population was at risk of poverty or social exclusion, in 2024 this figure will be 20.2%, or a total of 1,914,000 people. In 2024, the proportion of children (21.1%) and people aged 25-49 (14.5%) at risk of poverty or social exclusion decreased significantly compared to 2023. According to the latest data, women were affected by poverty at a higher rate (21.1%) than men (19.2%). In Hungary, the proportion of the population at risk of poverty or social exclusion has been lower than the EU average since 2018. In 2023, the EU average was 21.3%, while the domestic figure was 19.7%. In the European Union in 2023, the highest rates were in Romania (32.0%), Bulgaria (30.0%) and Spain (26.5%), while the lowest rates were in the Czech Republic (12.0%), Slovenia (13.7%), and Finland and the Netherlands (both 15.8%).

The proportion of people living in households with very low work intensity deserves special attention, particularly in light of efforts to promote a work-based society. Households in which members of working age (18–64 years old) spent less than 20% of their potential working time in employment in the year preceding the survey are classified as having very low work intensity. According to the Hungarian Central Statistical Office (HCSO), the proportion of people living in households with very low work intensity in Hungary has been steadily declining since 2020 thanks to several years of sustained improvement in the labour market situation. In 2020, the improving trend came to a halt due to the coronavirus pandemic, and the proportion of the working poor increased until 2022, after which it declined again. In 2023, 4.9% of people aged 0-64 lived in households with very low work intensity, compared to 8.7% in 2015. The domestic indicator remains more favorable than the EU average, with Hungary among the countries with low in-work poverty. In the European Union in 2023, the highest rates were in Belgium (10.5), Germany (9.9%), and Denmark (9.8%), while the lowest rates were in Malta (3.6%), Slovenia (3.8%), and Poland and Luxembourg (3.9%).

¹⁵⁵ See Hungary's Central Statistical Office's data on proportion of people at risk of social exclusion

It is worth examining the poverty exposure of the most disadvantaged social groups separately.

According to Eurostat data,¹⁵⁶ the risk of poverty or social exclusion among children decreased significantly between 2015 and 2024, in many cases by half, in all age groups and breakdowns examined (0–6-year-olds, 6–11-year-olds, 12–17 years old, based on parents' educational attainment). The risk of poverty and social exclusion among those under 18 years of age decreased from 88% to 70% for parents with primary education (ISCED 0-2), for parents with secondary education (ISCED 3-4) it decreased from 43.2% to 24.8%, while for parents with tertiary education (ISCED 5-8) it decreased from 10.7% to 5.8%. It can be seen that as parents' educational attainment increases, children's exposure to poverty decreases. For parents with secondary and higher education, the risk of child poverty fell below the EU average from 2018-2019. Furthermore, the indicators for child poverty are worse in several countries in the region: Bulgaria, Slovakia, the Czech Republic, and Romania all have risk rates of 76% or higher, while in Hungary the rate is 70% (based on a study of the most vulnerable group, whose parents have primary education and are under 18 years of age).

In Hungary, the Child Protection Act distinguishes between disadvantaged and multiply disadvantaged children and young adults.¹⁵⁷ A disadvantaged child is a child, young adult, or young person who is eligible for regular child protection benefits and who meets one of the following criteria: the parent or foster parent has a low level of education, is underemployed, or the child or young adult lives in inadequate housing or living conditions. A child with multiple disadvantages is one who meets at least two of the above conditions. In addition, children who have been removed from their families and placed in specialized care institutions, as well as young adults who are in aftercare and are students, are also classified as multiply disadvantaged. The new regulations provide a wider range of opportunities to compensate for disadvantaged situations than before, for example, it is now possible to apply for certification from municipal notaries between the ages of 0 and 24.

The number of disadvantaged children and young adults peaked in Hungary in 2017, reaching 106,200. Since then, the number of disadvantaged children and young adults has been declining, albeit with some fluctuations, reaching 81,400 in 2023. The proportion of minors in disadvantaged children also decreased per thousand 0-17-year-olds: from 58.5 per thousand in 2017 to 46.9 per thousand. Of course, the number of people classified as disadvantaged has never been independent

¹⁵⁶ See Eurostat data on children at risk of poverty or social exclusion by educational attainment level of their parents (population aged 0 to 17 years)

¹⁵⁷ See Hungary's Central Statistical Office's data on number of minors classified as disadvantaged per thousand minors

of the number of people with multiple disadvantages. The total number of children and young adults in the two categories remained more or less constant until 2017, with at most some reclassification between the categories, but thereafter the number of persons with both types of classification began to decline.

The number of multiply disadvantaged children and young adults and their ratio per thousand minors improved even more sharply over the years. The number of children and young adults with multiple disadvantages fell from 151,000 in 2014 to 81,000 in 2023 (-46%), while the ratio of children with multiple disadvantages per thousand minors fell from 83 per thousand to 48 per thousand.

According to Eurostat data,¹⁵⁸ 32.5% of people with disabilities in Hungary (aged 16 and over) were at risk of poverty or social exclusion in 2024. This is a slight decrease since 2015 (36.8%). As detailed in the previous section on the labour market, people with disabilities in Hungary receive various types of support (e.g., disability benefits), and the state uses various financial and tax instruments and subsidies to assist and encourage the employment of people with changed work abilities in the open labour market.

Low-skilled workers are also a group at risk of poverty and social exclusion. According to Eurostat data, the risk of poverty among this group decreased from 51% in 2015 to 44% in 2024 (for people aged 18 and over). However, the risk is higher in several countries in the region: Bulgaria, Romania, Croatia, Lithuania, and Latvia. The Hungarian state provides various forms of support to help low-skilled workers make a living and reduce their poverty: training grants are provided for acquiring a new or first profession, especially in the field of adult education and retraining (we described retraining and further training in detail in the previous chapter), complex support under the program "Expanding and developing the labour supply," support for the transition from public employment to the competitive sector, and various housing subsidies.

The Roma community is a priority ethnic group in Hungary, whose poverty and social exclusion indicators improved slightly between 2010 and 2025. Around 2010, approximately 70% of the Roma community lived in poverty or were at risk of social exclusion, compared to 58.3% in 2023.¹⁵⁹ Furthermore, according to the results of a survey conducted in eight EU Member States, the poverty rate among Roma is several times higher than that of the majority society, while in Hungary this figure is average compared to the survey average (FRA, EU-MIDIS II 2016, Roma;

¹⁵⁸ See Eurostat data on persons at risk of poverty or social exclusion by level of disability (activity limitation), sex and age

¹⁵⁹ See the Hungarian Office of National Assembly's data on nationalities in Hungary, 2025

Eurostat, EU-SILC 2014).¹⁶⁰ Between 2015 and 2024, the proportion of Roma who had completed less than eight years of schooling decreased, while two-thirds of Roma completed eight years of schooling, a proportion that has remained stagnant. Due to their low level of education, Roma people are highly vulnerable to sudden changes in the labour market, so changes are needed in their education so that they can perform jobs with higher added value. Another positive result is that the number of Roma employees has increased one and a half times since 2010. The Hungarian National Strategy for Social Inclusion¹⁶¹(2011, 2014, 2030) and other targeted integration programs¹⁶² have sought to reduce poverty and promote social inclusion, particularly in the areas of housing, education, employment, and health care. As a result, slight improvements can be seen in certain areas. At the same time, educational segregation, labour market discrimination, and housing difficulties continue to pose significant challenges for the Roma population.

The risk of poverty or social exclusion among people aged 65 and over has increased slightly compared to 2015 (18.3%), with 21.3% at risk in Hungary in 2024.¹⁶³ At the same time, the exposure of the retired population to poverty is much higher in a number of regional and non-regional countries, including Latvia, Estonia, Lithuania, Croatia, Bulgaria, Romania, Malta, Cyprus, Greece, Slovenia, and Ireland; the Hungarian level is the same as the German level. The Hungarian government supports the livelihood of pensioners and reduces their poverty through several measures, primarily pension increases, supplementary benefits, and protection against inflation (pension compensation, thirteenth-month pension, food vouchers, pension premiums, general utility protection). Furthermore, if a pensioner takes up employment, their earnings are subject only to 15% personal income tax, meaning that their wages are contribution-free.

As far as concrete poverty is concerned, the so-called income poverty rate gives the proportion of people living in households with an income of less than 60% of the median income in a given country, relative to the total population.¹⁶⁴ The multi-year downward trend in the income poverty rate since 2015 was interrupted in Hungary by the crisis caused by the coronavirus pandemic. Following a decline in 2022, the number and proportion of poor people rose again in 2023 and 2024, primarily due to a decline in the purchasing power of incomes. However, with inflation being brought under control (in which monetary and fiscal policy elements and measures also played a significant role), the poverty rate may start to decline again in 2025. In 2024, 14.7% of the population lived below the poverty line, compared to 15% in 2013-2015. In terms of the

¹⁶⁰ Csenger, 2025

¹⁶¹ Hungarian National Social Inclusion Strategy 2030

¹⁶² Bernát, 2018, pp. 144-165

¹⁶³ See Eurostat data on persons at risk of poverty or social exclusion by age and sex

¹⁶⁴ See the Hungarian Central Statistical Office's data on poverty rate

poverty rate, the situation in Hungary is more favorable than the EU average. In 2023, 16.2% of the population in the European Union lived below the relative income poverty threshold, compared to 13.1% in Hungary.

4.10.2 Income and wealth disparities among the Hungarian population

In its 2025 country-specific recommendations, the Commission calls on Hungary to "(e) improve the long-term sustainability of the pension system, primarily by addressing income inequalities, while preserving its adequacy."

In this context, let us examine the Hungarian government's efforts and measures to reduce income inequality. Since 2010, the Hungarian government has contributed to reducing income inequality mainly through family support, tax policy, and employment incentive measures.

The emphasis on family and work has also played a prominent role in this area, and is in line with the government's economic policy framework and objectives. The measures mainly belong to the fiscal and social policy toolkit. Within this, we can find redistribution tools. These include various family support measures (specifically family tax allowances, family supplements, the expansion of Infant Care and Childcare Allowance, and Childcare Aid, and making them tax-free), changes to the tax system (income tax exemptions linked to the number of children, a general reduction in the tax burden on earned income), the restructuring of social transfers (work instead of welfare, tightening of certain forms of support, e.g., social assistance), and public works as a tool for both welfare and labour market activation. In addition to redistribution elements, there are also employment policy incentives, such as a general increase in the employment rate, reaching out to inactive groups through various programs, and public employment (aimed at getting people back to work). In addition, there are also targeted support elements, such as housing subsidies, home creation subsidies, and the introduction of CSOK. Nevertheless, further measures aimed at reducing income inequality are also justified in order for Hungary to achieve even more significant results in social justice.

As a result of government measures, income inequality in Hungary decreased slightly between 2015 and 2024. One frequently used indicator of this is the Gini index. The Gini index, named after Italian statistician Corrado Gini, measures how evenly income is distributed in society. Its value is expressed as an absolute number between 0 and 1 (Eurostat, and thus the Hungarian Central Statistical Office report it as a percentage), where 0 represents a perfectly even distribution and 1 (100%) represents complete inequality. A higher value corresponds to greater inequality. In Hungary, income inequality according to the Gini index has been on a downward trend since 2014, with the exception of certain years. In 2023, this figure rose significantly to 29%, then corrected

back to the multi-year average of 27.9% in 2024. Hungary is one of the less unequal countries in the European Union, with a lower-than-average EU value in 2023 (29% vs. 29.6%). In the European Union in 2023, income inequality was highest in Bulgaria (37.2), Lithuania (35.7), and Latvia (34.0), and lowest in Slovakia (21.6) and Slovenia (23.4).

The downside of the Gini index is that as the economy grows, so does the degree of wealth concentration. After a while, however, it reaches a maximum value, after which it declines. This is the so-called Kuznetz curve.

According to the MNB's 2023 report entitled Financial Data of Households, after 2014, the growth rate of Hungarian household wealth was significantly higher than the growth rate in the euro area, whether we look at average or median wealth.¹⁶⁵ In the European Union, wealth inequality among Hungarian households can be considered moderate.

The net wealth of the household sector doubled between 2014 and the end of 2020, while inflation was only 15 percent over the six-year period. Wealth growth was significant in all household groups, but the wealth of those with medium and low wealth grew above average, while that of the wealthiest households expanded below average. This shift occurred in the second half of the period. As a result, the wealth of the bottom 50 percent of households rose by 133 percent, while the wealth of the top 10 percent grew by only 90 percent over six years. The share of the bottom 50 percent in the sector's net wealth increased from 9 percent to 11 percent, while the share of the top 10 percent decreased from 53 percent to 51 percent. Wealth disparities between households decreased slightly, and the number of households with negative net wealth halved.

According to the MNB's analysis entitled "Preliminary data on the financial accounts of the general government and households for the second quarter of 2025," the financial wealth of domestic households rose by more than 11 percent in the second quarter of 2025.¹⁶⁶

4.11 Defense spending

In a terse formulation, the European Commission conveys a message that is self-contradictory in itself: increase defence and security expenditure in line with the requirement of debt sustainability and make use of the flexibility granted for increasing defence expenditure.

This year's country-specific recommendations for the European Semester were published after the adoption of the ReArm Europe 2030 program. For this reason, the guidelines on defense spending relate to the expansion of resources. Like other EU Member States, Hungary will receive a

¹⁶⁵ Gerendás et al., 2023

¹⁶⁶ See MNB's statistics on preliminary financial accounts of general government and households

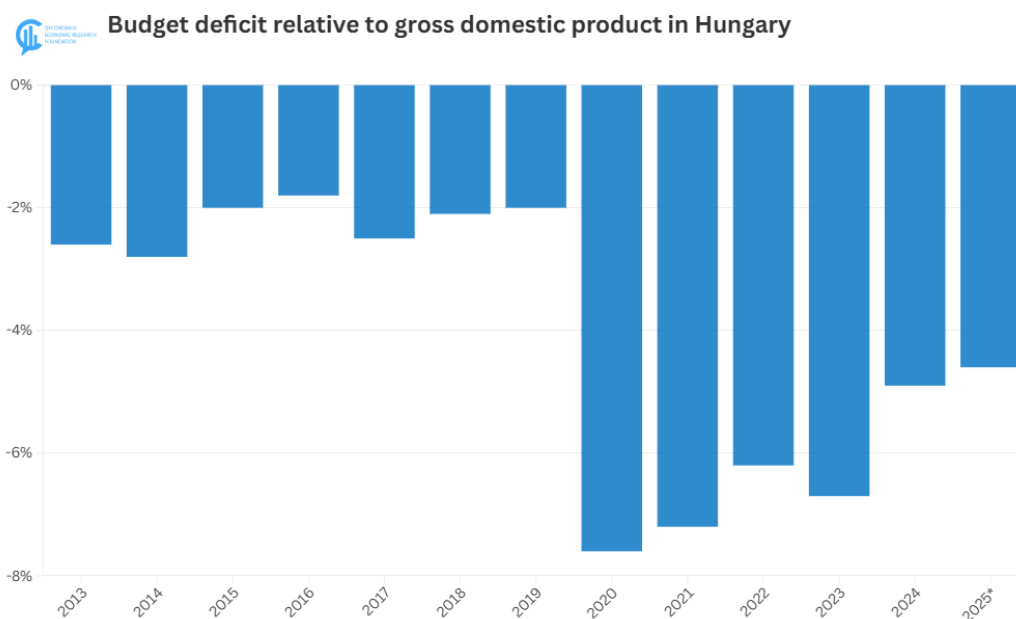
temporary exemption from EU budget rules to finance the additional spending. The SAFE instrument, which aims to strengthen the European defense industry, allows EU Member States to increase defense spending at a higher rate than previously specified over the next five years, but by no more than 1.5 percentage points of GDP per year. The increase in funding is a response to the changed security situation caused by the Russian-Ukrainian war. However, the exemption from budgetary rules is temporary and targeted. This flexibility allows the Hungarian budget to provide greater funding, even exceeding deficit targets, by temporarily deviating from EU fiscal rules, provided that the government uses it exclusively for defense purposes. In addition to the 1.5 percentage point threshold, the sustainability of public debt financing has been set as a further condition. Fiscal stability is the primary consideration, and the government may also review the structure of expenditure to this end. The proposal to increase Hungarian defense spending is in line with the Hungarian government's objectives. According to the guideline adopted at the 2025 NATO summit, the ratio of defense spending to gross domestic product should be increased to 5 percent over the next decade. According to this objective, 3.5% of GDP should be spent on traditional defense spending, with the remaining 1.5 percentage points spent on developing cyber defense, logistics and intelligence capabilities and modernizing strategically important infrastructure. The latter item leaves considerable leeway for the leaders of the defense organization's Member States.

The country-specific recommendation stipulates that although positive deviations from the pre-determined budget are only permitted for a limited period, it will still be possible to overspend after the deadline has expired. This was justified by the fact that, similar to the implementation period for asset purchases during the exemption period, the reimbursement of the purchase price may take years or even decades.

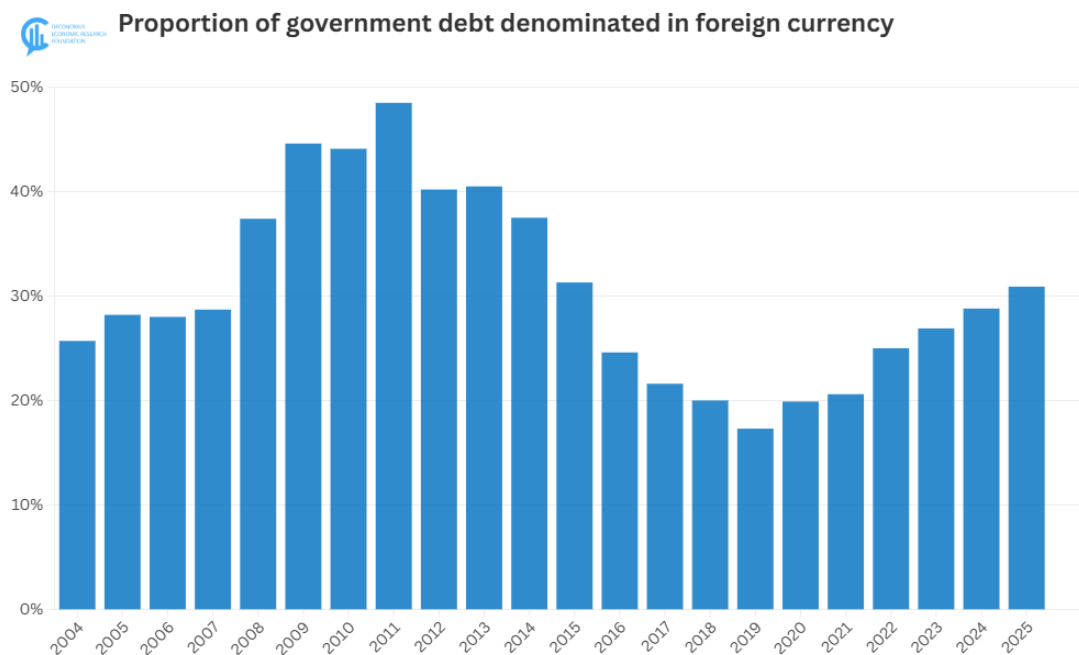
4.12 Budget, sustainability of public debt and budget planning

Improving budgetary balance is mentioned several times in the country-specific recommendations. According to the European Commission's recommendations, special taxes and tax breaks that distort competition should be phased out in order to improve the budgetary situation. The Commission wrongly justifies this by arguing that these measures serve only as a temporary means of reducing the deficit, while at the same time impairing the Union's common economic environment. In contrast, the aim of the aforementioned economic policy elements is precisely to create a global and regional competitive advantage for the Hungarian economy by increasing the country's ability to attract capital and achieving a demographic turnaround. Thanks to the widespread personal income tax exemption characteristic of our country, from 2029,

approximately 1.4 million people will be eligible for the benefit (young people under 25, mothers under 30, mothers with multiple children). In this case - unlike in other countries - the different tax rates will not be determined in a way that restricts the development of employees, i.e., not in relation to income levels, but according to other socio-political considerations. This political objective is to support young people and mothers with children.

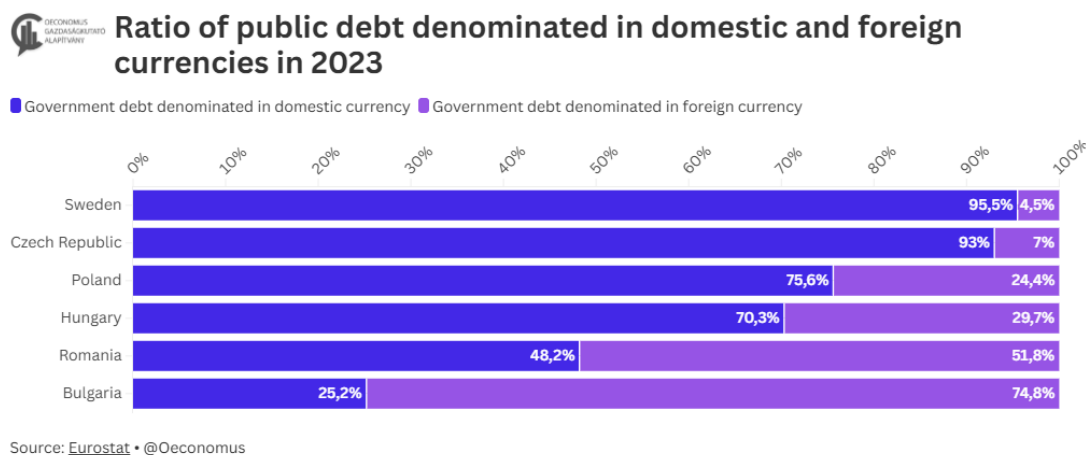


Source: European Commission, Tradingeconomics

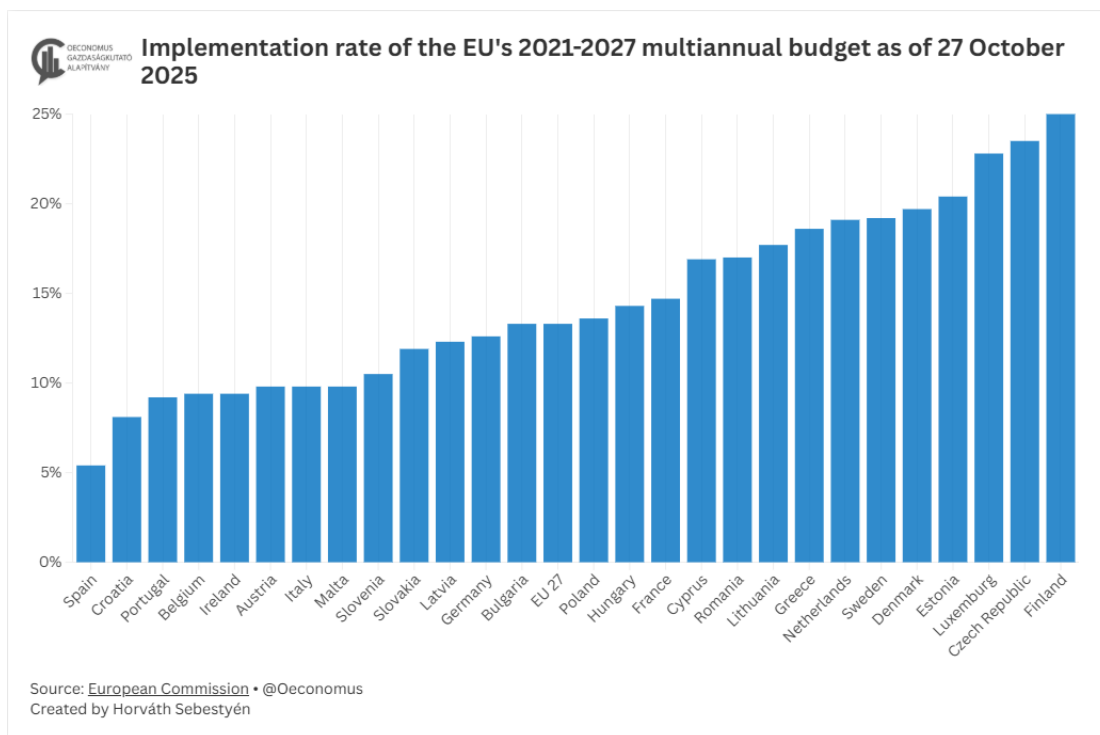


Source: Public Debt Management Center

Within the national debt, the proportion of government bonds denominated in foreign currency reached its lowest point in 2019, the last year considered peaceful before the coronavirus pandemic, at 17.3 percent. Subsequently, due to capital flight caused by the economic crisis of 2020, demand for all currencies in the region fell. In parallel with the turbulence on the foreign exchange market, a significant portion of the EU funds legally due to Hungary from 2022 onwards was also frozen. Despite these events, among the six EU Member States that have a sovereign currency, the proportion of Hungary's foreign currency-denominated public debt is in the middle of the pack.



In relation to public debt, the issue of frozen EU funds is naturally a further factor to be taken into account. Although nearly 40 percent of the EU funds to which Hungary is legally entitled under its contracts remain blocked by the EU, we are not lagging behind in terms of the drawdown rate of the funds allocated in the total budget for 2021-2027. The European Commission publishes daily reports on the implementation rate of projects included in the budget plans of Member States and the rate of fund utilization. According to this EU ranking, at the end of October 2025, Hungary had drawn down 14.3 percent of its share of the current seven-year budget. This rate is the 13th highest among the 27 EU Member States, placing Hungary in the middle of the pack, ahead of the EU average of 13.3 percent.



Last year, the European Commission launched an excessive deficit procedure (EDP) against six other EU Member States in addition to Hungary. In the case of Austria, the procedure was launched in 2025, while in the case of Romania, the procedure launched in 2020 was maintained. Following an assessment of the measures taken by the government over the past year and a half, the Commission initiated the suspension of the EDP's restrictive measures this summer. According to their justification, the Hungarian government has taken the necessary steps to improve the sustainability of public debt. As things stand, the decision on the suspension of restrictive measures will be taken by the specialized committee in spring 2026.

The country-specific recommendations also include improving the efficiency and transparency of budget planning. Due to the volatile nature of the armed conflicts on the periphery of Europe and the uncertainty caused by the escalation of the trade war to a global level, the accuracy of macroeconomic forecasts is deteriorating. Although the Hungarian government's forecasts often are generally in line with the forecasts of international analytical institutions and knowledge centers (IMF, Eurostat, World Bank). The European Commission criticizes Hungary for the early adoption of its budget and does not look favorably on the numerous amendments. Since 2016, with a few crisis-related exceptions, the National Assembly has consistently adopted the budget for the following year in the summer. Although this is considered exceptionally early in a European or Euro-Atlantic context, it is in line with the practice of many countries in Central Europe. Due to historical circumstances and the regime change of 1989-1990, Hungarian legislation has been

greatly influenced by German legal culture. In Germany, the Bundestag usually votes on the budget for the following year in September.

4.13 Sustainability of the pension system

4.13.1 Key policy changes proposed by the EU

- Developing more sustainable financing models: Reforms are recommended to ensure the long-term stability of pension system financing, such as restructuring the financing of pension funds to mitigate the effects of economic cycles.
- Modernizing the indexation system: Recommendations suggest modifying the indexation mechanism, for example by using indices that better reflect wage growth instead of the consumer price index, so that the real value of pensions does not suffer an excessive decline.
- Review of the retirement age and the extension of expected years in retirement: Alongside any increase in the retirement age, the issue of expected years spent in retirement must also be addressed so as to ensure the long-term sustainability of the system while maintaining fair access to pensions.
- Strengthening the social protection system: Targeted measures are recommended to support low-income earners and those with interrupted employment, such as raising the minimum pension or improving the social pension system.
- Increasing the transparency and fairness of the pension system: Regulations aimed at increasing the transparency of pension funds and strengthening fairness would be introduced to ensure the equal and equitable distribution of benefits.

4.13.2 General objectives

All proposals aim to make the pension system sustainable, fair, and modern in the long term, while being able to adapt to demographic and economic changes and maintaining social protection for pensioners.

These reform proposals are closely aligned with the EU's general social and economic policy guidelines, which encourage the development of sustainable and fair pension systems.

The country-specific recommendations issued under the European Semester criticise the Hungarian pension system on several points in a manner that is both erroneous and one-sided,

primarily on grounds of sustainability, fairness and modernisation. The main criticisms are as follows:

- The sustainability of the Hungarian pension system is questionable, as the method of calculating pensions is non-linear and pensions correlate with average wages in previous years, which is highly exposed to fluctuations in the economic cycle. This can lead to injustices and makes it difficult for people to judge the optimal time to retire.
- The minimum pension has not increased significantly since 2008, so it does not provide effective protection for low-income pensioners with interrupted employment.
- The ratio of pension payments to GDP has fallen significantly in recent years, which reduces the budgetary burden but also signals a decline in the real value of pensions and a weakening of the standard of pension provision.
- Due to the method of indexation (transition to price indexation), pensioners do not benefit from wage increases resulting from economic growth, which leads to a further decline in the ratio of benefits.
- The higher retirement age has reduced the number of expected retirement years, raising concerns about fairness and welfare.

4.13.3 The position of the Hungarian government

The Hungarian government sees its pension system not as being in crisis, but as "protected" and based on a political and moral alliance. The prime minister and members of the government consistently refer to pensioners as those with whom they entered into an agreement in 2010: the essence of this is that the purchasing power of pensions will be preserved, the 13th month pension will be restored and maintained, and recently the introduction of a 14th month pension has even been introduced. This political narrative is a good starting point for understanding why the government considers the current system to be fundamentally adequate and why it rejects most of the more profound reform proposals put forward in the European Semester.

The most important element of the government's communication is that the value of pensions cannot be reduced. Viktor Orbán has repeatedly stated that as long as the country has a national government, pensions cannot lose their purchasing power, and pensioners must also benefit from the results of economic growth.

The government bases this partly on the statutory indexation rules. Under the current system, in January the government raises pensions by the estimated inflation rate for the given year; if the

actual inflation rate measured during the year is higher than this, it pays a supplementary increase (pension adjustment). In recent years, such mid-year corrections have taken place on several occasions, which the government interprets as fulfilling its promise of value stability.

The government supplements the purely inflation-linked increase with another tool: if GDP growth exceeds 3.5 percent, it is also possible to pay a so-called pension premium. The government has also earmarked funds for such a premium in the 2026 budget, in case the planned economic growth is actually realized.

However, the political symbol of the system is the 13th month pension. According to the government's own narrative, this "compensates" for the austerity measures of 2009 and restores fairness towards pensioners. Government statements repeat year after year that the cabinet will "protect" the 13th month pension; from 2025, a regulatory amendment will ensure that the extra benefit will be automatically paid every February to those who were pensioners in the previous year and in February of the given year.

In recent months, the Prime Minister and the Minister heading the Prime Minister's Office have already stated that the introduction of a 14th-month pension had begun: as a first step, 25% of it was paid in February 2026 together with the 13th-month benefit, following a similar gradual approach to the one previously used for the restoration of the 13th-month pension.

In the government's view, therefore, an important element of the "sustainability" of the pension system is politically committed stability: pensioners are a group with whom a long-term agreement has been made, and part of this is value stability, the 13th month's pension – and, in the future, the expected 14th month's pension.

Official documents of the Hungarian government – such as the Convergence Program for 2024–2028 and the medium-term structural plan – do not refer to a crisis, but rather to a manageable system that can be financed in the long term. According to the cabinet's position, there is no justification for intervening in the pension system in the coming decade: there are no plans to further raise the retirement age, abolish the Women40 discount, or further reduce the 13th month pension.

The government argues that the combination of the retirement age being gradually raised to 65 after 2010, the strengthening of the labour market, and family policy measures will in itself ensure the medium-term sustainability of the system. The pension system will be able to sustain itself until 2035, so no further increase in the retirement age is on the agenda, provided that the government's family policy is successful and achieves the desired demographic turnaround.

An integral part of the government's argument is also that the financing of the pension system depends not only on the continuous management of parameters such as the retirement age and the indexation formula, but also on the performance of the economy as a whole. The convergence program outlines higher-than-average EU growth for the coming years, with GDP expansion of around 4 percent, high employment, and an improving budgetary position. Within this framework, pension expenditures – together with the amount exceeding HUF 7,700 billion planned for 2026 – can be financed, according to the government.

An important element of the government's self-image is the privatization of pension funds carried out in 2010–2011. According to official communications at the time, the cabinet deemed the previous multi-pillar structure unsustainable for the state, arguing that mandatory private fund contributions diverted resources from the state pay-as-you-go system. The abolition of mandatory private pension fund membership was therefore presented as a condition for the long-term stabilization of the pension system.

The current government position follows from this: now that the state pillar has been strengthened and the retirement age raised, there is no need for further major reforms to the pension system, only fine-tuning at most – while the main instruments of economic policy should be sought in stimulating employment and growth, not in rewriting pension rules.

The difference from EU criticism is particularly striking when it comes to indexation and fairness. The country-specific EU recommendations criticize the Hungarian system because inflation-linked indexation decouples pension levels from wage developments, meaning that pensions account for an increasingly smaller share of GDP and total wages, and pensioners do not benefit from economic growth. The Commission encourages a shift towards indexation formulas that are more closely linked to wages.

The Hungarian government, on the other hand, emphasizes a different normative principle: the pension system operates on an insurance basis, not on a means-tested basis. This view is very clearly reflected in the official responses to parliamentary questions. When opposition MPs called for an increase in the minimum pension and the HUF 28,500 "social projection base" (the former minimum pension), the state secretaries responding on behalf of the government emphasized that: the government believes that social security should be linked primarily to work, not to a general increase in benefits; the value of pensions in Hungary is preserved by inflation-linked pension increases; according to the government's calculations, since 2010, the amount of pensions has more than doubled and their purchasing power has increased by about 25%; pension increases cannot

be differentiated between pensioners, as this would violate the principle of insurance and the "fairness" of the pension system.

The government's position is therefore that a uniform, inflation-linked increase is a guarantee of fairness: this preserves the link between previous contributions, the pension awarded and its subsequent value preservation. In their view, differentiated increases – for example, faster increases for low pensions and slower increases for high pensions – would interfere with the system at the expense of better contributors and, in the longer term, weaken the willingness to pay contributions.

This also explains why the government is not raising the minimum pension, which has remained at the same nominal level since 2008: according to the official response, the problem of low pensions should be addressed through social policy measures – equitable increases, one-off benefits – while old-age pensions themselves remain an insurance entitlement.

The government therefore does not approach the fairness of the system from the perspective of the EU's preferred social minimum, minimum pension increase, and progressive indexation, but rather from the close relationship between individual career contributions and pension amounts.

Another prominent element of EU criticism is that, in addition to the higher retirement age, the number of expected retirement years is decreasing, while the Hungarian government continues to allow a significant group to retire early with a full pension through a special program, the Women40 discount. The government, on the other hand, emphasizes that the combination of a uniform retirement age of 65 and Women40 is a compromise model:

- they present the raising of the "normal" retirement age as a necessary step in line with European trends,
- while at the same time viewing the 40-year eligibility period – especially in the case of women raising children – as a life history that justifies full pensioner status.

Government documents and statements therefore repeatedly emphasize that maintaining Women40 is not only a demographic and family policy issue, but also a matter of "appreciation" for decades of long service. The medium-term structural plan explicitly states that there are no plans to change the rules of Women40, and the Orbán government does not accept the expert opinion proposing to narrow its scope.

While the EU approaches the relationship between the retirement age and the expected number of years of retirement primarily from an actuarial perspective, the Hungarian government uses moral

arguments here as well: forty years of work in itself entitles a person to full benefits, even if this reduces the numerical sustainability of the system at the macro level.

Under the Recovery and Resilience Facility (RRF), the European Commission also called on the Hungarian government to carry out a pension reform, a need which the Commission identified erroneously. According to the Commission, that reform could in principle improve the sustainability of the system and, in particular, the level of benefits provided to low-income pensioners. In preparation for the reform, an OECD expert paper was also produced which, following the evaluative logic preferred by the Commission, pointed inter alia towards automatic adjustments linked to the retirement age, mixed wage-and-price indexation, and an increase in the lower benefit levels.

However, in the fall of 2024, the Hungarian government made it clear that it did not wish to change the pension system, considering only the promised value stability and the payment of a 13th month pension to be mandatory; it did not agree with the recommendations of the experts commissioned by the European Commission and did not support them.

In doing so, the government has effectively opposed the logic that sees the sustainability of the pension system primarily in normative, formula-based reforms—automatic rules adjusted to age limits, life expectancy, and wage increases. According to the Hungarian position, the long-term balance of the system is better guaranteed by employment rates, economic growth, and a work-based society strategy, while the value of pensions is sought to be preserved or increased through inflation adjustments, bonuses, and extra months.

The difference between the EU position formulated within the framework of the European Semester and the Hungarian government's narrative is not merely a technical, but also a normative contrast. The EU approaches sustainability and fairness from the perspective of rules that are predictable in the longer term, automatic, and calibrated to demographic and economic processes; in contrast, the Hungarian government considers (i) the political stability of the pension system, (ii) the preservation of the value of pensions in line with inflation, (iii) the 13th (and future 14th) monthly benefits, and (iv) uniform increases in line with the insurance principle as the main guarantees of sustainability and fairness.

The Hungarian government believes that the system is viable in the long term within the current parameters – the age limit of 65, Women40, inflation tracking, premium and extra monthly pensions – it therefore views the criticisms of EU experts primarily as technocratic proposals that do not take sufficient account of the political and social preferences of the Hungarian model.

Overall, the Hungarian government considers the EU reforms to be too strict, which in the long term will undermine the sustainability of the system, social justice, and the modernization of the pension system.

In addition to concerns about the sustainability of the pension system, the country-specific report also criticizes the relative income situation of pensioners. It highlights that the minimum pension has remained unchanged since 2008. However, pensions close to the legally binding lower limit are no longer paid.

4.14 Cohesion funds

4.14.1 EU cohesion policy

The European Union's cohesion policy is one of the Community policies, its internal development policy and an instrument of financial solidarity. Cohesion policy aims to promote the economic, social and territorial cohesion objectives set out in the TFEU. In implementing cohesion policy, the practical application of a number of principles is of paramount importance. These include multi-level governance, partnership, additionality, consideration of territorial aspects, and the requirement for the efficient use of public funds. The integrated approach and multi-level governance enable policies to be implemented in a coordinated and complementary manner, which increases the efficiency and effectiveness of investments and developments. However, this process can only be achieved through partnership and cooperation between stakeholders. A consistent and coordinated management approach enables projects to be implemented efficiently and successfully.

As in previous periods, Hungary received significant cohesion funding in the period after 2010: tens of thousands of projects were financed in the 2014-2020 cycle. The total amount of support for Hungary was EUR 25 billion, but the budget allocated for its use, implementation, and execution was much larger, as the national co-financing (or government support) amounted to nearly EUR 32.1 billion. Most of the money was spent on infrastructure and energy sector development, with nearly €4 billion invested. This was followed by spending on employment, competitiveness, improving the efficiency of raw material use, and environmental protection. In addition, the implementation of green policy objectives and the development of public education also played an important role.

For the 2021-2027 period, Hungary has identified its most important challenges based on the Partnership Agreement (PA) in line with five EU policy objectives, and has then defined the country's main development priorities based on these. The Partnership Agreement sets the

framework for the use of funds, while the details of the development directions are laid down in the sectoral and territorial operational programs prepared by the relevant ministries. The Partnership Agreement deals in detail with the links between the areas covered by the separate operational programs, the clear demarcation of the technical content of the programs, and the ensuring of cooperation between the programs. In addition to these main elements, the Partnership Agreement also addresses, among other things, the conditions for the effective and efficient use of resources and the basic principles for addressing regional disparities.

Coordination between programs is ensured by the system established in the 2014-20 development policy cycle. This is based on strong central coordination and a system of policy makers and managing authorities. Strong central coordination ensures a uniform implementation framework for developments. Developments are implemented within a uniform legal framework, using a uniform IT system. The central coordination unit within the ministry responsible for the use of EU funds also coordinates program planning, monitoring and reporting obligations, conducts program evaluations, provides a uniform training system, performs communication tasks, and manages the Development Policy Coordination Committee. The planning level beyond the programs is represented by the annual development framework (ADF), which is prepared for each operational program and contains operational-level information related to the calls for proposals announced in the current year. The ADF forms the transition between the programs and the calls for proposals, as it contains both the strategic basis for the calls and information relevant to applicants. The next level of coordination between programs and funds is the FKB, which is the government's decision-making body for development policy matters. In addition, the PA-level Monitoring Committee ensures consistency in the use of funds and the fulfillment of objectives, principles, and goals during implementation.

The five policy objectives set out in the current cycle focus on research and development (R&D), sustainable development, infrastructure, and social policy:

1. Smart Europe: the goal is for Hungary to significantly improve its economic competitiveness and efficiency, thereby increasing the value of goods produced in the country and creating the preconditions for sustained wage growth. Within this policy framework, the aim is to develop the research and innovation ecosystem to international standards, improve the productivity of micro, small and medium-sized enterprises and the level of integration of digital technologies.

2. A greener, low-carbon and resilient Europe: in pursuing this objective, Hungary intends to promote economically and environmentally sustainable energy production through environmentally sustainable energy production and secure networks, smart solutions, renewable

and expanding utility capacities, cleaner urban transport, and lower greenhouse gas emissions in the economies of regions affected by the Just Transition Fund.

3. A more connected Europe: within this framework, the aim is to promote the creation of a connected, new-generation infrastructure for fast and convenient transport. The aim is for transport infrastructure with adequate capacity and high standards to contribute to further increasing the competitiveness of the Hungarian economy and to improving the everyday quality of life of the population.

4. Social Europe: the policy objective is to create a prosperous, healthy and competitive society in line with the European Pillar of Social Rights and the Porto Declaration approved in 2021. Increasing the size and skill level of the working-age population is key to improving economic performance. The goal is not only to increase employment, but also to improve labour productivity and the quality of working conditions. Other important aspects of this policy include social equality, support for education and adult training, support for educational and training innovations that fit the profile of higher education institutions, and the integration of disadvantaged groups and minorities.

5. A Europe closer to its citizens: the fifth and final policy objective is to strengthen territorial development and reduce regional disparities. Hungary's territorial development tasks are set out in the National Development and Territorial Development Concept (OFTK), the implementation of which is also supported by cohesion funds. The aim is to reduce regional disparities, with particular regard to areas affected by the Covid-19 pandemic and struggling with economic and employment problems. Other key tasks include the development of a city network that ensures a multi-centered spatial structure, the strengthening of urban-rural links, and increasing the population retention capacity of rural areas. In the case of Budapest and its region, the aim is to strengthen the capital's international economic role and improve its livability. Another important element is the development of road and rail networks between settlements and the improvement of local and regional public transport.

In the 2021–2027 cycle, Hungary has approximately €21.7 billion available from cohesion funds, of which 14.3 percent, or approximately €3.1 billion, has been drawn down by the government, according to data from the European Commission on October 24, 2025.¹⁶⁷ A small portion of the EU funds drawn down so far comes from EU pre-financed grants, which are not tied to any conditions or eligible costs, and which ensure the liquidity of the projects to be implemented.

¹⁶⁷ See the European Commission's data on Total EU payments all ESI Funds – time series cumulated to the end of each year (daily update):2021-2027, Hungary

Although we have only drawn down a small portion of the cohesion funds, the end of the cycle is still far away, which means that the state still has time to ramp up its drawdown of EU funds. Furthermore, we are not doing badly in the EU rankings, as we are in the middle of the pack in terms of fund utilization, ahead of countries such as Austria, Belgium, and Spain.

4.14.2 Obstacles imposed by the European Union

The fundamental problem is that the EU has been putting obstacles in Hungary's way for years, even though the Hungarian government has fulfilled numerous conditions, yet our country continues to be subjected to constant political attacks. At the end of 2022, citing Hungary's failure to meet the conditions of the rule of law, the European Union froze the cohesion funds allocated to Hungary. A significant obstacle to the payment of these funds was removed in December 2023, when approximately €10 billion was released from the cohesion funds after the European Commission acknowledged that Hungary had fulfilled its commitments to strengthen the independence of the judiciary. After a long struggle, the Hungarian government succeeded in getting the European Commission to transfer the first part of the previously blocked cohesion funds, EUR 445 million, on January 2, 2024. This allowed the EU refinancing of the operational programs for the new development period to begin.

However, the EU continues to block the funds due to Hungary. According to the EU, our country did not meet the reform requirements and rule of law conditions. In order to release these funds, Hungary would have had to implement several reforms by the end of 2024. These include amendments to laws on the prevention of conflicts of interest and the fight against corruption. However, this has not happened according to the EU's conditions.

In addition, the country's other EU funds are also at risk, as penalties imposed for violating migration rules will be deducted from these amounts. In addition to the €200 million basic penalty imposed by the Court of Justice of the European Union last summer, the country is also subject to an additional daily penalty of €1 million because it consistently opposes Brussels' migration policy.

With regard to Hungary, the Recovery Fund remains frozen, and we have still not received €5.8 billion in support because, according to the EU, the Hungarian government has not fulfilled the so-called "super conditions," i.e. it has not implemented the expected judicial reforms to ensure transparency, or has not taken the requested anti-corruption measures. The Hungarian government has consistently sought to refute these claims, yet the EU appears not only unwilling to relax its specific conditionality framework but also inclined from time to time to formulate further new requirements. In addition, a significant share of the cohesion funds, amounting to more than EUR 12 billion, still remains to be released.

However, this does not mean that Hungary is permanently cut off from EU funding, as we continue to receive significant support:

- Common Agricultural Policy (CAP) subsidies: These subsidies are intended for agricultural development and direct support for farmers, which farmers continue to receive without interruption.
- Rural Development Fund: Despite the rule of law disputes, the EU has not suspended these funds either.
- We also receive additional support for energy reforms.

The European Union's cohesion policy is one of its Community policies, an internal development policy and an instrument of financial solidarity that serves to reduce economic, social and territorial disparities. The EU's cohesion policy provides significant resources for Hungary, but these can only be fully utilized if Hungarian reforms meet EU expectations. The government stands firm in its defense of the country's sovereignty and conservative values, which has led to numerous conflicts with the European Union in recent years. Although the Hungarian government has implemented several reforms, cohesion funds were still frozen at the end of 2022. In December 2023, €10 billion was released, and in January 2024, €445 million was received, but the EU continues to maintain restrictions. Overall, Hungary is still receiving EU funds, but disputes over the rule of law and political conditions are significantly slowing down our country's access to the money it is entitled to, so the debate over subsidies will remain one of the most important aspects of the relationship between the EU and Hungary in the future.

4.15 R&D&I

In the section (31), which outlines policy challenges, the Council document makes critical observations about the Hungarian R&D&I system. As a solution, the document recommends in another section that the state improve the predictability of its R&D spending and target SMEs more effectively within the framework of existing measures.

The Council's recommendation to increase Hungary's R&D spending is fact-based and in line with the objectives of the European Semester. However, the validity of the criticisms relating to researchers' working conditions, technology transfer and administrative barriers is questionable and requires a more balanced approach to these phenomena.

4.15.1 R&D intensity

The Council notes that R&D intensity (i.e. R&D expenditure as a percentage of GDP) has increased only slightly in Hungary over the past decade and was still well below the EU average in 2023.

According to Eurostat's 2025 report, Hungarian R&D expenditure reached 1.4% of GDP in 2023, while EU R&D expenditure reached 2.3% of GDP, so the criticism is justified from this point of view.¹⁶⁸ Hungary ranks 19th among the 27 EU Member States in terms of R&D intensity. At the same time, the report also shows that the share of the R&D budget is growing very slowly not only in Hungary but also in the EU as a whole. In 2013, the EU spent 2.1% of GDP on research and development, an increase of 0.2 percentage points over 10 years, while China has overtaken it and the US is already at around 3.5%.

4.15.2 Source structure of R&D expenditure

The Council document notes that public R&D expenditure, including at universities, is among the lowest in the EU, which hinders the achievement of scientific excellence.

According to a Eurostat report presenting data on government R&D expenditure for 2024, Hungary is indeed among the lowest-ranked countries.¹⁶⁹ Based on comparable data for 2023, Hungary ranks 22nd among the 27 EU Member States in terms of government R&D expenditure (per capita), 25th in terms of higher education R&D expenditure, and 17th in terms of corporate R&D expenditure.¹⁷⁰ The overall picture of R&D funding is further nuanced by direct and indirect government subsidies to companies, which are 36.4% higher than the EU average.¹⁷¹

In addition to the funding ratio, the strengthening role of the corporate sector in research and development is also indicated by the fact that several multinational, global companies operate (e.g., Bosch, Continental, Richter, Egis) or plan to establish (e.g., BYD) significant domestic R&D centers.

According to the Global Innovation Index developed by a UN agency, Hungary will rank 36th in the world (out of 139 countries surveyed) in terms of innovation performance in 2025, and 20th among EU Member States.¹⁷²

¹⁶⁸ See Eurostat's information on R&D expenditure

¹⁶⁹ See Eurostat's information on the EU governments increased R&D allocations by 3% in 2024

¹⁷⁰ See Eurostat's data on GERD by sector of performance

¹⁷¹ European Innovation Scoreboard 2024 Country Profile Hungary:

¹⁷² See wipo.int's data on Hungary ranking in the Global Innovation Index 2025

4.15.3 Researchers' working conditions

In the Council's assessment, the ongoing reorganization of research institutes and unclear internal evaluation mechanisms mean that researchers are working in uncertain conditions.

The Council's comment concerns the reform of the Hungarian research and development institutional system and the establishment and operation of the Eötvös Loránd Research Network (ELKH). The government's stated goal of the organizational restructuring carried out in 2019 was to implement a more efficient, economically oriented science policy, but it resulted in a loss of autonomy and a crisis of confidence. The reorganization caused uncertainty and operational disruptions in the years following its introduction. However, the reorganization and organizational consolidation were completed years ago and are not currently ongoing.

New support mechanisms and specialized tenders have appeared in the Hungarian innovation system (e.g., the "Thematic Excellence Program" and cooperative doctoral programs), which contribute to encouraging the next generation of researchers. According to the European Commission's 2025 Innovation Country Report (EIS), the framework conditions for R&D&I activities have improved significantly in Hungary in recent years.¹⁷³

However, the European Commission's (EC) 2022 decision to exclude the vast majority of Hungarian universities from European research and higher education cooperation, in particular the Horizon and Erasmus programs, had a negative impact on R&D&I activities and the situation of Hungarian researchers.¹⁷⁴ The EC criticized the Hungarian higher education reform, in particular the fact that universities have become public asset management foundations. The practical effect of the Commission's sanction is not only that the universities concerned cannot receive EU funding, which immediately reduces the Hungarian R&D budget and research capacity, already considered low by the Council document. The exclusion of Hungarian institutions from European research partnerships effectively excludes Hungarian researchers and their expertise, which leads to a less efficient allocation of EU R&D funds and ultimately weakens the performance of the entire European knowledge base.¹⁷⁵

4.15.4 Technology transfer

The Council notes that technology transfer offices are not yet sufficiently embedded and accepted within scientific circles, and that spin-off channels are not yet sufficiently developed. Cooperation

¹⁷³ European Innovation Scoreboard 2025 Country profile Hungary

¹⁷⁴ Council implementing decision (EU) 2022/2506 of 15 December 2022 on measures for the protection of the Union budget against breaches of the principles of the rule of law in Hungary

¹⁷⁵ Zubaşcu, 2024

between scientific institutions and businesses is mainly limited to existing businesses linked to universities.

If we compare the critical findings of the document with the European Commission's 2025 Innovation Country Report, we get a more nuanced and quantifiable picture. According to the report's data, the innovation activity of Hungarian SMEs is below the EU average, which suggests that knowledge and technology transfer mechanisms are not effectively reaching a wide range of businesses. The number of industrial property (IP) applications also lags behind the EU average. At the same time, according to the report, the number of joint scientific publications (per year) by universities and businesses is growing significantly, well above the EU average, which indicates the strength of the technology transfer base. The indicator for networking and knowledge sharing among SMEs also shows an upward trend, with measurable improvements in cooperation between those involved in technology transfer. In terms of developing digital infrastructure and knowledge bases, which are fundamental prerequisites for technology transfer, Hungary consistently outperforms the EU average in several respects.

There is real potential for making technology transfer more effective in Hungary. At the same time quantifiable progress has been made in several areas, partly thanks to higher education reform and change of model in universities, which has been criticized by the European Commission.

4.15.5 Administrative burdens

According to the Council, due to the heavy administrative burden and the not always clear eligibility rules for innovation expenditure, only a few, mainly large, companies can be considered innovative and benefit from various forms of support.

A 2023 study examining the impact of EU calls for proposals on companies and employees finds that administrative complexity and application requirements often limit the participation of truly innovative but organisationally weaker SMEs, while larger market players with the capacity to handle the administration find it easier to win and utilize grants. According to the results of a 2025 study¹⁷⁶ examining the factors influencing the innovation activities of domestic SMEs, the innovation performance of small and medium-sized enterprises does not depend on their size or age, but on how effectively they can integrate modern scientific results and advanced technological solutions into their operations. Companies are primarily constrained in their innovation by high costs, which is why innovation tenders that do not deter potential innovators with excessive administrative burdens are so important.

¹⁷⁶ Karácsony et al., 2025, pp. 635-642

5. The position of the Hungarian government and economic policy on the European Semester country recommendations

5.1 Shifting European Semester, shifting government positions

The political content, focus, and toolkit of the country-specific recommendations formulated within the framework of the European Semester have undergone significant changes since their introduction in 2011. The dynamics of change have also been influenced by crises affecting the European Union (migration crisis, COVID-19 pandemic, energy crisis). The proportion of fact-based, precisely worded recommendations has also changed over time, and the range of topics covered has expanded significantly.¹⁷⁷

The European Semester was created as the EU's response to the 2008 financial crisis, so initially it focused on strengthening fiscal coordination within the EU, monitoring the implementation of the Stability and Growth Pact, and influencing the budgetary paths of Member States in line with Community interests. In the early years, country-specific recommendations focused almost exclusively on maintaining and achieving fiscal balance and macroeconomic stability. The recommendations have "hardened," i.e., they were increasingly formulated as specific, quantified expectations and related to fiscal balance and structural reforms affecting the labour market, the pension system, and the healthcare system. In the early years, the European Semester was criticized for its overly technocratic approach, which subordinated social and societal policy dimensions to fiscal objectives.

With the unfolding of the migration crisis, the scope of the recommendations began to broaden in 2015. The European Pillar of Social Rights was established in 2017, and recommendations referring to its principles began to appear in increasing numbers in the practice of the European Semester. The literature interprets this as a shift towards "softening," or "softer" social policy issues. Assessments and recommendations concerning social cohesion, social policy, and education policy appear in the country-specific recommendations prepared by the European Commission.

The COVID-19 crisis has fundamentally changed the approach to the European Semester. In order to protect the economies of the Member States and ensure the operability of the EU-level economic stimulus package (NextGenerationEU), the Commission has temporarily allowed greater flexibility in fiscal rules and placed greater emphasis on supporting the green transition and stimulating investment. The country-specific recommendations included aspects relating to

¹⁷⁷ Bekker, 2020, pp. 114-133

digitalization, climate protection, and resilience development.¹⁷⁸ At the same time, the European Semester expanded to include political issues, with recommendations concerning Member State regulations and measures deemed to undermine the rule of law. The Commission has linked Member States' participation in financial support programs, in particular access to the Recovery and Resilience Facility (RRF), to the implementation of the "rule of law" reforms required in the recommendations, escalating political disputes between EU institutions and Member States.¹⁷⁹

The functioning of the European Semester was also transformed by the new economic governance framework introduced in 2024. The reform significantly modified the Stability and Growth Pact (SGP) and the rules of European fiscal coordination. Member States are required to submit medium-term budgetary and structural plans to the Commission, setting out their expenditure trajectories, key reforms, and investment plans.¹⁸⁰ The new economic governance framework promises simplification, with a single headline expenditure indicator replacing the multiple indicators used in the past. In addition to financial sustainability, the reform also focuses on structural changes and investments. Instead of imposing universal solutions, it gives Member States the opportunity to stabilize their public debt and deficit trajectories over a longer period of time.

The Hungarian government's attitude towards the country-specific recommendations formulated within the framework of the European Semester has been shaped by the structural changes in the European Semester. According to the assessments of the EU institutions, Hungary has on several occasions shown progress in the implementation of the recommendations. For the 2019–2023 period, the European Commission recorded an implementation rate of approximately 22%.

In the first years of the European Semester, the recommendations focused on budgetary consolidation, fiscal coordination, and macroeconomic stability. The Hungarian government supported the principle of fiscal discipline, but at the same time sought to ensure room for maneuver in national economic policy. The debates between the Hungarian government and EU leaders were typically technical in nature, for example, concerning the pace of adjustment, and there were no open political conflicts at that time.

From 2015 onwards, the Commission paid greater attention to social and labour market issues, particularly following the introduction of the European Pillar of Social Rights. However, the Hungarian government contested the validity of the recommendations on several points, arguing that they ignored national specificities. With regard to family policy, utility cost reduction, and

¹⁷⁸ 2020 European semester: country-specific recommendations

¹⁷⁹ Fromont – Van Waeyenberge, 2025

¹⁸⁰ Darvas et al., 2024

state incentive programs, the government considered the preservation of the "national model" to be a priority.

During the COVID-19 pandemic, the European Semester became more flexible: instead of fiscal austerity, an investment- and recovery-oriented approach came to the fore. This could have reduced conflicts, but the non-economic conditions attached to RRF funds opened up new political debates.¹⁸¹ The Commission made financial support conditional on the rule of law and institutional conditions, which the Hungarian government rejected on the grounds of sovereignty. Tensions rose to a high level and turned into a protracted political debate.

The relationship between the Hungarian government and the European Semester gradually evolved from initial technical coordination into a political conflict. While in the early years the debates mainly concerned the timing of economic policy measures, after 2017 the focus shifted increasingly to the content and political interpretation of EU expectations. Overall, the degree of implementation of the recommendations remained low. The current situation is characterized by persistent political tension and low-impact coordination, which may limit the effectiveness of economic and institutional cooperation in the longer term.

5.2 European Semester 2025 and the room for maneuver of Hungary's economic policy

According to the Hungarian government's assessment, the recommendations formulated in the 2025 European Semester fundamentally ignore Hungary's economic characteristics and objectives. According to the Ministry of National Economy, the unconsidered implementation of the recommendations would increase the burden on the population, as they would include tax increases and the abolition of utility subsidies and family support.¹⁸² The Hungarian government continues to consider support for families, pensioners, and domestic businesses a priority and intends to implement a further significant tax reduction program to this end.

According to the government's argument, some of the recommendations are based on an incorrect assessment of the situation, and the proposals put forward as solutions are universal and cannot be adequately adapted to the realities of the Hungarian economy. According to the ministry's assessment, the budget deficit could fall to 3.7 percent next year even without implementing the

¹⁸¹ Bokhorst, 2021

¹⁸² See Portfolio.hu's article on July 9th, 2025

recommendations, while the primary balance would remain balanced, thus not undermining economic stability.

Budgetary decisions are fundamentally a national competence under EU Treaties, and the macroeconomic flexibility necessary for rapid adjustment can be better ensured by Member States' economic policies. According to the government, the tax policy and price regulation elements applied by the Hungarian model, which have been criticized by the European Semester, contribute to internal stability and to the financing of social policy objectives based on democratic mandate.

The government has been given a political mandate to protect Hungarian families and domestic businesses, and is therefore unwilling to automatically apply EU recommendations if they conflict with the fundamental interests of families and businesses. According to the government's assessment, the EU's bureaucratic expectations ignore the social priorities of Hungarian voters, and the proposed measures — such as the liberalization of energy prices or the reduction of certain state subsidies — would increase the burden on households.

The recommendations formulated by the European Commission focus primarily on structural reforms and the requirements of EU frameworks. At the same time, the Hungarian government emphasizes that the measures must serve the interests of the Hungarian people and businesses, and therefore reserves the right to intervene extensively. According to the government's position, the reforms and measures to be implemented must be in line with the realities of the Hungarian economy and society, but the EU's assessment and recommendations take this into account only to a limited extent.

The positions of the European Commission and the Hungarian government are furthest apart on utility price reduction, energy security, and sectoral special taxes. These are areas that are most sensitive from a political and social point of view and that directly contribute to the well-being of voters and the secure functioning of the economy. The government's position is strategically understandable, as it is accountable to Hungarian voters. Since the recommendations are not binding, they do not restrict the Hungarian government's economic policy options in the short term. However, failure to implement the reforms demanded by EU institutions could be risky in the longer term, as it could jeopardize access to EU funds.

6. More European Semester and less autonomous economic policy – Is EU-level competitiveness at risk?

6.1 The EU's competitiveness situation and challenges

The competitiveness of the European Union in 2025 shows signs of a profound structural crisis, which is hampering the continent's economic growth and global position in many ways. Over the past decade and a half, the US economy has grown three times faster than that of the EU, a clear warning that the continent's lag is not merely temporary but stems from deep-rooted structural problems. The EU's share of the global economy has declined significantly since 2004 and now accounts for only about 17% of world GDP, down from 26% in 2004, partly due to demographic changes and partly to competitiveness shortcomings.

The EU's technological and innovation gap is particularly striking, with a dramatic loss of position in chip manufacturing, for example: in 1990, they still had a 44% market share, but by 2022 this had fallen below 10%. There is also a significant lag in the spread of digital technologies and the number of so-called unicorn companies (start-ups valued at or less than \$1 billion) compared to the United States and China. This innovation deficit fundamentally undermines the EU's competitiveness, with many companies seeking development opportunities outside the EU.

The shortage of labour and production capacity, as well as the lack of highly skilled professionals, limits the EU's industrial and technological development. Among the structural challenges, the significant increase in energy prices, which are 2-2.5 times higher in the EU than in the United States, is a major concern. These high costs not only hamper industrial production, but also slow down the achievement of climate neutrality, which has been set as a target for the EU by 2050. The energy price shock is particularly affecting the German automotive industry and manufacturing in general, which may remain a sore point for European economic growth in the long term.

The current competitiveness crisis is further exacerbated by administrative burdens. Reforming EU institutions, reducing accumulated bureaucracy, and removing regulatory barriers that undermine international competitiveness are essential to restoring competitiveness. Deepening the capital markets union is key to making it easier for businesses in Member States to access funds and become more competitive in the global market.

Demographic challenges such as aging populations, declining fertility rates, and labour migration also severely limit the EU's economic potential in the short and medium term. These processes

also threaten the sustainability of social systems, and labour shortages lead to a decline in production capacity.

6.2 A unified European Union?

When assessing the competitiveness of the European Union's Member States and making recommendations for improving competitiveness, it is necessary to take into account the fact that the individual Member States have very different characteristics. There are significant differences in various economic data, but soft factors such as linguistic, cultural and historical roots are also very diverse. In this respect, the European Union cannot be compared to the United States, whose states have different economic systems but share the same linguistic, cultural and historical foundations.

Among the European Union's efforts to date to harmonize the economies of a wide range of Member States, the introduction of the euro and the functioning of the eurozone are particularly noteworthy. The introduction of the euro is based on the theory of the optimal currency area. An optimal currency area can be created when a geographical region uses a single currency that is economically beneficial to all members. The advantages of a common currency (such as reduced transaction costs and increased trade) outweigh the costs (such as the loss of monetary policy independence). The creation of the euro area and the historical experience since then have shown that the application of the rules associated with the introduction of a common currency has different effects on economies with different characteristics.

In the first half of the 2010s, the eurozone fell into crisis, but it was primarily the southern Member States that were hit by the lack of room for maneuver resulting from the introduction of the euro, i.e., the harmonization of monetary policy instruments at the European level. On the other hand, uniform regulation had a different impact on countries with different economic conditions. The simplest example is the common central bank base rate, which is set by the ECB for all 21 Member States using the euro. A uniform interest rate is too strict for some countries and restrains their economies (those with weaker, less developed economies and high public debt, e.g. the southern Member States), while for other countries it is too loose, and they would expect (even) stricter conditions for economic and inflationary stability (e.g. Germany, the Netherlands, northern Member States). Eurozone Member States may react differently to external shocks and crises, may be in different economic cycles, and may have different budgetary situations, growth prospects and competitiveness. The ECB, however, is trying to find a middle ground with a single interest rate policy, but this may cause overheating in some countries and restraint in others.

The rules, expectations, and regulations that apply uniformly to all 27 EU countries are not favourable from a competitiveness perspective—neither for individual countries nor for the competitiveness of the European Union as a whole. Excessive central intervention and the narrowing of national autonomy may pose a risk to the economic adaptability of certain countries and their ability to deal with specific problems, but it may also hinder innovation. This is especially true when the recommendations proposed by the Commission are not adequately tailored to the specific circumstances and needs of the Member States. Each Member State is a separate entity with its own language, culture, and mindset (albeit with common European roots and historical awareness), which cannot (and should not) be lumped together and treated uniformly (as in the case of the US states), as this could be detrimental to efficiency and competitiveness.

Summary

Over the past decade and a half, the European Semester has undergone a striking transformation: from a fundamentally soft coordination mechanism created in the wake of the 2008–2009 crisis, it has gradually developed into an economic policy governance framework that serves not only policy coordination but increasingly also as an instrument of political pressure on the Member States, thereby shaping national policies in an ever more direct manner. The original purpose of the Semester was to identify macroeconomic imbalances and fiscal risks in a timely manner, but it now covers key areas of social, employment, pension, housing, energy, and tax policy in addition to fiscal policy. This means that the Commission – the real driving force behind the Council – is becoming not only a proposer but also an increasingly influential player.

One of the main findings of the analysis is that the rules of the European Semester were soft at the outset: the country-specific recommendations (CSRs) were not formally legally binding, their implementation was voluntary, and Member States, including Hungary, often took them into account only partially and selectively. The European Court of Auditors examines the European Semester in its annual special reports and always points out in its summaries that, according to its findings, only about a quarter of the CSRs were implemented in full or to a significant extent, while no meaningful progress was made on a further 30 percent. This "soft law" nature has long been a guarantee that the economic sovereignty of Member States would not be fundamentally undermined.

However, the post-COVID-19 period has brought about a turning point. The Recovery and Resilience Facility (RRF) under NextGenerationEU has become a testing ground for how the

recommendations of the European Semester can be turned into hard financial conditions. Member States' recovery plans had to respond directly to the challenges identified in the country-specific recommendations, and payments are linked to the achievement of specific reform and investment milestones. No approved plan, no reforms, no delivery, no money. This is a radically new situation: the Semester thus becomes an instrument of retaliation through which the Commission can not only recommend but also enforce.

At the same time, the new EU economic governance framework – a system of multiannual net expenditure paths and medium-term fiscal-structural plans – further strengthens the weight of the Semester. Member States must present an approved expenditure path for several years in advance, which is assessed by the Commission and approved by the Council by a qualified majority vote. The reforms and investments identified in the Semester will feature prominently in these plans, while annual "progress reports" will create continuous pressure to deliver. These formally non-binding documents will thus become de facto binding reference points for budgetary paths and reform agendas.

Another key conclusion of the analysis is that cohesion policy will be the next "front line" after the RRF. According to the current state of negotiations on the EU budget cycle for 2028–2034 (which is still awaiting approval), it can be expected that the use of cohesion and rural development funds will be much more closely linked to the reforms and objectives set out in the semester. Cohesion funds would be linked to national and regional partnership plans, in which country-specific recommendations would serve as a fundamental point of reference. If a Member State fails to comply with these recommendations, or only does so selectively, it can expect not only political criticism but also a loss of funds. The RRF is therefore not a one-off exception, but a pattern: semester conditionality is gradually being extended to the entire EU funding system.

In the case of Hungary, the analysis shows in detail how the country-specific recommendations assess the key elements of the Hungarian economic policy mix: utility price reduction, interest rate freezes, subsidized loans, price freezes and margin restrictions, the windfall tax system, housing policy subsidies, the structure of the tax system, labour market measures, and poverty and pension policy. The "mainstream" EU logic represented by the Commission tends to favor market prices, targeted subsidies, horizontal and less sector-specific taxes, more generous minimum benefits, a stronger social safety net, and automatic, rule-based pension indexation. In contrast, the Hungarian government is trying to preserve its own economic policy model with the tools of a work-based society, a family-friendly tax system, utility cost reductions, and crisis management based on special taxes.

The tension is therefore not merely technical, but normative in nature: there are differing views on what constitutes "good" economic policy. While the EU is building a coordinated model of stability, competitiveness, green and digital transition, and strengthening social rights, several Member States—including Hungary—are demanding independent economic policy leeway, citing national characteristics and electoral mandates. However, the conditionality attached to the RRF and then expectedly, to cohesion policy means that the price of deviation will increasingly be a concrete loss of EU funds.

The research paper also emphasizes that the "hardening" of the European Semester raises democratic and constitutional questions. EU-level decisions are still primarily made by the Commission's expert apparatus, while the role of national parliaments, social partners, and the European Parliament is limited. If the formally non-binding recommendations formulated in the Semester are linked to financial conditions amounting to billions of euros, then EU economic policy coordination will essentially become centralized economic policy-making, with weaker political control.

Ultimately, the basic premise of the study can be summarized in the title of Chapter 6: "More European Semester and less autonomous economic policy – is EU-level competitiveness at risk? The authors do not dispute that stronger coordination can bring stability and crisis management benefits and contribute to the achievement of EU objectives such as the green transition or social inclusion. At the same time, they point out that excessive restrictions on Member States' room for maneuver, the curtailment of economic policy pluralism, and the Commission's "competence creep" could, in the longer term, come at the expense of competitiveness and democratic legitimacy. It is the joint responsibility of EU decision-makers and Member State governments to ensure that the Semester is not a means of undermining economic policy sovereignty, but rather a tool for strengthening mutually agreed, transparent and democratically controlled cooperation.

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References

- 2020 European semester: country-specific recommendations: https://publications.europa.eu/resource/ellar/262b9676-ff62-11ea-b31a-01aa75ed71a1.0001.02/DOC_1
- Act XC of 2024 on the central budget of Hungary for 2025: <https://net.jogtar.hu/jogszabaly?docid=a2400090.tv>
- Adamecz-Völgyi, Anna – Ónozó, Livia (2016): Megszűnőben az infláció elosztási hatása. *Hungarian National Bank*: <https://www.mnb.hu/kiadvanyok/szakmai-cikkek/inflacio/adamecz-volgyi-anna-onozo-livia-megszunoben-az-inflacio-elosztasi-hatasa>
- Baccini, Federico (2025): Cohesion policy: the controversial revolution of the future EU budget. *Osservatorio balcani e caucasia*: https://www.balcanicaucaso.org/en/cp_article/cohesion-policy-the-controversial-revolution-of-the-future-eu-budget/
- Bagi, Nikolett Dóra (2023): Tagállami mozgástér az Európai Szemeszter tükrében. *Ludovika.hu*: <https://www.ludovika.hu/blogok/ot-perc-europa-blog/2021/07/26/tagallami-mozgaster-az-europai-szemeszter-tukreben/>
- Balatoni, András (2022): Ársapkák és infláció: mit üzen a múlt és mit mutat a jelen? *Hungarian National Bank*: [balatoni-andras-arsapkak-es-inflacio-mit-uzen-a-mult-es-mit-mutat-a-jelen.pdf](https://www.mnb.hu/kiadvanyok/szakmai-cikkek/arsapkak-es-inflacio/balatoni-andras-arsapkak-es-inflacio-mit-uzen-a-mult-es-mit-mutat-a-jelen.pdf)
- Baroncelli, Stefania (2024): The Recovery & Resilience Facility. *REBUILD Centre Working Paper No. 15*: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4698043
- Bekker, Sonja (2015): European socioeconomic governance in action: coordinating social policies in the third European Semester. *Ose Paper Series*: https://www.eapn.eu/wp-content/uploads/2015/03/Bekker_2015_OseResearchPaper19.pdf
- Bekker, Sonja (2020): Hardening and softening of country-specific recommendations in the European Semester. *West European Politics* Volume 44, Pages 114-133
- Bekker, Sonja (2021): The EU's Recovery and Resilience Facility: A Next Phase in EU Socioeconomic Governance? *Politics and Governance* (ISSN: 2183–2463) 2021, Volume 9, Issue 3, Pages 175–185: <https://doi.org/10.17645/pag.v9i3.4290>
- Bernát, Anikó (2018): A magyarországi romák társadalmi integrációja a 2010-es években. *Társadalmi Riport* pp. 144-165.: <https://real.mtak.hu/180447/>

- Bíró-Nagy, András – Laki, Gergely (2020): ajánlások és teljesülésük- A V4-ek országspecifikus ajánlásai európai kontextusban. *Politikatudományi Szemle* XXX/1. 7–34. pp.
- Bokhorst, David (2021): The Influence of the European Semester: Case Study Analysis and Lessons for its Post-Pandemic Transformation. *Journal of Common Market Studies*: <https://onlinelibrary.wiley.com/doi/10.1111/jcms.13266>
- Cannas, Giuseppina - Ferraro, Sara - Van De Castele, Koen (2023): Competition State aid brief: https://competition-policy.ec.europa.eu/system/files/2023-07/state_aid_brief_1_2023_kdam23001enn_TCTF_survey_0.pdf
- Chen, Been-Lon - Chen Hung – Ju - Wang, Ping (2021): Long-Run Tax Incidence In A Human-Capital-Based Endogenous Growth Model With Labor-Market Frictions. *Macroeconomic Dynamics*, 25, 2021, 337–378.
- Commission Staff Working Document 2024 Country Report – Hungary Accompanying the document Recommendation for a Council Recommendation on the economic, social, employment, structural and budgetary policies of Hungary
- Communication From The Commission To The European Parliament, The European Council, The Council, The European Economic And Social Committee And The Committee Of The Regions-REPowerEU: Joint European Action for more affordable, secure and sustainable energy: https://eur-lex.europa.eu/resource.html?uri=cellar:71767319-9f0a-11ec-83e1-01aa75ed71a1.0001.02/DOC_1&format=PDF
- Council Implementing Decision (EU) 2022/2506 of 15 December 2022 on measures for the protection of the Union budget against breaches of the principles of the rule of law in Hungary: https://eur-lex.europa.eu/eli/dec_impl/2022/2506/oj/eng?utm
- Council implementing decision (EU) 2022/2506 of 15 December 2022 on measures for the protection of the Union budget against breaches of the principles of the rule of law in Hungary
- Council of the European Union's press release on September 30th, 2022: <https://www.consilium.europa.eu/en/press/press-releases/2022/09/30/council-agrees-on-emergency-measures-to-reduce-energy-prices/>
- Csalad.hu's article (December 28th, 2020): <https://csalad.hu/csaladban-elni/tobb-mint-ket-es-felszeresere-emelkedik-jovore-a-csaladtamogatasok-osszege-2010-hez-kepest>
- Csalad.hu's article (November 11th, 2024): <https://csalad.hu/csaladban-elni/segitseg-a-kisgyermeket-nevelo-edesanyaknak>

- Csalad.hu's article (September 19th, 2025): <https://csalad.hu/csaladban-elni/munkavegzes-a-gyermek-utan-jaro-tamogatasok-mellett>
- Csenger, Ádám (2025): Romák a munkaerőpiacon: A szegénységi mutatók változása a romák körében. *Oeconomus Economic Research Institute*: <https://www.oeconomus.hu/rendezveny/romak-a-munkaeropiacon-a-szegenysegi-mutato-k-valtozasa-a-romak-koreben/>
- Csiszer, Éva (2024): Bértámogatás súlyosan hátrányos helyzetűeknek. *palyazzokosan.hu*: <https://palyazzokosan.hu/sulyosanhatranyosokbertamogatasa/>
- Darvas, Zsolt – Welslau, Lennard – Zettelmeyer, Jeromin (2024): The implications of the European Union's new fiscal rules. *Policy Brief Issue n°10/24*: <https://www.bruegel.org/system/files/2024-07/PB%2010%202024.pdf>
- Data on youth employment in Hungary, made by Erdélyi, Dóra (July 4th, 2023), *Oeconomus Research Institute*: <https://public.flourish.studio/visualisation/14116927/>
- Demján Sándor Program: <https://vali.hu/demjansandorprogram>
- Directorate-General for Communication of the European Commission (July 16th, 2025): EU budget 2028-2034 for a stronger Europe: https://commission.europa.eu/news-and-media/news/eu-budget-2028-2034-stronger-europe-2025-07-16_en
- Együttfejlodunk.hu's article (December 17th, 2024): <https://egyuttfejlodunk.hu/a-foglalkoztatasi-fejlesztesehez-kapcsolodo-piller-projekt-a-hatranyos-helyzetu-allaskeresekre-fokuszal/>
- Enache, Cristina (2025): Windfall Profits Taxes in Europe. *Tax Foundation Europe*: <https://taxfoundation.org/data/all/eu/windfall-profits-taxes-europe/>
- Erdélyi, Dóra (2022): Európai inflációs körkép. *Oeconomus Economic Research Institute*: <https://www.oeconomus.hu/irasok/europai-inflacios-korkep/>
- Erdélyi, Dóra (2023): Megéri nyugdíj mellett dolgozni? – körkép az idősök foglalkoztatásáról. *Oeconomus Gazdaságkutató Alapítvány*: <https://www.oeconomus.hu/irasok/megeri-nyugdij-mellett-dolgozni-korkep-az-idosek-foglalkoztatasarol/>
- Erdélyi, Dóra (2024a): Fogytékossággal élők foglalkoztatása Európában és Magyarországon <https://www.oeconomus.hu/irasok/fogyatekossaggal-elok-foglalkoztatasa-europaban-es-magyarorszagon/>

- Erdélyi, Dóra (2024b): Tartós munkanélküliség pszichológiai háttere és gazdasági vonatkozásai <https://www.oeconomus.hu/irasok/tartos-munkanelkuliseg-pszichologiai-hattere-es-gazdasagi-vonatkozasai/>
- Erdélyi, (2025a): Tanulni nem luxus: a lifelong learning hatása. Oeconomus Economic Research Institute: <https://www.oeconomus.hu/irasok/tanulni-nem-luxus-a-lifelong-learning-hatasa/>
- Erdélyi, Dóra (2025b): Egységes kulcs, dinamikus növekedés: az egykulcsos adó munkaerőpiaci szerepe Magyarországon. Oeconomus Economic Research Institute: <https://www.oeconomus.hu/irasok/egyseges-kulcs-dinamikus-novekedes-az-egykulcsos-ado-munkaeropiacy-szerepe-magyarorszagon/>
- Erdélyi, Dóra (2025c): Az árrésstop is segítette az infláció lassulását áprilisban. *Oeconomus Economic Research Institute*: <https://www.oeconomus.hu/gyorsreakcio/az-arresstop-is-segitette-az-inflacio-lassulasat-aprilisban/>
- Erdélyi, Dóra –Horváth, Sebestyén (2023): 20%-ra lassult a hazai infláció. *Oeconomus Economic Research Institute*: <https://www.oeconomus.hu/oecofocus/20-ra-lassult-a-hazai-inflacio/>
- Erste Bank's information on interest rate freeze: <https://www.erstebank.hu/hu/ebh-nyito/hitelek-es-otthon/otthonmegoldasok/kamatstop>
- Ertekvagy.hu's article on primary labor market employers: <https://ertekvagy.hu/hu/-/els-c5-91dleges-munkaer-c5-91-piaci-munkaad-c3-b3k>
- Ertekvagy.hu's information on rehabilitation contribution: https://ertekvagy.hu/hu/-/rehabilitacios-hozzajarulas_2024
- European Commission's data on Total EU payments all ESI Funds – time series cumulated to the end of each year 2021-2027, Hungary: <https://cohesiondata.ec.europa.eu/countries/HU/21-27#eu-payments>
- European Commission's Report on Hungary, 2025: https://ec.europa.eu/eurostat/databrowser/view/trng_lfse_01__custom_17673244/default/table
- European Innovation Scoreboard 2024 Country Profile Hungary: https://ec.europa.eu/assets/rtd/eis/2024/ec_rtd_eis-country-profile-hu.pdf
- European Innovation Scoreboard 2025 Country profile Hungary: https://ec.europa.eu/assets/rtd/eis/2025/ec_rtd_eis-country-profile-hu.pdf

- European Parliament's summary on the EU framework for fiscal policies: <https://www.europarl.europa.eu/factsheets/en/sheet/89/a-fiskalis-politikak-unios-keretrendszer>
- Eurostat data on children at risk of poverty or social exclusion by educational attainment level of their parents (population aged 0 to 17 years): https://ec.europa.eu/eurostat/databrowser/view/ilc_peps60n__custom_18340005/default/table
- Eurostat data on participation rate in education and training: : https://ec.europa.eu/eurostat/databrowser/view/trng_lfse_01__custom_17673244/default/table
- Eurostat data on persons at risk of poverty or social exclusion by level of disability (activity limitation), sex and age: https://ec.europa.eu/eurostat/databrowser/view/hlth_dpe010__custom_18287264/default/table
- Eurostat's data on GERD by sector of performance: https://ec.europa.eu/eurostat/databrowser/view/rd_e_gerdtot/default/table?lang=en
- Eurostat's data on total fertility rate: <https://ec.europa.eu/eurostat/databrowser/view/tps00199/default/table?lang=en>
- Eurostat's information on R&D expenditure: <https://ec.europa.eu/eurostat/statistics-explained/SEPDF/cache/1203.pdf>
- Eurostat's information on the EU governments increased R&D allocations by 3% in 2024: <https://ec.europa.eu/eurostat/web/products-eurostat-news/w/ddn-20250729-2?utm>
- Exterde, Tibor (2025): Elemző: az árresstop miatt a kereskedők át fogják hárítani a veszteségeiket a vevőkre. *Infostart.hu*: <https://infostart.hu/gazdasag/2025/03/18/elemzo-az-arresstop-miatt-a-kereskedok-at-fogjak-haritani-a-vesztesegeiket-a-vevokre>
- Fabbrini, Federico (2024): The Recovery & Resilience Facility as a New Legal Technology of European Governance. *Journal of European Integration*: https://www.fondazioneccsf.it/images/2024/Research-paper/CSF-RP_FFabbrini_RRF-European-Governance_May2024.pdf
- Fizetesek.com's article (May 26th, 2025): <https://www.fizetesek.com/blog/allasgarancia-magyarorszagon-2025>
- Fortuna, Gerardo (2025): Ringfenced, but reduced: EU Commission shrinks agriculture share in record budget. *Euronews*: <https://www.euronews.com/my->

europe/2025/07/17/ringfenced-but-reduced-eu-commission-shrinks-agriculture-share-in-record-budget

- Fromont, Louise – Van Waeyenberge Arnaud (2025): The European Semester as a Governance Mechanism for Rule of Law Risks in the EU. *European Journal of Risk Regulation*;16(3):872-881. <https://doi.org/10.1017/err.2025.29>
- Gerendás et al., (2023): A háztartások pénzügyi adatai. *Hungarian National Bank*: https://statisztika.mnb.hu/sw/static/file/A_haztartasok_penzugyi_adatai_2023_HUN.pdf
- Government of Hungary: <https://kormany.hu/hirek/35-ezer-csaladnak-kedvezhet-a-babavaro-hitel-eletkor-modositasa>
- Government Office of Győr-Moson-Sopron Counties' information Labor market programs to assist job seekers will continue in 2025: <https://kormanyhivatalok.hu/kormanyhivatalok/gyor-moson-sopron/megye/hirek/hir/2025-ben-folytatodnak-az-allaskereseket-segito>
- Horváth, Sebestyén – Pásztor, Szabolcs (2025): Árrésstop: egy Izraeltől Franciaországig alkalmazott eszköz. *Oeconomus Economic Research Institute*: <https://www.oeconomus.hu/oecofocus/arres-stop-egy-izraeltol-franciaorszagig-alkalmazott-eszkoz/>
- Hungarian Central Statistical Office: Consumer price index by main consumption groups and consumer price index for pensioners 1961-2025
- Hungarian Central Statistical Office's data on birth and death rates in Hungary: <https://www.ksh.hu/gyorstajekoztatok/nep/nep2412.html>
- Hungarian Central Statistical Office's data on percentage of long-term unemployed among unemployed persons aged 15–64: https://www.ksh.hu/stadat_files/mun/hu/mun0035.html
- Hungarian Central Statistical Office's data on poverty rate: <https://ksh.hu/kiadvanyok/fenntarthato-fejlodes-indikatorai/2024/2-5>
- Hungarian Central Statistical Office's data on the number of unemployed persons by duration of job search, by gender: https://www.ksh.hu/stadat_files/mun/hu/mun0031.html
- Hungarian Central Statistical Office's Fuel price statistics of September 2025: <https://www.ksh.hu/s/kiserleti-statisztika/kiadvanyok/regios-uzemanyagarak-osszehasonlitasa-2025-10-03/>
- Hungarian Competition Authority (2023): <https://www.gvh.hu/sajtoszoba/sajtokozlomenyek/2025-os-sajtokozlomenyek/mar-100-termekategoria-erheto-el-az-online-arfigyeloben>

- Hungarian Competition Authority (2024): <https://www.gvh.hu/sajtoszoba/sajtokozlomenyek/2024-es-sajtokozlomenyek/harom-honap-alatt-kozel-20-milliard-forintot-sporoltak-a-magyar-csaladok-az-online-arfigyelonek-koszonhetoen>
- Hungarian National Bank's summary on monetary policy: <https://www.mnb.hu/web/en/monetary-policy>
- Hungarian National Social Inclusion Strategy 2030: <https://kormany.hu/dokumentumtar/magyar-nemzeti-tarsadalmi-felzarkozasi-strategia-2030>
- Hungarian Office of National Assembly's data on nationalities in Hungary, 2025: http://parlament.hu/documents/d/guest/infotablo_2025_3_magyarorszag-i-nemzetisegek_2025
- Hungary's Act LXXXI of 1996 on Corporate Tax and Dividend Tax: <https://net.jogtar.hu/jogszabaly?docid=99600081.tv>
- Hungary's Central Statistical Office's data on lifelong learning: <https://op.europa.eu/webpub/eac/education-and-training-monitor/en/country-reports/hungary.html#6-adult-learning>
- Hungary's Central Statistical Office's data on number of minors classified as disadvantaged per thousand minors: <https://ksh.hu/kiadvanyok/fenntarthato-fejlo-des-indikatorai/2024/2-8>
- Hungary's Central Statistical Office's data on proportion of people at risk of social exclusion: <https://ksh.hu/kiadvanyok/fenntarthato-fejlo-des-indikatorai/2024/2-4>
- Hungary's Government Offices information on accreditation of employers who employ workers with changed working capacity: <https://kormanyhivatalok.hu/kormanyhivatalok/budapest/megye/megvaltozott-munkakepessegu-munkavallalokat-foglalkoztato>
- Hungary's Ministry of Interior Affairs's information on the current status of Public Work Scheme (PWS) in Hungary: <https://kozfoglalkoztatas.kormany.hu/tajekoztato-a-kozfoglalkoztatas-rendszererol>
- Hungary's Public Procurement Authority's list of protected workplaces: <https://fenntarthato.kozbeszerzes.hu/szocialis-kozbeszerzes/vedett-munkahelyek-listaja/>
- Hungary's State Treasury's information on disability benefit: https://www.allamkincstar.gov.hu/egeszsegbiztositas/Betegseg/Fogyatekossagi_tamogatas/fogyatekossagi-tamogatas

- Israel's Ministry of Economy and Industry's data on prices of price-controlled consumer products: <https://www.gov.il/en/departments/dynamiccollectors/food-price-control-search?skip=0>
- Karácsony, Péter – Tsoy, Alexander – Mészáros, János – Nurgaliyeva, Kuralay (2025): Analysis of factors influencing innovation of Hungarian small and medium-sized enterprises. *Problems and Perspective Management*, Volume 23 2025, Issue #1, pp. 635-642
- Kárdási, Adrienn (2024): Kamatplafon kisokos – a leggyakoribb kérdések és válaszok a kamatplafonról. *Tudastar.money.hu*: <https://tudastar.money.hu/ismerteto/kamatplafon-kisokos-kerdesek-es-valaszok-a-kamatplafonrol/>
- Kisfaludy, Tamás (2025): Szélsőséges időjárás sújtja a gyümölcsöket - Ez hajtja feljebb a magyar árakat? *Portfolio.hu*: <https://www.portfolio.hu/gazdasag/20250704/szelsoseges-idojaras-sujtja-a-gyumolcsoket-ez-hajtja-feljebb-a-magyar-arakat-772155>
- Koha.net, 2025 (February 18th): <https://www.koha.net/en/rajon/qeveria-maqedonase-kufizon-marzhen-e-fitimit-per-102-grupe-produktesh>
- Koltai et al. (2018): A közfoglalkoztatás hatása a helyi gazdaságra, helyi társadalomra. *HETFA Research Institute*: https://kozfoglalkoztataskormany.hu/download/f/fc/42000/BM_k%C3%B6zfoglalkoztat%C3%A1s_Tanulmány_20180928-merged.pdf
- Kotz, Maximilian - Levermann Andres - Wenz, Leonie (2024): The economic commitment of climate change. *Nature*, volume 628, pages 551–557: <https://www.nature.com/articles/s41586-024-07219-0>
- Magyar Nemzet (February 22nd, 2025) <https://magyarnemzet.hu/belfold/2025/02/eurostat-nalunk-joval-kedvezobbek-a-szegenysegi-adatok-mint-az-eu-atlag>
- Marzinotto, Benedicta – Wolff, Guntram B. – Hallerberg, Mark (2012): On the effectiveness and legitimacy of EU economic policies. *Bruegel.org*: <https://www.bruegel.org/policy-brief/effectiveness-and-legitimacy-eu-economic-policies>
- Milesi-Ferretti, Glan M. - Roubini, Nouriel (2010): Growth Effects of Income and Consumption Taxes. *Journal of Money, Credit and Banking*, Vol. 30, No. 4 (Nov., 1998), pp. 721-744
- Ministers Chambers and Donohoe welcome Ireland's third payment under the EU's Recovery and Resilience Facility. Department of Public Expenditure, Infrastructure, Public Service Reform and Digitalisation (2025): <https://www.gov.ie/en/department-of-public->

expenditure-infrastructure-public-service-reform-and-digitalisation/press-releases/ministers-chambers-and-donohoe-welcome-irelands-third-payment-under-the-eus-recovery-and-resilience-facility/

- Ministry of National Economy (2025): <https://kormany.hu/hirek/nem-a-profit-hanem-a-magyar-csaladok-az-elsok-a-kamatstop-a-lakhatas-biztonsaga-mellett-a-bankokat-is-vedi>
- MNB's statistics on preliminary financial accounts of general government and households: : <https://statisztika.mnb.hu/publikacios-temak/penzugyi-szamlak/tajekoztatok/az-allamhaztartas-es-haztartasok-elozetes-penzugyi-szamlai>
- Molnár, Dániel (2025): KamatStop vagy KamatGo – a probléma nem is ott van, ahol keresik. *Világgazdaság.hu*: <https://www.vg.hu/velemeney/2025/06/kamatstop-problema-bankok-lakossag>
- Molnár, Görgy (2025): KamatStop vagy KamatGo – a probléma nem is ott van, ahol keresik. *Világgazdaság.hu*: <https://www.vg.hu/velemeney/2025/06/kamatstop-problema-bankok-lakossag>
- Molnár, György (2014): Miért lehet magasabb az érzékelt infláció a valóságnál? *Hungarian National Bank*: <https://www.mnb.hu/sajtoszoba/hirek-2015-juniusig/molnargyorgy-miert-lehet-magasabb-az-erzekelt-inflacio-a-valosagnal>
- Money.hu's article on interest rate freeze (May 22nd, 2023): <https://tudastar.money.hu/hir/20230522/barmikor-megszunhet-a-kamatstop-keszuljünk-a-hitelkivaltasra/>
- Muringani, Jonathan - Dahl Fitjar, Rune - Rodríguez-Pose, Andrés (2024): Political trust and economic development in European regions. *The Annals of Regional Science* Volume 73, pages 2059–2089
- Nagy, Ervin (2024): A munkaalapú társadalom. *XXI. Századi Intézet*: <https://www.xxiszaszadintezet.hu/ertekpillerek-3-resz-munkaalapu-tarsadalom/>
- Nagy, Ervin Miklós – Szabó, Erika – Petrus, József (2020): Megváltozott munkaképességű illetve fogyatékossgal élő személyek a munkaerőpiacon, foglalkoztatásuk munkavédelmi és munkaügyi kérdései. *Governement Office of Szabolcs-Szatmár-Bereg Counties*: <https://ertekvagy.hu/documents/35269/77600/Megv%C3%A1ltozott+munkak%C3%A9pess%C3%A9g%C5%B1+illetve+fogyat%C3%A9koss%C3%A1ggal+%C3%A9l%C5%91+szem%C3%A9lyek+a+munkaer%C5%91piacon%2C+foglalkoztat%C3%A1suk+munkav%C3%A9delmi+%C3%A9s+munka%C3%BCgyi+k%C3%A9rd%C3%A9sei.pdf/59e95d40-8592-bd6d-24dd-2e5f9efcdab7?t=1616351534431>

- National Employment Service's information on calculation of job search allowance available for training:
https://nfsz.munka.hu/cikk/4404/A_kepzeshez_nyujthato_allaskeresest_osztonzo_juttatas_kiszamitasa
- National Employment Service's information on expanding and developing the labor supply:
https://nfsz.munka.hu/cikk/4176/A_munkaerokinalat_bovitesi_es_fejlesztese_GINOP_PLUSZ31123
- National News Agency (2025): Ursula von der Leyen: The European Commission Proposes a €2 Trillion Budget for the 2028–2034 Period:
<https://mti.hu/hirek/2025/07/16/ursula-von-der-leyen-az-europai-bizottsag-2028-2034-kozotti-idoszakra-2000>
- Németh, Viktóra (2022): Az infláció mérséklésére hozott intézkedések Magyarországon. *Oeconomus Economic Research Institute*: <https://www.oeconomus.hu/irasok/az-inflacio-merseklesere-hozott-intezkedesek-magyarorszagon/>
- Németh, Viktória (2022): Az infláció mérséklésére hozott intézkedések Magyarországon. *Oeconomus Economic Research Institute*: <https://www.oeconomus.hu/irasok/az-inflacio-merseklesere-hozott-intezkedesek-magyarorszagon/>
- Neyer, Jürgen (2015): Empowering the Sovereign: National Parliaments in European Union Monetary and Financial Policy. *The European Union: Democratic Principles and Institutional Architectures in Times of Crisis*, Pages 219–236
- Nyugdíjguru's article (March 12th, 2023): <https://www.nyugdiguru.hu/nyugdig/nyugdig-melletti-munkavegzes/a-nyugdijasok-hatalyos-foglalkoztatasi-szabalyai-2023-ban>
- Oeconomus Research Institute: data on the employment rate of young people not in education or training by educational attainment in Hungary made by Erdélyi on June 24th, 2024: <https://public.flourish.studio/visualisation/14128567/>
- Officina's article on working as a pensionist: <https://officina.hu/gazdasag/53-nyugdig-melletti-munka>
- Officina's information on unemployment benefit: : <https://officina.hu/gazdasag/3-munkanelkuli-segely>
- Olekszij, Anton (2025): Romák a munkaerőpiacon: Magyarországot olyan országgá tesszük, ahol mindenki tudja, hogy érdemes dolgozni. *Oeconomus Economic Research Institute*: <https://www.oeconomus.hu/rendezveny/romak-a-munkaeropiacon-magyarorszagot-olyan-orszagga-tesszuk-ahol-mindenki-tudja-hogy-erdemes-dolgozni/>

- Őri, Péter – Szabó, Laura (2024): A népesség száma és szerkezete. In: Monostori Judit – Őri Péter (szerk.) (2024): Demográfiai portré 2024. KSH NKI, Budapest: 183–203
- Origo (July 7th, 2025): <https://www.origo.hu/gazdasag/2025/07/gyogyszerar-csokkent-es-ngm>
- Portfolio.hu (April 4th, 2025a): <https://www.portfolio.hu/gazdasag/20250404/orban-viktor-bizik-benne-hogy-kiegyeznek-a-bankokkal-es-a-telekom-cegekkel-752581>
- Portfolio.hu (April 4th, 2025b): <https://www.portfolio.hu/gazdasag/20250404/orban-viktor-fokozatos-gyorsulast-var-a-magyar-gazdasagtol-752435>
- Portfolio.hu (March 29th, 2025): <https://www.portfolio.hu/gazdasag/20250329/ujabb-teruleten-nyulhat-bele-a-kormany-a-dijszabasba-visszaterhet-az-arstop-is-751073>
- Portfolio.hu 2025 (July 28th): <https://www.portfolio.hu/gazdasag/20250728/egyresulyosabb-a-helyzet-magyarorszagon-ha-igy-megy-tovabb-akkor-kukoricabol-burgonyabol-es-almabol-is-hiany-lesz-776865>
- Portfolio.hu's article on July 9th, 2025: <https://www.portfolio.hu/unios-forrasok/20250709/hatarozottan-visszautasitja-az-ngm-az-europai-bizottsag-elvaraslistajat-773421>
- Rodriguez – Pose, A (2025): EU Budget Proposal 2028-2034: A Threat to Cohesion Policy: https://www.linkedin.com/posts/andr%C3%A9s-rodr%C3%ADguez-pose-814a45a_europeancommission-budget-cohesion-activity-7351523353557446657-TaXz/
- Scheinert, Chirstian - van Lierop, Christiaan (2019): Linking cohesion policy and the European Semester. *European Parliamentary Research Service*: https://www.europarl.europa.eu/RegData/etudes/STUD/2019/644208/EPRS_STU%282019%29644208_EN.pdf
- Shaw, Kristin D. (2021): Are Consumption Taxes Better Than Labor Income Taxes? Theoretical And Quantitative Implications Of The Choice Of Tax Base. University of Pennsylvania: <https://repository.upenn.edu/server/api/core/bitstreams/3026bcb5-e5e4-4849-9221-6f927631671b/content>
- Somosi Sarolta – Farkas Beáta (2024): A helyreállítási és rezilienciaeszköz félidőben: az Európai Unió sikeres új támogatási eszköze? *Külgazdaság*, LXVIII. évf., 2024. szeptember–október (3–30. o.)
- Stiglitz, Joseph E. (2016): Inequality and Economic Growth. *The Political Quarterly*. https://business.columbia.edu/sites/default/files-efs/imce-uploads/Joseph_Stiglitz/Inequality%20and%20Economic%20Growth_0.pdf

- Szabó (2025): Brüsszel a kormány teljes gazdasági programját ízekre szedte, fájó lépéseket követelnek: <https://www.portfolio.hu/unios-forrasok/20250604/brusszel-a-kormany-teljes-gazdasagi-programjat-izekre-szedte-fajo-lepeseket-kovetelnek-765931>
- Szabó, Dániel (2025): Brüsszel a kormány teljes gazdasági programját ízekre szedte, fájó lépéseket követelnek. *Portfolio.hu*: <https://www.portfolio.hu/unios-forrasok/20250604/brusszel-a-kormany-teljes-gazdasagi-programjat-izekre-szedte-fajo-lepeseket-kovetelnek-765931>
- Szász, Péter (2025): Kiderült, hogy változott az árrésstopos termékek ára. *Portfolio.hu*: <https://www.portfolio.hu/gazdasag/20250810/kiderult-hogy-valtozott-az-arresstopos-termek-ara-769547>
- Széchenyi Card Program: <https://www.kavosz.hu/>
- Szegedi, Andrea (2025): Az Otthon Start Program lendületet adhat a gazdaságnak is. *Oeconomus Economic Research Institute*: <https://www.oeconomus.hu/oecofocus/az-otthon-start-program-lenduletet-adhat-a-gazdasagnak-is/>
- Tar, Gábor (2025): Nagy Márton: Nagy esélye van annak, hogy meghosszabítjuk az árrésstopot. *Portfolio.hu*: <https://www.portfolio.hu/gazdasag/20250428/nagy-marton-nagy-eselye-van-annak-hogy-meghosszabitjuk-az-arresstopot-757555>
- The European Commission's summary on the European Semester. *commission.europa.eu*: https://commission.europa.eu/business-economy-euro/european-semester_en
- The Hungarian National Bank's Base rate history database: https://www.mnb.hu/en/Jegybanki_alapkamat_alakulasa
- The Hungarian National Bank's data on financial accounts of households : https://statisztika.mnb.hu/sw/static/file/A_haztartasok_penzugyi_adatai_2023_HUN.pdf
- The Hungarian National Bank's deep analysis on actors behind domestic food inflation: <https://www.mnb.hu/kutatas/pareto-muhely/pareto-melyelemzesek/mnb-melyelemzes-a-hazai-elelmiszerinflacio-mogott-meghuzodo-tenyezok>
- The Hungarian Village Program': <https://magyarfaluprogram.hu/hirek/tobb-mint-50000-videki-otthonteremto-csalad-elt-mar-a-falusi-csok-lehetosegevel>
- The website of the Demjén Sándor Program: <https://vali.hu/demjansandorprogram>
- Vállalkozzokosan.hu's information on support for unemployed entrepreneurs: https://www.vallalkozas-okosan.hu/tamogatas_munkanelkulibol_vallalkozoknak
- Vanhercke, Bart – Verdun, Amy (2021): The European Semester as Goldilocks: Macroeconomic Policy Coordination and the Recovery and Resilience Facility. *Journal of Common Market Studies*, Volume60, Issue 1

- wipo.int: Hungary ranking in the Global Innovation Index 2025 : <https://www.wipo.int/gii-ranking/en/hungary?utm>
- Zeitlin, Jonathan – Vanhercke, Bart (2014): Socializing the European Semester? Economic Governance and Social Policy Coordination in Europe 2020. *SIEPS Report* No. 7: https://sieps.se/media/hupjcjqb/socializing-the-european-semester_-economic-governance-and-social-policy-coordination-in-europe-2020-2014_7.pdf
- Zubaşcu, Florin (2024): New survey unveils hidden costs of EU-Hungary tussle over research funding. *Science Business*: <https://sciencebusiness.net/news/horizon-europe/new-survey-unveils-hidden-costs-eu-hungary-tussle-over-research-funding?utm>

Member State sovereignty and the division of competences in the EU's economic policy

1. Executive Summary

The purpose of this detailed study is to identify and analyse the tensions inherent in the division of competences between Member State sovereignty and the economic policy competences of the European Union, with particular emphasis on the practice of “creeping competence expansion”. Through this practice, the EU progressively narrows national policy space by means of soft-law instruments, financial mechanisms and regulatory tools, without formally altering the allocation of competences laid down in the Treaties. The study aims to map the distribution of competences on the basis of the EU Treaties, secondary legislation, soft-law mechanisms and the European Commission's implementation practice. Its methodological framework relies on the analysis of international academic literature, the processing of secondary data, and two structured in-depth interviews conducted with Hungarian experts in the fields of energy policy, economic policy and EU affairs, highlighting the domestic implications of these developments.

The theoretical framework places industrial policy at its centre. Although industrial policy formally remains a Member State competence, the EU exercises influence through four principal mechanisms: direct EU financial instruments (such as Horizon Europe and NextGenerationEU), industrial alliances (e.g. in the fields of batteries and hydrogen), a flexible interpretation of State aid rules (notably through Important Projects of Common European Interest – IPCEI), and foreign direct investment (FDI) screening, complemented by the indirect effects of EU climate policy. A historical overview traces the evolution from the “national champions” policies of the 1970s to the geopolitical activism of the 2010s (KUKA case, US protectionism), illustrating a significant paradigm shift. Tax policy likewise formally remains within Member State competence; however, the number of measures limiting fiscal autonomy has increased. These include State aid control, the global minimum tax initiative (OECD BEPS), soft coordination mechanisms (notably the European Semester) and the linkage with the Recovery and Resilience Facility (RRF). Together, these mechanisms contribute to the emergence of a system of “coordinated fiscal autonomy”, resulting in increasing convergence of fiscal policies across the Union.

In the area of investment regulation, instruments such as the Juncker Plan, FDI screening, the EU Taxonomy (‘green definitions’), and the RRF - with approximately EUR 700 billion in conditional

funding - have strengthened the influence of the central EU institutional framework. In energy policy, despite the Treaty-based sharing of competences, initiatives such as the Energy Union, the European Green Deal, the Fit for 55 package and REPowerEU - along with stringent targets, the potential extension of the EU Emissions Trading System (ETS) and its current cost implications - significantly constrain the economic policy space available to Member States.

In Hungary, the following factors are hindering convergence: rising energy prices linked to the ETS, investment-related risks (e.g. the BYD investment and the Paks II nuclear project), the risk of losing EU funding (including the suspension of RRF resources and rule-of-law related disputes), pressure on domestic fiscal policy (interest rates and inflation), and technological lag are all relevant factors. Expert interviews also identify potential declines in competitiveness and sovereignty-related risks, such as those connected to a potential embargo on Russian gas.

Based on the findings, it can be concluded that Hungarian industrial policy is significantly influenced - through a range of indirect, non-legislative mechanisms - by policy frameworks developed at EU level. Consequently, the effectiveness of these frameworks has a substantial impact on Hungary's national development policy. The study provides an opportunity to better understand this less visible system and examines the areas and mechanisms through which the EU policy framework developed in Brussels affects the shaping of domestic industrial policy. The study offers an opportunity to gain insight into this less visible system and examines the areas and mechanisms through which the Brussels based policy framework intervenes in shaping domestic industrial policy. It also identifies specific fields such as energy policy (ETS), investment promotion and fiscal policy where policymakers may intervene in order to develop an industrial policy tailored to Hungary's specific circumstances.

2. Research Methodology

This chapter presents the methodological background of the research. It outlines the key questions underpinning the relevance of the study and describes both the primary and secondary data collection methods applied. In examining the topic, the research primarily relies on a review of international academic literature, which provides a detailed discussion of the fundamental tensions between Member State sovereignty and the exercise of competences by the institutional framework of the European Union. To complement the literature review, two in-depth interviews were conducted with subject-matter experts in order to explore the domestic implications of the broader trends identified, with the participation of Hungarian specialists familiar with the topic.

2.1 Background of the Research

The Treaty on the Functioning of the European Union (TFEU) places several policy objectives within the scope of Union competences. For instance, the functioning of the internal market, as well as economic, social and territorial cohesion fall within the category of shared competences. This means that although the determination of fiscal policy and the formulation of industrial policy formally remain within Member State competence, the EU is nevertheless able to adopt measures that effectively constrain these competences by invoking areas of shared or exclusive Union competence.

In recent years, the practice commonly referred to as “competence creep” has become increasingly prevalent. The essence of this phenomenon is that the European Union gradually extends its influence into policy areas where the Treaties do not provide a clear and exclusive mandate. Through secondary legislation, soft law instruments, and the jurisprudence of the Court of Justice of the European Union, Union-level decisions increasingly affect a broad range of policy fields and in practice limit the policy space available to Member States.

This process is particularly visible in the case of the EU’s green transition policy packages. The European Green Deal, together with related initiatives such as Fit for 55 and REPowerEU, establishes obligations that directly influence the scope of Member States’ economic policy. Mandatory targets for the share of renewable energy, stricter energy efficiency standards, and the extension of the EU Emissions Trading System (ETS) significantly affect industrial producer prices and the overall operating environment, while rendering certain sectors and production technologies uncompetitive within the territory of the European Union. The linkage between the European Semester and the Recovery and Resilience Facility (RRF), as well as the emergence of rule-of-law conditionality in connection with country-specific recommendations, provides further examples of instruments that do not formally possess binding legal force but acquire de facto mandatory effects.

Another important factor is the withholding or suspension of development funds, which significantly affects Hungary’s room for manoeuvre in the area of economic policy. The resulting shortfall in euro liquidity is forcing the Government Debt Management Agency (ÁKK) to increase external debt issuance, potentially leading to a riskier debt structure and higher risk premiums. Rising interest costs may reduce the room for manoeuvre in fiscal policy by diverting resources from the real economy. At the same time, reduced euro liquidity and uncertainty surrounding EU-Hungary relations contribute to exchange rate volatility; in order to curb speculative trading and contain inflation, higher interest rates are required, thereby narrowing the scope for monetary

policy as well. Furthermore, the scrutiny or prohibition of Member State subsidies - such as those provided in connection with the BYD investment or the Paks II nuclear power plant project - may increase investor risk perception and lead either to the cancellation of investments or to their implementation under less favourable conditions.

Technological requirements and regulatory measures place domestic market actors at a disadvantage, potentially slowing or even preventing economic convergence.

In this area competence creep is not a one-off phenomenon, but rather an ongoing process. In times of crisis - such as the economic recession following the COVID-19 pandemic - joint measures, including investments financed through joint debt issuance, appeared justified. However, in the long term these developments also indicated that EU-level intervention may become permanently embedded at the level of competences.

The objective of the research is therefore to map the distribution of economic policy competences between the European Union and the Member States, with particular attention to the tensions between national sovereignty and EU regulation. The legal basis of the analysis is provided by the EU Treaties, secondary legal acts, and the jurisprudence of the Court of Justice of the European Union, complemented by the role of soft law instruments. Particular emphasis is placed on green transition packages such as Fit for 55 and REPowerEU, which formally pursue climate policy objectives but in practice also influence Member States' scope of action in the area of economic policy. The findings of the research may contribute to a better understanding of how competence creep reshapes the practical content of Member State sovereignty, and how an appropriate balance may be achieved between the advantages of joint European action and the preservation of national autonomy.

2.2 Methodological Presentation of Primary Data Collection

In the qualitative phase of the research, expert in-depth interviews were conducted in order to identify and gain a deeper understanding of professional perspectives concerning EU-level competences and Hungary's economic policy sovereignty, as well as recent developments and forward-looking risks. During this phase of the research, a total of two structured in-depth interviews were carried out with experts possessing substantial expertise in the fields of energy policy, economic policy, and the frictions arising between national policies and EU-level policy frameworks.

The interviews focused on four main areas:

- changes in the exercise of competences through soft-law instruments by the EU's central institutions;
- the impact of decisions taken by European institutions on Hungary's economic policy;
- current areas of conflict and their effects on competitiveness;
- the linkage between the Recovery and Resilience Facility (RRF) and the European Semester within the EU decision-making framework.

The qualitative findings complement the results of the secondary data collection in an integrated manner, providing an interpretative framework for understanding the evolution of the policy patterns identified in that analysis.

2.3 Presentation of the secondary data collection methodology complementing primary data collection

As a complement to the qualitative primary research methodology, a content analysis was also conducted. The research primarily focused on studies published in international academic journals, as well as on relevant policy briefs and analytical reports. Priority was given to articles published in internationally highly ranked policy and academic journals, as well as to analyses that simultaneously provide a comprehensive overview of the institutional structure and the economic policy context addressing both hard-law and soft-law frameworks.

3. Theoretical Introduction

This chapter presents the literature review that provides the theoretical foundation for the study. The theoretical section examines the evolution of industrial policy within the European Union, the changes that have taken place across different Commission cycles, and the manner in which various multilateral mechanisms have become intertwined to form a comprehensive economic policy-making regime. This is followed by an examination of developments in the field of tax policy at EU level, where it becomes evident that, through indirect instruments, the EU institutional framework is capable of exerting a tangible influence on the evolution of Member States' fiscal policies. Turning to the field of investment promotion, it becomes apparent that soft forms of pressure and the shaping of the internal market through regulatory frameworks create a number of challenges for independent, Member State-centred development strategies. Through various central mechanisms, EU institutions are capable of obstructing or delaying investments

that do not align with prevailing policy priorities at Union level; this increases investment risks and may deter foreign investors.

3.1 Industrial policy in the European Union – the division of competences and the role of industrial policy

Industrial policy occupies a controversial position within the system of economic governance of the European Union. In legal terms, the Treaty on the Functioning of the European Union (TFEU) provides only limited authorization for industrial policy decision-making at EU level. Under Article 173 TFEU, industrial policy primarily falls within the competence of the Member States, while EU institutions are assigned a supporting and coordinating role. In practice, however, the situation is more complex. Over the past two decades, the European Union has gradually developed an institutional and policy toolkit that enables it to exert a tangible influence on the direction of industrial development within Member States. As a result, the EU today is not merely an observer or coordinator of industrial processes but is increasingly capable of shaping their direction, pace and structural composition. The tension between formal competence limitations and actual policy influence illustrates that EU governance frequently operates not through explicit transfers of competences but through multi-level and complex mechanisms.^{183 184}

For this reason, understanding EU industrial policy cannot be limited to an examination of the legal bases laid down in the Treaties. It is also necessary to analyse the concrete instruments and procedures through which the European Union is able to exert influence over industrial policy. Such instruments include the targeted use of EU budgetary resources, the integration of research and innovation actors into collaborative networks, the flexible interpretation of competition rules, and the protection of strategically important sectors through the screening of investments. The academic literature often characterizes this approach as a “development-oriented, network-based” governance model in which the European Commission does not exercise direct control but rather incentivizes, coordinates and establishes regulatory frameworks.¹⁸⁵ While Member States formally retain their decision-making competences, in practice their room for manoeuvre is increasingly constrained by EU rules and expectations. Strict control of State aid, binding internal market rules, policy coordination mechanisms and the need to adapt to cross-border production chains are all factors that significantly limit national industrial policy autonomy.

¹⁸³ Bulfone, 2022, pp.22–43.

¹⁸⁴ Garben, 2017, pp.1–18.

¹⁸⁵ Di Carlo - Schmitz, 2023, pp. 2063–2096.

3.1.1 Historical Background – The Transformation of European Industrial Policy

The current multi-level governance logic of European industrial policy can only be fully understood through an examination of the historical turning points that shaped its development. Until the late 1970s, industrial policy remained almost entirely within the competence of nation states. Western European governments actively shaped their industrial structures through direct state ownership, the steering of credit and investment, market protection instruments, export subsidies, and the targeted support of so-called “national champions.”¹⁸⁶ This model was closely linked to the post-war “Fordist” system of production and the concept of the interventionist state. It was based on the assumption that national governments, operating within relatively closed economic frameworks, were able to optimally direct industrial development.

From the 1970s onwards, however, this system began to falter: the internationalization of production, the emergence of global value chains and the cross-border nature of corporate activity gradually reduced the ability of Member States to exercise autonomous industrial policy control. At the same time, the deepening of European integration in legal and institutional terms - particularly the consolidation of the logic of the internal market and the growing centrality of competition law - fundamentally transformed the institutional environment of national industrial policy. Articles 107–108 of the Treaty on the Functioning of the European Union (TFEU) did not eliminate the possibility of state intervention, but they introduced a procedural framework that subjected the application of Member State industrial policy instruments to EU-level oversight. The granting of State aid was no longer solely a matter of national decision-making but became dependent on the approval of the European Commission.¹⁸⁷ This development did not take the form of an explicit transfer of competences; rather, it emerged through the expanded application of Treaty rules, a phenomenon frequently described in the academic literature as “competence creep.”¹⁸⁸ As a consequence, by the 1990s it became widespread to argue that industrial policy had effectively “disappeared” in Europe. In reality, however, it had undergone a transformation. Member States increasingly turned to more indirect instruments (such as tax incentives, the fine-tuning of public procurement rules, research and development cooperation, and public–private partnerships) while EU-level decision-making gradually established coordination and incentive mechanisms through which industrial policy directions could be influenced indirectly.

In the second half of the 2010s, this transformation gained renewed momentum due to geopolitical shocks. The so-called “KUKA case”- the 2016 acquisition of the German robotics company by a

¹⁸⁶ Zysman, 1983

¹⁸⁷ Garben, 2017

¹⁸⁸ Garben, 2017

state-backed Chinese investor - clearly demonstrated that openness in strategic technological sectors may also entail vulnerabilities, particularly where external investors are backed by state-led industrial strategies and public financing.¹⁸⁹ At the same time, the protectionist shift in the United States highlighted the fragility of the multilateral trading system. These developments contributed to the revival of Franco–German cooperation in the field of industrial policy. Their joint manifesto of 2019 explicitly called for a more active European industrial policy and for greater flexibility in the application of EU competition rules in order to adapt to intensifying global competition.¹⁹⁰ As a result, by the end of the 2010s the European Commission’s industrial strategies increasingly acknowledged that purely horizontal policy instruments were insufficient to ensure technological sovereignty and security of supply. Consequently, industrial policy began to emerge more explicitly as a strategic complement to the functioning of the market in areas where market failures and geopolitical risks appear simultaneously.¹⁹¹

3.1.2. Modern industrial policy: four governance mechanisms

The shift after 2016 brought not only a change in rhetoric, but also a substantial transformation of the structure of industrial policy governance in the European Union. Today, the EU’s industrial policy is not embodied in a single, well-defined policy. Rather, it operates through several intertwined governance mechanisms. These mechanisms divide competences between the EU and Member State levels in different ways, yet they all share the common feature of being capable of generating industrial policy effects without the EU formally acquiring full industrial policy competences.

The first such mechanism is the strengthening of EU financial instruments and their use for industrial policy purposes. The Horizon Europe research and development programme and, in particular, the Next Generation EU financial fund created in response to the Covid-19 crisis, have significantly changed the scale of the EU’s economic involvement. With a budget of more than €90 billion, Horizon Europe enables the EU to directly support technological trajectories that are of strategic importance for the future of European industry. Even more significant is Next Generation EU, which through joint borrowing has created a financial capacity previously unimaginable at the EU level.¹⁹² Formally, these instruments do not deprive Member States of their right to make industrial policy decisions: for example, the use of recovery funds is based on plans prepared by the Member States and subsequently approved by the Council. In practice,

¹⁸⁹ Di Carlo–Schmitz, 2023

¹⁹⁰ Di Carlo–Schmitz, 2023

¹⁹¹ Renda, 2021, pp.133–138

¹⁹² Schramm - Terranova, 2024, pp.943–961

however, the European Commission plays a decisive role in determining what types of investments and reforms are eligible for support. The disbursement of funds is tied to milestones and performance conditions linked to the green and digital transition as well as industrial modernization. As a result, the European Union's institutional framework shapes Member States' industrial policy not directly, but through financial incentives.

The second governance mechanism is the organisation of industrial cooperation and alliances. In recent years, the European Commission has launched several industrial initiatives – for example in the fields of batteries, hydrogen technology, semiconductors and critical raw materials – with the aim of promoting coordination between market players. Participation in these forms of cooperation is not legally binding; it is based on voluntary engagement. The EU's role in this case is not primarily regulatory, but rather consists of organising the flow of information, building trust and articulating common goals. These industrial alliances prove particularly effective where market players are unable to coordinate their investment decisions on their own, for example in the case of high-risk technologies with long payback periods. In terms of competences, this model shows that the EU is capable of providing industrial policy guidance without introducing binding regulations: the potential benefits of coordination themselves act as an incentive for participation.

The third – and perhaps legally the most sensitive – mechanism is the flexible reinterpretation of the rules on state aid, particularly in the context of so-called Important Projects of Common European Interest (IPCEIs). These arrangements allow several Member States in cooperation and with significant state aid, to carry out large-scale industrial and technological investments that go beyond individual national interests. The decisive factor is that the approval of such projects lies in the hands of the European Commission: it is the Commission that determines what qualifies as being of 'European significance'. This mechanism essentially transforms the exercise of industrial policy competences. Member States continue to finance and implement projects themselves, but the EU level plays a decisive role in setting industrial policy priorities. This is not a formal conferral of competences, but rather a creative application of existing legal frameworks that significantly increases the EU's de facto influence, particularly with regard to large-scale industrial investments.

The fourth governance mechanism is the strengthening of the defence policy dimension of industrial policy. The EU framework for screening foreign direct investment (FDI) and the new rules on foreign subsidies indicate that the EU increasingly sees itself as less of an open market. These instruments do not automatically prohibit foreign investment, but they do allow the EU and its Member States to take action against transactions that harm strategic interests. It is particularly

noteworthy that the European Commission has been given direct investigative and sanctioning powers in the examination of foreign subsidies, which represents a new dimension in EU economic decision-making. In terms of the division of competences, these defensive instruments are of a dual nature. The final decision on the screening of investments remains with the Member States, however EU-level coordination and the Commission's opinions exert political pressure on national decision-makers. Although under the Treaties the Commission could formally exercise only a mediating role in areas affecting industrial policy, in the case of foreign subsidies the EU has acquired more direct executive power. This goes beyond mere coordination and strengthens the 'economic protection' function of industrial policy.

Based on the above, the structure of industrial policy competences in the European Union cannot be simply described as "national" or "EU" competences. Rather, a multi-level system is emerging, in which Member States formally retain their decision-making powers, but these decisions are increasingly taken within EU framework. EU industrial policy has not become centralised, however through regulatory instruments, financial incentives, coordination mechanisms and protective measures, it is capable of determining the direction of European industrial development, even at the level of Member States.

3.2. Tax policy in the European Union

At first glance, tax policy in the European Union appears to reflect a clearly delineated division of competences. Article 113 of the TFEU places direct taxation, such as personal income tax, corporation tax and property taxes, explicitly within the competence of the Member States. In contrast, in the field of indirect taxes, such as value added tax and excise duties, shared competence applies. The EU may harmonise these forms of taxation, while Member States retain the right to determine the detailed structure of the taxes.

This division reflects a fundamental democratic principle. Taxation is one of the foundations of state sovereignty: as it directly affects the extraction and redistribution of resources, it is essential that such decisions remain under the democratic control of the Member States. Behind this formal autonomy however, a far more complex regulatory structure has emerged in practice. Over the past decades, a system of legal and policy mechanisms has developed that significantly restricts Member States' room for maneuver in fiscal policy. These include the application of EU competition law, international tax coordination, soft law economic policy guidance, and the indirect impact of other EU policies - particularly environmental and climate policy - on tax policy.

3.2.1. The impact of state aid provisions on tax policy

Although the European Union has no competence to harmonise direct taxation, the rules on state aid nevertheless restrict Member States' tax policy measures. Articles 107 and 108 TFEU prohibit state measures that grant exclusive advantage on certain undertakings, thereby distorting competition. Tax advantages may fall into this category if they favour specific companies or sectors.

Under these rules, the Commission's Directorate-General for Competition is empowered to examine national tax systems and, where an infringement is found, to require the recovery of unlawful tax advantages. The Apple case in Ireland, as well as the proceedings relating to tax assessment practices in the Netherlands, Luxembourg and Belgium are good examples of how the Commission actively exercises this competence.¹⁹³ Even if certain decisions are later invalidated by the Court, the mere possibility of investigations creates significant legal uncertainty and restricts the tax policy leeway of Member States.

From a competence perspective, this process represents a classic example of 'competence creep': formally, there is no conferring of competences, yet in practice, the Commission exercises substantial influence over the content of direct taxation through competition law.¹⁹⁴

3.2.2. International constraints – tax minimum and 'soft law' coordination

Member States' fiscal autonomy has been further constrained by the strengthening of international tax cooperation. The OECD's Base Erosion and Profit Shifting (BEPS) process followed by the 2021 global minimum tax agreement, proposed the introduction of a minimum corporate tax rate of at least 15%.¹⁹⁵ The EU has incorporated this commitment into its economic governance framework through a binding directive, which entered into force in 2023. Although the tax minimum is not the result of classic EU coercion, in practice it significantly restricts the room for manoeuvre of Member States. Countries that had previously based their economic development strategies on low corporate tax rates were compelled to adjust. Fiscal autonomy has therefore narrowed not through formal legal means, but by economic and political pressures.

Climate and energy policy measures - such as emission limits and the associated quota system - do not constitute tax harmonisation, yet they nevertheless influence the tax systems of Member States by increasing corporate costs and necessitating tax policy adjustments.¹⁹⁶ This is

¹⁹³ Európai Bizottság, 2016

¹⁹⁴ Garben, 2017

¹⁹⁵ OECD, 2021

¹⁹⁶ Európai Bizottság, 2019

complemented by soft law forms of economic policy coordination, above all the European Semester. Although the country-specific recommendations issued under this framework are formally non-binding, they exert significant pressure on Member States as they are linked to budgetary surveillance and financial market assessments.^{197 198} In times of crisis, such as the euro area crisis or the post-Covid-19 recovery, this coordination has become an explicit condition, particularly in the case of the Recovery and Resilience Facility (RRF).¹⁹⁹

3.2.3. Coordinated fiscal autonomy

The division of competences in tax policy within the European Union thus has a dual nature in practice. Formally, Member States retain their decision-making powers; functionally however, competition law, international minimum standards, soft law coordination and other areas of EU legislation together create a framework within which autonomous and substantially different tax strategies are increasingly difficult to maintain.

This situation can be described as ‘coordinated fiscal autonomy’: Member States are formally free, but their decisions are increasingly structured by EU and international norms. In the longer term, this dynamic will lead to the gradual convergence of national tax systems and the erosion of Member State tax policy.^{200 201}

3.3. Investment promotion in the European Union

Although industrial policy in the European Union falls within the competence of national governments, in recent years an increasing number of EU-level initiatives have emerged through which the European Commission acts not only as a regulator but also as a proactive policy actor in the field of investment promotion, which is closely linked to industrial development.²⁰² This can be seen in the trend whereby the EU is gradually moving away from its initial focus on preserving the internal market towards an investment policy aimed at shaping the market, seeking to mould the internal market in line with politically defined objectives rather than merely establishing rules to maintain fair and clean competition. In this context, a new set of instruments aimed at encouraging industrial investment has begun to take shape, which in several respects indirectly reshapes the effective division of competences between the EU and Member States. Below, we review areas of investment policy where this dynamic is particularly tangible.

¹⁹⁷ Zeitlin - Vanhercke et al., 2014

¹⁹⁸ Garben, 2017

¹⁹⁹ Schramm-Terranova, 2024

²⁰⁰ Gabrue, 2017

²⁰¹ Scharpf – Schmidt, 2000

²⁰² Di Carlo – Schmitz, 2023

3.3.1. The baseline and changes under the Juncker Commission

In their research, Di Carlo and Schmitz (2023) analyse in detail the changes that have taken place in recent decades with regard to the distribution of industrial policy competences. They note that, for a long time, the European Union intervened in industrial policy primarily through horizontal instruments in order to ensure the healthy functioning of the market. The authors examine not only the instruments through which competences have shifted in the field of industrial policy but also the timing of this process. In their view, "the integration of industrial policy in the Single Market accelerated significantly from 2016 and 2017 onwards". In line with this, the EU's increasing activism in the field of investment policy also became apparent in the mid-2010s, immediately at the highest level, as stimulating investment became one of the primary political goals under the presidency of Jean-Claude Juncker, justified by the need to mitigate the effects of the global economic crisis.²⁰³ In 2014, the European Investment Plan, also known as the Juncker Plan, was launched. Under this initiative, the European Investment Bank financed more than €315 billion in investments through the European Fund for Strategic Investments (EFSI) by 2018.²⁰⁴ Although the level of support was more significant than before, the EU did not intervene directly in the allocation of EFSI resources, it primarily exercised an advisory role. At the same time, greater emphasis was placed on the implementation of Important Projects of Common European Interest (IPCEI). While the IPCEI had been part of EU law from the outset, it had not become a significant instrument of investment policy in previous decades. The IPCEI framework was designed to support large-scale projects and entire industrial ecosystems with state aid in order to promote innovation in strategic sectors such as the battery industry and semiconductor manufacturing.

The IPCEI framework produces a dual effect on the relationship between Member States' room for manoeuvre and EU control. On the one hand, it substantially expands Member States' opportunities to support industrial development in areas of strategic importance using government funds; measures which would previously have conflicted with state aid rules may now be authorised on the grounds of common European interest. On the other hand, this extended scope is linked to a very strict set of EU conditions. The Commission determines what qualifies as an IPCEI, then monitors whether the projects achieve their objectives and actually generate EU added value, while not causing undue distortion of competition. As Di Carlo and Schmitz (2023) note, the Commission not merely plays an authorizing role, but also acts as a network coordinator. By encouraging cooperation between Member States, coordinating and pooling resources, the

²⁰³ Juncker, 2014

²⁰⁴ Európai Beruházási Bank, 2018

Commission effectively becomes a shaper of investment policy in practice. Compared to earlier principles, this represents a noticeable shift: instead of a horizontal regulatory role and the guardian of free competition, the outlines of a mission-oriented European industrial policy have begun to emerge.

3.3.2. FDI screening mechanism

The 2019 EU Framework Regulation on the screening of foreign direct investments (FDI Screening Regulation, 2019/452), adopted by the Juncker Commission, marked the next milestone in EU investment policy.²⁰⁵ The declared objective of the regulation was to establish a coordination mechanism ensuring a more structured flow of information and cooperation among Member States when screening foreign investments deemed critical from a security or public order perspective. Although the regulation left the substantive application of screening, and thus the bulk of the competences, within the national sphere, according to Dackö et al. (2022), the EU thereby provides a framework for the functioning of national mechanisms and creates an institutionalized cooperation platform between Member States and the European Commission.

In practice, the regulation provides that Member States must notify one another and the Commission whenever they examine foreign investments in sensitive sectors. It also enables other Member States and the Commission to express their opinion on the transaction in question. Although these opinions are not formally binding and the final decision remains with the Member State concerned – as neither the EU institutions nor other Member States have a formal veto right –, the mechanism opens up a meaningful channel of informal influence. For example, if the host Member State does not identify a national security risk on its own, but several partner states or the Commission express concern that the transaction could potentially harm their own security interests or those of the Union as a whole, the pressure exerted could actually change the decision-making process, as noted by Dackö et al. (2022). Within this process, national security interests are interpreted at EU level, and the decision-making process is indirectly complemented by a European dimension.

In December 2025, a new draft regulation emerged from the trilogue negotiations as an extension of the 2019 investment screening system.²⁰⁶

According to the announced agreement, all Member States are required to maintain a screening system with a jointly defined minimum scope of application. According to the Council's communication, this draft focuses specifically on the most sensitive areas, namely dual-use and

²⁰⁵ Dackö – Brodin - Arlebo, 2022, pp.505–518.

²⁰⁶ Európai Bizottság, 2025

defense industry products, critical technologies (aligned with the AI Act's terminology, focusing in particular on general-purpose AI with space or defense relevance), quantum technologies and semiconductors, critical raw materials, energy, transport and digital infrastructure operators, electoral infrastructure, and a narrow circle of financial market infrastructure operators.²⁰⁷ At the same time, the compromise also strengthens the treatment of circumvention structures. The Council's communication specifies that the system explicitly covers investments carried out through EU subsidiaries, which targets one of the typical circumvention routes in the previous framework. According to the interpretation of the international law firm HSF Kramer, this extension may also be understood as a lifting of the restrictions laid down in a previous ruling by the Court of Justice of the European Union, insofar as the revised mechanism now covers investments made by formally EU-based investors but controlled by a third-country company.

From the point of the balance of competences and institutions, the change does not entail a transfer of decision-making power to the Commission. The final authorization decision remains the exclusive responsibility of the host Member State, however the expansion of EU-level coordination and bureaucratic processes certainly represents a new level in investment policy. The draft incorporates a procedural accountability element that is significantly stronger than in the 2019 framework; if another Member State makes comments or the Commission issues an opinion, the host Member State must provide substantive justification as to how these views were taken into account or why it has deviated from them. In its consultative role, the Commission also intends to provide information and support to Member States during the assessment process, which can essentially be interpreted as an advisory role. Although the substantive part of the decision remains with the Member States, the Commission is playing an increasingly prominent role in the exercise of competences, particularly compared with the pre-2019 situation, when no EU-level constraints existed with regard to investment decisions.

3.3.3. EU taxonomy

In 2020, the European Union adopted the sustainable finance taxonomy. Formally, this constitutes a classification framework for environmental purposes, with the aim to provide investors with a uniform reference point for channeling capital towards climate-neutral investments.²⁰⁸ In practice, therefore, the taxonomy regulation establishes centralized definitions and measurement standards that set sustainability criteria at EU level, thereby removing them from the Member State level. Whereas previously national governments could through their own

²⁰⁷ Európai Tanács, 2025

²⁰⁸ Fuest - Meier, 2022, pp.261–266.

budgetary and development policy tools - such as tax breaks or targeted subsidies – more flexibly determine which sectors and technologies they considered as ‘green’, the taxonomy introduces a harmonized EU-wide system of criteria defining the conditions of environmentally sustainable economic activities.²⁰⁹ According to Fuest and Meier (2022), the taxonomy has an indirect impact on Member States' fiscal and development policies. The reporting obligations imposed on the corporate and financial sectors also reinforce the implementation of the regulation at the level of market actors, as transparency requirements and the use of indicators steer financing decisions towards compliance with EU standards.²¹⁰

One of the central issues in the professional debate surrounding the taxonomy is the extent to which a uniform definition framework can be interpreted as a restriction of Member States' room for manoeuvre and the extent to which it is associated with the typical information and implementation problems of central planning. Critics argue that the system implicitly replaces part of national decision-making and market-based coordination with bureaucratic coordination. Based on Kooths' (2022) argument, the taxonomy presupposes an ambitious, all-encompassing knowledge and measurement requirement on the part of the central authority, which in practice may entail a significant administrative burden and compliance costs, while the net social benefit cannot necessarily be justified in advance. Critics also point to an additional economic policy risk: if green certification can mean market access, reputational advantage or more favourable financing conditions, then economic interests may start to assert themselves at EU level around the classification, which carries clear corruption risks.²¹¹ In relation to this approach, several analyses have raised that the effectiveness of taxonomy-type direct control instruments may be questionable in an environment where the EU already has market-based climate policy instruments (such as the ETS system). According to Fuest and Meier (2022), capital costs and financing regulations may contribute to a decline in productivity and thus competitiveness, and may also lead to the outsourcing of polluting activities outside the EU, which fundamentally questions the legitimacy of the system. Garcia-Torea et al. (2024) point out that complex interpretation frameworks and disclosure requirements also entail implementation and reputational risks for the financial intermediary system, further increasing the economic burden associated with the taxonomy.

3.3.4. The implications of the RRF for Member State competences

The most striking example of a shift in competence is the introduction of the Recovery and Resilience Facility (RRF). Prior to the 2020 crisis, fiscal and the core economic policy instruments

²⁰⁹ Kooths, 2022, pp.243–249.

²¹⁰ Uo.

²¹¹ Uo.

remained largely within the competence of Member States, with the EU typically only able to exert minimal influence through soft coordination mechanisms, the European Semester, or ad hoc intergovernmental agreements in times of crisis.²¹² The RRF, a €700 billion support fund created to mitigate the economic damage caused by the coronavirus pandemic, has altered this previous distribution of economic competences by redefining the objectives attached to the use of funds. Alongside, and in several respects partially replacing, the traditional focus on regional convergence, strengthening the resilience of Member States - and, in essence, encouraging structural and economic reforms - have become the central function of the mechanism. In the 2021-2027 budgetary cycle, the scale of the 'Cohesion, Resilience and Values' chapter can be interpreted as a financial reflection of this process, in which case it indicates that the EU through financial incentives now seeks to shape economic policy directions over which it previously had no direct influence. It does so by bringing certain elements of economic governance under the umbrella of cohesion policy without formally reopening the Treaties.²¹³

According to Schramm and Terranova (2024), the RRF introduced a performance-based governance model, which, through the mechanism of "positive conditionality", represents a significant shift from previous practice characterized by Member State autonomy and EU coordination. The essence of the system is that access to funds is now linked to the fulfilment of specific reforms and investments. These are measured through milestones and targets, which the Commission monitors much more closely than in previous coordination practices, on the basis of a predefined framework. As a result of this construction, previously legally non-binding recommendations, such as expectations regarding the sustainability of the pension system, labor market regulation or education and public administration reforms, become de facto contractual obligations since the actual disbursement of funds becomes contingent upon the implementation of reforms. Leino-Sandberg and Lindseth (2023) describe this process as a 'revolutionary reinterpretation' of EU Treaties: the EU acquired substantive influence over national policies in areas where no formal transfer of competences has taken place, while decision-making shifted through the channel of financial conditionality. A specific feature of this process – one that can also be interpreted as a political and legal stabilizing factor - is that, under the pressure of the crisis, Member States themselves requested the funds and thus accepted the conditions attached to them. The cost of this however, was to having to align some of their internal policies with Brussels' approval. Consequently, the Commission and the Council acquired more direct influence in policy areas where, under the Treaties, the legal decision-making competence formally remains

²¹² Leino-Sandberg - Lindseth, 2023

²¹³ Leino-Sandberg - Lindseth, 2023

exclusively with the Member States, not through legislative authority but through conditional financing.²¹⁴

According to Schramm and Terranova (2024), the RRF has created a hybrid governance model in which the boundaries between Member State sovereignty and EU governance do not disappear, but are reshaped through procedural and financial instruments to the benefit of the Union. Formally, Member States prepare National Recovery and Resilience Plans (NRRPs), which maintain the narrative of national sovereignty, but the content framework is strongly constrained by common EU priorities and expectations set out in metrics. One such requirement, for example, is that a specified proportion of expenditure in the plans must be allocated to financing the green transition, which creates a binding EU-level commitment that takes precedence over national objectives. During implementation, the Commission monitors and evaluates performance, so that the logic of support shifts from the previous cohesion funding based on eligibility and regional needs to conditional payments for reforms. Leino-Sandberg and Lindseth (2023) also conclude from this construction that the RRF could set a precedent for a future solution which - without creating a formal federal budget - implements a concealed fiscal policy through financial conditionality and centralised prioritisation.

3.4. Elements of EU energy policy affecting competences

Energy and climate policy has become one of the organising principles of EU economic governance. In 2019, Commission President Ursula von der Leyen explicitly positioned the European Green Deal (EGD) as Europe's long-term growth strategy, with the ultimate goal of making the continent climate neutral by 2050.²¹⁵ Accordingly, the EGD is not a narrowly defined environmental policy package, but should be interpreted as a comprehensive economic and investment-stimulating programme, as it has placed sustainable transformation at the centre of EU economic governance. As a result of the Green Deal, sustainability considerations and the economic principles associated with them have become a horizontal priority within the EU and are now reflected across almost all EU policies, most prominently in energy policy, where they function as a defining organizing principle.²¹⁶

At the same time, energy issues are present in EU economic policy not only in regulation and communication, but also through the EU's budgetary and financing mechanisms, as we have shown earlier. Bekker (2021) also points out that, under the RRF, a significant proportion of the reforms

²¹⁴ Leino-Sandberg - Lindseth, 2023

²¹⁵ Schramm – Terranova, 2024

²¹⁶ Besnier, 2023

and investments undertaken in Member States' recovery plans relate to the green transition, while disbursements depend on the implementation of commitments through a performance and conditionality based logic. The literature consistently emphasises that this application of financial conditionality has created a new and substantive instrument for the EU to influence national economic policies. Overall, this indicates that the energy policy of the European Green Deal, linked to the broader economic governance framework of the European Semester, has become an increasingly important component of fiscal and structural policy-making. In the wake of the COVID-19 crisis and the war in Ukraine, the EU has maintained its position that the green transition is not a secondary goal but an integral part of crisis management.²¹⁷ Based on all this, energy policy can no longer be interpreted as a separate policy area in the EU, but rather as a key element of the common European economic strategy, through which the EU intends to shape innovation directions, investment priorities and structural reform processes. The following section examines how the division of competences in energy policy was established in the pre-2010 period and how it has evolved in recent years through Energy Union, the Green Deal and REPowerEU.

3.4.1. Energy policy competences under the Treaties

In the Maastricht Treaty, EU energy policy did not appear as an independent policy area; rather it was incorporated into EU decision-making primarily through the logic of the internal market and competition law, as well as through environmental legislation, while no explicit competence on energy existed.²¹⁸ The Treaty of Lisbon, which entered into force in 2009, explicitly included energy in the Treaty, and simultaneously established both the objectives of EU energy policy and its institutional and sovereignty limits. The new provision identified the promotion of the functioning of the energy market, the strengthening of security of supply and the promotion of sustainable energy, in particular renewables, as EU objectives, while also firmly establishing the rights of Member States. According to the Treaty, EU measures shall not affect the right of Member States' right to determine the conditions for exploiting its energy resources, its choice between different energy sources, and the general structure of its energy supply. This provision is typically interpreted in the literature as a guarantee of Member States' energy sovereignty and, at the same time, as a constraint that predetermines the development path of the common energy policy. Reins (2019) points out that although the Lisbon Treaty created shared competence in the field of energy, in the early years Member States relied on their existing rights to maintain their influence, which limited the practical extension of joint action in several areas.

²¹⁷ Schramm – Terranova, 2024

²¹⁸ Reins, 2019, pp.665–672.

3.4.2. The emergence of the Energy Union

In the mid-2010s, the initiative of the Energy Union attempted to overcome this situation by organising cooperation within a comprehensive framework based on five pillars (security of supply, internal energy market, energy efficiency, decarbonization, and research and innovation). However, even at this stage the initiative encountered resistance.²¹⁹ Particularly in the fields of cross-border infrastructure development and gas market integration, several Member States adopted a cautious approach towards EU-level intervention and expressed resistance out of concern over the erosion of national decision-making rights. During the period of the Energy Union, national governments explicitly challenged the EU competences, particularly on sensitive issues such as control over energy infrastructure and the development of strategic supply routes. All this suggests that, in practice, the EU's room for manoeuvre in energy policy remained limited at that time. Despite the shared competences enshrined in the Treaty, Member States continued to wield considerable influence, and the expansion of joint action was only possible gradually, through political and institutional compromises.

3.4.3. The new direction of the Green Deal

In recent years, the European Union has increasingly ventured beyond its defined role in the creation of the common market to pursue policy objectives that go beyond its previously established competences. According to Besnier (2023), "since the Energy Union, the European Union has clearly increased its role in the field of energy policy". According to the author, the Union has largely achieved this by exploiting climate protection goals and the war in Ukraine. The first step in this process was the European Green Deal, whose political significance we have highlighted earlier. As Kusiak-Winter (2023) outlines in her work describing the evolution of EU energy policy, the EGD in reality profoundly affects and reshapes all major sectors of the economy. Among these, its impact on the energy sector stands out, as the ambitious plans extending to 2050 aim at a comprehensive transformation of the energy market through the implementation of decarbonization and the transition to renewable energy sources.

The EGD established the objective of climate neutrality by 2050 and simultaneously set stricter climate targets to be achieved by 2030. As part of this initiative, the EU has adopted and proposed several new pieces of legislation under the "Fit for 55" package, in particular the tightening of the Renewable Energy Directive (through raising the target value), the strengthening of energy efficiency requirements and the further tightening of industrial emission standards. The most

²¹⁹ Besnier, 2023

significant legislative act in this regard is the 2021 European Climate Law (ECL), which establishes binding commitments and targets for Member States, for example with respect to the share of renewables and emission reductions.²²⁰ In order to fulfil these commitments, Member States are required to develop national adaptation strategies, the implementation of which is assessed by the Commission every five years. The EGD also imposes restrictions on companies and market actors by setting out market trends and development directions for the coming years and decades. It is evident that the emergence of this planning and monitoring role strengthens central authority while significantly eroding the sovereign energy policies of Member States. Despite this, the majority of Member States interpreted the EGD as a common European issue and accepted it without any particular opposition.²²¹ According to Besnier's (2023) research, the political weight of the programme is also increased by the fact that it has created a new EU narrative, previously emphasized. According to this narrative, the process of sustainable transition, understood as a collective European endeavour, provides legitimacy for the extension of EU intervention to areas that were previously primarily managed within national competence. Through this framework the Commission's role in managing the energy transition has strengthened, while Member States in practice have partly lost their veto power over ambitious common goals. As the Green Deal responds to challenges affecting all Member States, such as climate change, Member States have also shown greater willingness to accept EU regulation even when it restricts their sovereignty, for example in shaping their energy mix.

Within the framework of the EGD and Fit for 55, the ETS system, which is intended to promote market-based emission reductions, has also undergone reform. ETS I, which has been in force since 2005, has been gradually tightened in recent years (through a reduction in the permitted emission quota). In 2023, ETS II was introduced, extending the scope of the system to transport and real estate (German Environment Agency - Umweltbundesamt, 2023). The ETS has an indirect impact on the energy policies of Member States, as the rise in carbon dioxide quotas reduces the competitiveness of fossil fuels, thereby favoring renewable energy sources. As a result, the ETS implicitly influences both the development of the national energy mix and the industrial structure of Member States, even though this is primarily a Member State competence.

²²⁰ Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 ('European Climate Law')

²²¹ Besnier, 2023

3.4.4. Advancing within the framework of REPowerEU

Amidst the Russian-Ukrainian war and the resulting energy crisis, the EU has launched a decisive initiative to phase out Russian fossil fuels.²²² On 18 May 2022, the Commission presented REPowerEU, which aims to phase out Russian energy by relying on energy savings, diversification of energy sources and renewable energy, while accelerating the EU's green transition and strengthening security of supply. In the crisis situation caused by the war, the EU took on an unprecedented centralising role, and the Member States accepted that addressing acute supply problems would require closer EU coordination and joint decision-making in the energy market than before. Due to the escalation of the Russian-Ukrainian war and the rise in energy prices, most Member States were willing to give more room for manoeuvre for the EU institutional framework.

REPowerEU has deepened EU energy policy integration in several dimensions, as detailed by Schramm and Terranova (2024). On the one hand, through financial incentives, the EU has mobilized additional resources for Member States in a short period of time by adding new energy-focused chapters to the previously established Recovery and Resilience Facility (RRF). As a result of this budgetary innovation, the EU provides conditional support to Member States for infrastructure investments, the development of gas and electricity networks, energy efficiency programmes and renewable energy projects. On the other hand, REPowerEU also included regulatory and coordination tools, including common gas storage requirements and the strengthening of the solidarity mechanism between Member States, both of which resulted in further EU involvement in national energy policy decision-making. Under the Commission's leadership, for example, a common platform for gas procurement was established, and all Member States committed to collectively move towards phasing out Russian energy. Overall, REPowerEU expanded the EU's effective room for manoeuvre in energy policy without amending the Treaties, largely due to the political crisis created by the emergency situation. Although several flexible and 'soft' elements (such as recommendations and guidelines) appear among REPowerEU measures, Member States have de facto accepted the strengthened leadership role of the Union during this critical period.²²³ This interpretation is also supported by the study of Volpi (2024), which analyses changes in competences in the context of recurring crises and concludes that the EU - and particularly the Commission - has typically been able to use such periods to reinforce its own influence.

²²² Schramm – Terranova, 2024

²²³ Besnier, 2023

3.4.5. Reframing sanctions policy

The Member States unanimously decided to ban Russian coal imports (in April 2022) followed by an embargo on a significant share of Russian crude oil (in June 2022, with a six-month phase-out period). These measures were adopted by the EU within the framework of the Common Foreign and Security Policy (CFSP), with the unanimous agreement of all Member States.²²⁴ A fundamental feature of these classical sanction instruments was that every Member State retained a veto right, given the unanimity requirement applicable to CFSP decisions.

In June 2025, however, the European Commission proposed a total ban on Russian natural gas imports as a trade policy regulation. This construction represents a new milestone in terms of the change in competence, as previous energy sanctions were not based on trade policy, rather on the CFSP legal basis for sanctions.²²⁵ However, as the authors emphasize, the choice of legal basis is not merely a technical issue; while the adoption of foreign policy sanctions requires unanimity in the Council, trade policy measures can be adopted by a qualified majority in the ordinary legislative procedure. The provision thus created a situation in which a Russian gas embargo could enter into force even against the objections of Hungary and Slovakia.

Verellen (2025) points out that this fits into a broader trend in this area, whereby the EU is increasingly uses trade policy instruments for security purposes, thereby gradually blurring the boundaries between trade and security policy competences. This trend is reinforced, for example, by the Anti-Coercion Instrument (Regulation 2023/2675/EU) adopted in 2023, which creates the possibility of sanctions-like action on a trade law basis in response to geopolitical pressure. The proposal to ban Russian gas imports follows a similar logic, placing foreign policy restrictions within the EU trade law framework, thereby circumventing the requirement for unanimity among Member States. If the legislation actually enters into force, Member States' sovereignty in the field of energy policy would be further restricted.

3.4.6. Summary of the theoretical chapter

This chapter summarizes the theoretical framework of the European Union's industrial, tax, investment and energy policies, emphasizing the conflict between the formal competences of Member States and the actual influence of EU institutions.

With regard to industrial policy, although according to the European Union's Treaties industrial policy is primarily a Member State competence and the Union only plays a supplementary,

²²⁴ Verellen, 2025

²²⁵ Szép - Schaupp, 2025

coordinating role, in practice, the EU has significantly influenced industrial developments through multilateral mechanisms (e.g. Horizon Europe, NextGenerationEU) over the past two decades. These include financial incentives, industrial alliances (for example in the field of batteries and hydrogen), flexible interpretation of state aid (IPCEI) and FDI screening. Historically, national champions dominated until the 1970s, however globalisation, development of the single market and various geopolitical shocks have led to "competence creep" under the guise of emergency measures. This resulted in the emergence of a multi-level governance system where, alongside formal Member State autonomy, EU frameworks restrict the scope for economic policy.

In the case of taxation, direct taxes remained within the competence of the Member States, but the European Commission restricts them indirectly through competition law and the control of state aid under Articles 107-108 TFEU, including through retroactive withdrawal of tax concessions. The introduction of the international minimum tax, soft law coordination mechanisms (European Semester) and climate and energy regulations bring further restrictions, creating "coordinated fiscal autonomy". This process leads to convergence in national tax systems, with a gradual erosion of Member States' room for manoeuvre.

With regard to investment policy, despite Member State competence, the active role of EU institutions has strengthened over the past decade. Initiatives such as the Juncker Plan (EIB, ESBA), IPCEI projects and FDI screening (2019 regulation, 2025 extension) have all increasingly interfered with the practical implementation of one of the key elements of Member States' industrial policy. The sustainability taxonomy establishes uniform "green" definitions; the RRF has introduced a hybrid model through conditionality (payments linked to reforms), enabling a form of soft law pressure to be exerted on Member States.

4. The practical consequences of competence creep in Hungary

Based on the theoretical part, this chapter presents the practical consequences of competence creep experienced in recent years for Hungary. We examine the negative effects primarily in terms of economic convergence and competitiveness, demonstrable economic damage, and issues affecting the foundations of economic sovereignty.

4.1. Convergence and competitiveness

Hungary has a dynamically developing economy, which has converged significantly towards the average level of development of the EU over the past 15 years. Due to its level of development,

Hungary's industrial policy necessarily differs from that of the already developed, industrialised European core countries, such as Germany or France. It is in the fundamental interest of the Hungarian economy to introduce the most advanced (and most competitive) technologies and companies available globally into the domestic market during, particularly those that best match the Hungarian production mix. As previously discussed, this objective does not necessarily coincide with the strategic direction set by the European Union.

Active domestic industrial policy is constrained by restrictions on state aid and stricter EU requirements for IPCEI, as Hungarian development directions are largely determined by restrictions on state financing. At the same time, stricter requirements for foreign investors and centralized investigative powers limit Hungary's competitiveness in adopting the most competitive (non-EU) technologies. The involvement of the central institutional system not only makes the process of foreign direct investment more bureaucratic, but also carries an additional legal risk that may discourage foreign investors. The deteriorating EU-China relations pose further risk in terms of the perception of Asian investors; given the partially centralized nature of the system, Brussels' position is also reflected in the application of FDI screening processes, which may also restrict the transfer of advanced Asian technologies (for example in the field of batteries, semiconductors, electronic equipment, etc.).

The energy and climate policies outlined above also severely limit Hungary's room for manoeuvre. On the one hand, centrally determined carbon dioxide quota prices increase the costs of emission-intensive sectors (e.g. chemical and steel industries) across the entire common market. As a consequence, it reduces the competitiveness of these basic industries and declines European capacity. It also risks the stability of related industries (e.g. engineering, pharmaceuticals, agriculture), as they may become dependent on external suppliers or face substantially increased operating costs. The unsustainability of the framework is also illustrated by the fact that European companies pay six times more per tonne of carbon dioxide emitted than their American competitors and ten times more than Chinese companies.²²⁶ The centralized regulatory system in Brussels thus makes it impossible for strategically important industries to operate, thereby limiting Hungary's opportunities for adaptation. ETS prices are also reflected in energy production, effectively rendering certain production technologies unviable or significantly more expensive (e.g. coal-fired power plants and gas-fired power plants), resulting in a significant increase in the general level of energy prices. High energy prices are reflected in the raw material costs of all

²²⁶ Századvég, 2025a

industrial products and services, thereby generating inflationary pressure and reducing the international competitiveness of domestic companies.

4.2. Direct economic damage

Certain consequences of the EU's competence creep may also cause direct economic damage. A striking example is the withholding of EU funds. The unpaid grants –euro-denominated subsidies – are funds to which Hungary is entitled. The loss of planned subsidies does not appear in the deficit calculated according to the Maastricht criteria, but from a cash flow perspective the missing resources must be replaced. One possible solution is the issuance of alternative financing instruments, including foreign currency-denominated debt. However, this increases the financing needs of the Government Debt Management Agency of Hungary (ÁKK) and may potentially raise euro-denominated interest costs. In January of 2026 the amount of withheld EU funds (including RRF funds), for the entire 2021-2027 programming cycle was €18 billion. The involvement of these funds could significantly increase the central budget's foreign currency financing needs and entail additional interest costs. Continued uncertainty makes the Hungarian forint more vulnerable to external speculative pressures, which means increased costs for both exporting and importing firms, which are subsequently reflected in their pricing practices. As Hungary belongs to the group of small open economies, fluctuations in the exchange rate of the forint have a substantial impact on overall price dynamics, thereby generating direct social and political risks.

Another critical issue for Hungary is the question of sanctions imposed on Russian energy sources. The attempt to move away from the consensus-based decision-making towards a qualified majority poses a significant threat to Hungary's security of supply. Banning Russian natural gas from the European market would undermine the basis of Hungarian production sectors: due to its location and infrastructure, the country has no competitive alternatives, so a dramatic increase in production costs and consumer prices is to be expected.²²⁷ Rising household energy prices would not only cause economic damage but would also entail considerable social costs. The risk of poverty and the number of households experiencing energy poverty would increase, reversing the favourable trends observed over the past fifteen years. Increased fixed expenses also have a direct impact on disposable income in household budgets. It can therefore be concluded that rising utility prices would reduce the amount of income available for household consumption (this would be particularly noticeable among lower-income groups, which have higher consumption rates), which

²²⁷ Századvég, 2025b

would reduce consumption and, given the current weak international economic situation, jeopardize the only remaining pillar of our economic growth.

4.3. Fundamental sovereignty risks

A fundamental precondition of modern state sovereignty is the ability to pursue an independent tax policy, as this provides the economic basis necessary for the functioning of the central state. Consequently, any restriction, EU-level policy direction pointing in a similar direction (such as the EU Emissions Trading System 2 system, the global minimum tax, or the regulation of VAT rates), or policy proposals (e.g. recommendations issued under the European Semester) must also be assessed from this perspective. In addition, tax policy is an important element of the development policy toolkit, as the tax system can encourage or discourage the behaviour of various actors. As a result of different tax rates, economic policy can encourage domestic capital accumulation, profit reinvestment, the development of production capacities by foreign investors, the establishment of research and development centres, and may also serve as a tool for addressing regional disparities. The development of an appropriate tax framework is an important instrument for supporting domestic economic actors and Hungarian families, however such a system can function effectively only when it is tailored to local interests and characteristics.

The linking of the RRF to the European Semester marked a turning point in the exercise of the European Commission's competences, as clearly illustrated by the case of Hungary. As a result of the reform, the Brussels headquarters has acquired an instrument that enables not only political pressure but also economic leverage on individual Member States even in areas that formally remain within exclusive national competences.

This development represents a consolidation of the centralized economic governance mechanism, which is also intended to be applied in a number of other areas including during the new 2028-2034 programming period.

4.4. Findings from in-depth interviews with experts

The following chapter presents the findings of interviews with two experts. It can be concluded that the interviewed experts agreed with the picture revealed by the literature review, but they further clarified which central changes affecting European bureaucracy pose the greatest challenge for Hungary.

With regard to soft law instruments, they emphasized that the earlier coordination mechanisms had essentially 'hardened' in two directions. On the one hand, in the case of focus expansion

(thematic expansion); the European Semester gradually expanded from its originally narrow fiscal or macroeconomic focus centred on debt and deficit levels, the Macroeconomic Imbalance Procedure (MIP), and the Stability and Growth Pact (SGP), to a broad spectrum of public policy. The examples include the European Pillar of Social Rights, education, healthcare, pensions, social assistance, housing policy, R&D, and the green and digital transitions. On the other hand, there was a strengthening of conditionality (through financial channels); the link between country-specific recommendations (CSRs) and resources first appeared in a soft law form (ex ante conditions, thematic concentration), however after the COVID-crisis they ‘hardened’ and became accountable financial conditions through the RRF. In addition, a spillover effect has occurred into mechanisms that were already legally binding. Although CSRs formally remain recommendations, they have increasingly served as reference points in procedures under the Stability and Growth Pact and the Macroeconomic Imbalance Procedure, and they have also appeared in the conditionality frameworks and preambles of other EU legal acts. Taken together, these building blocks form the phenomenon commonly described as competence creep.

The experts also agreed that linking the European Semester to the RRF represents a qualitative shift, as it made the European Semester the main implementation framework for the RRF. This way, the Semester has evolved into an instrument of enforcement: previously “soft” Country-Specific Recommendations have become payment conditions, since funding is not disbursed without the fulfilment of agreed milestones and reforms. The document specifically emphasizes that not only economic recommendations but also rule of law/institutional conditions follow this logic. As a result, in Hungary's case, nearly €6 billion from the RRF remains blocked due to the debate over the fulfilment of the so-called "super milestones". The logic of conditionality also appeared in the case of cohesion funds: a partial payment (€445 million) was made at the early 2024, while other items remained blocked. In addition, the loss of funds must also be highlighted; a loss of entitlement of €1.04 billion from 2025 for legal reasons.

A further development is that the European Commission also exerts substantial influence in areas falling within the competence of Member States through the European Semester (such as retirement age/pension system, social assistance, housing policy, details of the tax system). The stages of pressure exerted are as follows: (i) peer pressure, political shaming, scoreboards (classic soft instruments), followed by a qualitative escalation: (ii) linking to funds to recommendation (via the RRF and potentially through a future "semesterization" of cohesion policy).

As a result of the transformation of the system, the European Commission's recommendations are playing an increasingly important role in determining Member States' priorities. They provide a

common narrative of "good policy" with detailed country diagnoses and reform packages, and are increasingly transformed into funding conditions. In the 2014-2020 and 2021-2027 cohesion frameworks, partnership plans and programmes are expected to reflect country recommendations, while the RRF has made their implementation enforceable. In the 2028–2034 cycle, cohesion/agricultural funds may be even more closely linked to the Semester recommendations, thus turning the CSRs into a de facto priority list.

The overexpansion of the central institutional system can be observed in several areas; in the case of Hungary, the practical consequences can be clearly identified on several occasions. This occurs on two levels: (i) Thematic extension to Member State competences: pension system, social assistance, housing policy, details of the tax system, and (ii) Conflicting economic policy models (normative dimension): the Commission's mainstream logic often favours market prices, more targeted subsidies and horizontal taxes, while the Hungarian model differs from this in several respects (e.g. utility price reduction, special taxes, price freezes). The Commission takes a critical view of sectoral special taxes and ad hoc interventions (price freeze/margin cap), and also raises legal certainty concerns in relation to them. This narrows the scope for manoeuvre in Hungarian economic policy: essentially not through legal "prohibitions", but through risk of funds and the price of deviating from the central line, which is increasingly often a loss/delay of funds.

The introduction of the ETS2 was assessed by the interviewed experts as a direct risk. ETS-2 would extend carbon pricing to fuel emissions from buildings and road transport (and certain other sectors). According to the EU's official summary, monitoring/reporting will start in 2025 and become fully operational in 2027. Social mitigation is provided by the Social Climate Fund, which was created specifically to support vulnerable households and transport users. This would introduce a new form of direct taxation, which would transfer resources from Member States' economies (disguised as a climate policy instrument) to the EU's central budget. The result would be increased pressure on prices for the general public (additional inflation in an already inflated environment). There is also a risk that the Social Climate Fund would place the compensation of vulnerable households in the hands of a centralised Brussels authority, meaning that payments could also be subject to the conditionality procedure described earlier. One of the experts interviewed further emphasized that, due to the logic of the ETS system, its introduction would override and abolish Hungary's regulated household energy pricing scheme as the two are not compatible regulatory systems. Regulated household utility prices constitute a central pillar of Hungarian economic policy, and predictable, low household energy bills contributed significantly to the inclusive growth model observed during the 2010s. The abandonment of this policy would therefore entail substantial political, social, and economic risks.

5. Conclusion for policy makers

This chapter summarises the key claims and principal findings presented in the detailed study, thereby providing support for policy-makers in making well-founded policy decisions.

5.1. European and Member State industrial policy

Conclusion 1: Centralized European industrial policy is gaining ground

- The institutional system in Brussels has shifted from merely defining regulatory frameworks to providing positive incentives.
- The example of NextGenerationEU programmes demonstrate that Member State economic policies are shaped through direct financial instruments.
- The extended interpretation of state aid rules grants the Commission investigative powers in a number of key industrial sectors.

Conclusion 2: The role of Member State incentives has been reduced

- Various soft law instruments limit the implementation of Member State-specific strategic objectives.
- The examination of investment incentives can also serve as a tool of direct pressure in the case of strategic industries (defense industry) and large-scale industrial projects.
- The central thematic prioritisation within the Horizon Europe framework appears as a form of soft influence by the Commission and plays a key role in the allocation of research funding.

Conclusion 3: EU climate policy has a fundamentally negative impact on the operating environment of Member States' industries

- Central climate targets and the measures adopted to achieve them significantly undermine the international competitiveness of Member States, particularly those with highly developed industries.
- As a result of climate measures, energy prices have risen several times over compared to those of major competitors, which is also hindering Hungary's convergence.
- Central EU regulatory frameworks (e.g. the EU Sustainable Finance Taxonomy) indirectly increase the cost of, or even render unviable, production technologies that are not favoured by the institutional framework, thereby forcing technological change or industrial downsizing.

Conclusion 4: The linking of the RRF to the European Semester has created a new situation

- Compared to previous indirect channels of influence, the linking of the RRF to the European Semester has given the Commission direct financial instruments to steer Member States' economic policies.
- The modification effectively enables the semi-autonomous allocation of expenditure, representing a significant step toward an independent fiscal capacity at the Brussels level.
- With the addition of the REPowerEU chapter, the Commission has been able to extend its influence to the strategically important field of energy policy as well (including the financing of investments and the approval of production technologies).

5.2. International competitiveness

Conclusion 5: The common European industrial policy fundamentally reduces Hungary's international competitiveness

- As a result of the common energy policy, companies operating in Hungary must pay significantly higher energy prices compared to their international competitors, making global market competition more difficult and potentially discouraging investment.
- Due to elevated European price levels, industrial production has declined in several traditional export markets of Hungarian industry, which may indirectly lead to a reduction in orders for Hungarian companies.
- Changes in investment policy may make it more difficult to attract investment from outside Europe, thereby preventing hindering the transfer of the cutting-edge technologies necessary for Hungary's economic convergence.

Conclusion 6: Restrictions on EU funds lead to increased financing costs

- Delays in the disbursement of EU funds temporarily increase financing needs and therefore generate additional interest burdens.
- Missing euro-denominated liquidity must be replaced through alternative financing sources, which increases the volume of foreign-currency-denominated government bonds issued and thereby raises sovereign debt-financing risks.
- Various political developments are causing uncertainty and volatility on international financial markets, which may be reflected in country risks (interest rate spreads) and also increase the volatility of the euro-forint exchange rate.

Conclusion 7: The ETS system fundamentally influences Member States' industrial policy

- Emission quota prices influence the cost of electricity generation, thereby determining which energy production technologies can be operated profitably ultimately shaping the energy mix of Member States.
- In addition to influencing electricity generation technologies, the system also affects the industrial structure of Member States, thereby constraining the policy space of national industrial policies and influencing the development prospects of key convergence-related sectors such as the steel and chemical industries.
- The EU Emissions Trading System 2 would introduce a new centralised tax burden affecting households as well, thereby withdrawing resources from consumers and weakening domestic demand within Member States.

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References

- Bekker, Sonja (2021): The EU's Recovery and Resilience Facility: A Next Phase in EU Socioeconomic Governance? *Politics and Governance*, 9(3), pp.175–185. doi:<https://doi.org/10.17645/pag.v9i3.4290>.
- Besnier, Thibault (2023): REPowerEU: The authority turn for the EU in energy policies? Available at: <https://coleurope.eu/sites/default/files/research-paper/wp91%20Besnier.pdf>.
- Boschiero, Nerina - Silingardi, Stefano (2023): The EU Trade Agenda: Rules on State Intervention in the Market. *German Law Journal*, 24, pp.151–178. doi:<https://doi.org/10.1017/glj.2023.5>
- Bulfone, Fabio (2022): Industrial policy and comparative political economy: A literature review and research agenda. *Competition & Change*, 27(1), pp.22–43. doi:<https://doi.org/10.1177/10245294221076225>.
- Clift, Ben - Woll, Cornelia (2012): Economic patriotism: Reinventing control in the French political economy. *Journal of European Public Policy*, 19(3), pp.307–323. doi:<https://doi.org/10.1080/13501763.2011.638117>.
- Dackö, Carolina - Brodin, Charlotta - Arlebo, Alice (2022): The FDI Screening Mechanisms and the Draft EU Foreign Subsidy Regulation – Potential Conflicts of Interests and in Application. *Zeitschrift für europarechtliche Studien*, 25(3), pp.505–518. doi:<https://doi.org/10.5771/1435-439x-2022-3-505>.
- Di Carlo, Donato - Schmitz, Luuk (2023): Europe first? The rise of EU industrial policy promoting and protecting the single market. *Journal of European Public Policy*, 30(10), pp. 2063–2096., doi: <https://doi.org/10.1080/13501763.2023.2202684>.
- European Investment Bank (2018): The European Investment Plan has exceeded its original investment target of €315 billion. [online] European Investment Bank. Available at: <https://www.eib.org/en/press/all/2018-192-juncker-plan-exceeds-original-eur-315-billion-investment-target?lang=hu>.
- EUR-Lex - 32021R1119 - EN - EUR-Lex.Europa.eu. [online] Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32021R1119>.
- European Commission (2025). Revision of the EU's Foreign Investment Screening Mechanism. [online] Trade and Economic Security. Available at: https://policy.trade.ec.europa.eu/news/revision-eus-foreign-investment-screening-mechanism-2025-12-11_en.

- European Council (2025): Foreign direct investment: Council and Parliament reached political agreement to improve FDI screening. [online] Consilium. Available at: <https://www.consilium.europa.eu/en/press/press-releases/2025/12/11/foreign-direct-investment-council-and-parliament-reached-political-agreement-to-improve-fdi-screening/>.
- European Commission (2019): The European Green Deal. COM(2019) 640 final. Available at: https://www.consilium.europa.eu/media/47573/st_15051_2019_init_en.pdf
- Fuest, Clemens - Meier, Volker (2022): Green Finance and the EU-Taxonomy for Sustainable Activities: Why Using More Direct Environmental Policy Tools Is Preferable. *The Economists' Voice*, 19(2), pp.261–266. doi:<https://doi.org/10.1515/ev-2022-0021>.
- Garben, Sacha (2017): Competence creep revisited. *Journal of Common Market Studies*, 55(1), pp.1–18. doi:10.1111/jcms.12643
- Garcia-Torea, Nicolas - Luque-Vílchez, Mercedes - Rodríguez-Gutiérrez, Pablo (2024): The EU Taxonomy, sustainability reporting and financial institutions: understanding the elements driving regulatory uncertainty. *Accounting Forum*, 48(3), pp.427–454. doi:<https://doi.org/10.1080/01559982.2024.2364953>.
- Haffert, Lukas - Mertens, Daniel (2019): Between distribution and allocation: growth models, sectoral coalitions and the politics of taxation revisited. *Socio-Economic Review*. doi: 10.1093/ser/mwz038.
- Juncker, Jean - Claude (2014): A New Start for Europe: My Agenda for Jobs, Growth, Fairness and Democratic Change Political Guidelines for the next European Commission Opening Statement in the European Parliament Plenary Session Setting Europe in Motion. [online] European Commission. Available at: https://commission.europa.eu/system/files/2019-09/juncker-political-guidelines-speech_en.pdf.
- Kooths, Stefan (2022): EU Taxonomy: Mission Impossible. *The Economists' Voice*, 19(2), pp.243–249. doi:<https://doi.org/10.1515/ev-2022-0028>.
- Kusiak-Winter, Renata (2024): The evolution of the European Union's energy policy. *Prawo*, 337, pp.105–116. doi:<https://doi.org/10.19195/0524-4544.337.9>.
- Leino-Sandberg, Päivi - Lindseth, Peter L. (2023): How Cohesion Became the EU's Vehicle for Economic Policy: Tracing the Hidden History of Article 175(3) TFEU. *SSRN Electronic Journal*. [online] doi:<https://doi.org/10.2139/ssrn.4545351>.
- Matúš Mišík - Figulová, Andrea (2024). EU Energy and Climate Policy after COVID-19 and the Invasion of Ukraine. [online] doi:<https://doi.org/10.4324/9781032624839>.

- German Environment Agency - Umweltbundesamt (2023). Introduction of an emissions trading system for buildings, road transport, and additional sectors in the EU. [online] Umweltbundesamt. Available at: https://www.umweltbundesamt.de/sites/default/files/medien/11850/publikationen/factsheet_introduction_of_an_emissions_trading_system.pdf.
- OECD (2021): Statement on a two-pillar solution to address the tax challenges arising from the digitalisation of the economy. Available at: <https://www.oecd.org/content/dam/oecd/en/topics/policy-issues/beps/statement-on-a-two-pillar-solution-to-address-the-tax-challenges-arising-from-the-digitalisation-of-the-economy-october-2021.pdf>
- Reins, Leonie (2019): The European Union's framework for FDI screening: Towards an ever more growing competence over energy policy? *Energy Policy*, 128, pp.665–672. doi:<https://doi.org/10.1016/j.enpol.2019.01.029>.
- Renda, Andrea (2021): The EU industrial strategy: Towards a post-growth agenda? *Intereconomics*, 56(3), pp.133–138. doi:<https://doi.org/10.1007/s10272-021-0968-7>
- Századvég (2025a). Where is the limit? – National sovereignty and EU powers – Economic Policy Conference, szazadveg.hu, Available at: <https://szazadveg.hu/cikkek/hol-a-hatar-nemzeti-szuverenitas-es-unios-hataskorok-gazdasagpolitikai-konferencia/>
- Századvég (2025b). Hungarian households would benefit from Tisza's utility programme. szazadveg.hu, Available at: <https://szazadveg.hu/cikkek/a-magyar-haztartasok-belerokkannanak-a-tisza-rezsiprogramjaba/>
- Scharpf, Fritz W. (1999): *Governing in Europe: Effective and democratic?* Oxford University Press.
- Scharpf, Fritz W. (2005): *Welfare and work in the open economy. 1, From vulnerability to competitiveness.* Oxford: Oxford Univ. Press.
- Schramm, Lucas - Terranova, Chiara (2024): From NGEU to REPowerEU: policy steering and budgetary innovation in the EU. *Journal of European Integration*, 46(6), pp. 943–961. doi:<https://doi.org/10.1080/07036337.2024.2353791>.
- Szép, Viktor - Schaupp, Lukas (2025): Energy Sanctions Reloaded: Navigating the Trade-Sanctions Divide in the EU's Proposed Gas Ban. *VerfBlog*. [online] doi:<https://doi.org/10.59704/e64b2095117d79fb>.
- Verellen, Thomas (2025): *Thomas Verellen*. [online] Thomas Verellen. Available at: <https://www.thomasverellen.com/blog/commission-proposal-to-ban-russian-gas-further-blurs-trade-and-security-competences>.

- Volpi, Virginia (2024): To Have or Not to Have Competence: EU Integration by Stealth through Permacrisis. [online] Istituto Affari Internazionali (IAI). doi:<https://doi.org/10.2307/resrep60385>.
- Zeitlin, Jonathan – Vanhercke, Bart et al. (2014): Socialising the European Semester? Swedish Institute for European Policy Studies.
- Zysman, John (1983): Governments, Markets, and Growth. Ithaca [N.Y.] : Cornell University Press.

ENERGY POLICY

Századvég Foundation,

Ministry of Energy and the Institute for Energy Strategy

Member State sovereignty and the division of competences in EU energy and climate policy

1. Executive summary

In the field of energy policy, Member State sovereignty remains formally established in legal terms; however, the effective margin for decision-making has narrowed significantly in recent years. The study describes this not as a classic "transfer of competences", but as a gradual, multi-channel expansion of Union competences, in which, while the formal framework of the Treaties remains intact, EU institutions, in particular the European Commission, assume an increasingly powerful agenda-setting, coordinating and supervisory role.

- + The "Green Revolution" as an systematic attempt: In the study's interpretation, the Green Deal and Fit for 55 are not merely a set of objectives, but a logic of transformation covering the entire economy and energy system, which sets out a strong, regulation-driven path for Member States.
- + Soft law: The Commission renders the soft law toolbox effective not through direct sanctions, but through forms of institutional pressure (professional persuasion, data reporting, guidance, publicity, recommendations). This is reinforced by several mechanisms in the 2018 Governance Regulation, in particular the 'comply or explain' principle: if a Member State does not incorporate the Commission's NECP recommendations, it is required to provide a public explanation, which creates political risk and reputational costs.
- + Transparency and 'naming and shaming' effect: The results highlight the annual reporting practice of the State of the Energy Union, which formally serves transparency but can also have a disciplinary function by publicly naming those who are lagging behind.
- + Delegated acts and operational governance: The Commission's ability to amend technical details through delegated acts makes EU governance more flexible and increases the scope for operational centralization.

Crises, especially the 2022 energy crisis, were not temporary "fluctuations" but rather accelerators of integration. In crisis situations, the need for joint action makes deeper EU intervention politically acceptable. REPowerEU represents both a symptom and a precedent of this logic. It demonstrated that, in exceptional circumstances, the EU is capable of centralizing energy policy

decisions rapidly and effectively without amending the Treaties, thereby raising the question of the extent to which the "security logic" may, in longer term, become a lasting justification for centralization. The findings emphasize that REPowerEU is not merely a substantive programme, but also a shift in the legal logic of governance. It describes the EU as moving towards a mode of "integration by stealth through permacrisis": successive crises can create a "permanent state of exception" in which Treaties can be interpreted more flexibly and the EU may act even where its competences are formally contestable. The key legal basis for this is Article 122 of the TFEU, which was originally designed as a narrow and temporary crisis management instrument, but according to the study, it could become an "all-encompassing" legal basis in the crises after 2010, with the risk of circumventing the ordinary legislative process. Expert interviews confirm that there is a significant gap between the formal division of competences and practical decision-making. According to one expert, the Commission exerts an indirect yet tangible influence on the energy sector through the application of competition-law instruments, in particular state aid rules: approvals and conditions narrow the room for manoeuvre of the Member States by establishing a „framework”.

Overall, the development of EU energy and climate policy demonstrates a gradual, crisis-accelerated realignment of competences. The formulation of Member States' energy strategies therefore increasingly takes place within an environment in which the exercise of sovereignty is not absolute but is shaped by the legal, institutional and political framework of the EU and by a continuous need for adaptation.

2. Presentation of research methodology

2.1. Background to the research

A distinctive feature of energy policy is that, although the Treaty on the Functioning of the European Union places several objectives within the EU's competence, such as the functioning of the internal market, strengthening security of supply, promoting renewable energy sources and increasing energy efficiency, Member States have retained the exclusive right to determine their energy mix. This means that, formally, energy policy remains part of Member State sovereignty, with each country deciding for itself what resources to base its energy system on.

In practice, however, the trend points in a different direction. In recent years, there has been a growing tendency towards what is known as competence creep, whereby the European Union gradually extends its influence to areas where it has no clear and exclusive competence under the

Treaties. Energy is a particularly sensitive example of this phenomenon. Through secondary legislation, soft law instruments and the case law of the Court of Justice of the European Union (CJEU), Union level decisions are having an impact on ever wider areas and are effectively limiting the room for manoeuvre of Member States.

This process is particularly striking in the case of the EU's green packages. The European Green Deal and the related Fit for 55 and RePowerEU plans set out obligations that directly affect Member States' energy policies. Setting mandatory quotas for renewable energy sources, tightening energy efficiency standards and extending the emissions trading system are all measures that were formally introduced for climate policy purposes, but in reality have a profound impact on Member States' sovereign decisions on their energy mix.

Competence creep in this area is not a one-off phenomenon, but an ongoing process. In crisis situations, such as the energy crisis caused by the Russian-Ukrainian war, joint measures such as the coordination of gas purchases or the imposition of storage obligations seemed justified, but in the longer term they also indicated that EU intervention could become permanent at the level of competence.

Therefore, examining energy competences is a key issue. Energy remains a sovereign right of Member States, but the competences extended by Union level decisions and green packages show that, in practice, national room for manoeuvre is constantly shrinking. The research can contribute to exploring how this realignment of competences is taking place, what tools the EU is using to strengthen its influence, and what consequences this has for the energy policy autonomy of Member States.

2.2. Research methodology

The study was based on secondary document analysis, in which we examined relevant literature, institutional reports and policy documents. Our aim was to systematise the knowledge related to the topic and integrate it concisely into the analysis, thus ensuring professional soundness and context sensitivity.

The study was supplemented by two in-depth interviews.

3. Study

3.1. Conceptual and framework definition

In the history of European integration, energy policy has been considered an untouchable area of national sovereignty for decades. Learning from the oil crises of the 1970s, Member States treated energy security as a matter of national security, and although they made concessions in the interests of the internal market, the right to determine the energy mix was enshrined in the Treaty of Lisbon. Article 194(2) of the Treaty on the Functioning of the European Union (TFEU) clearly states that EU measures shall not affect the right of Member States to choose between different energy sources.²²⁸ However, the central thesis of this analysis is that this legal guarantee has become meaningless in political and economic terms in the 2020s. Accordingly, although Member States are de jure free to determine their energy policy and decide whether to build nuclear power plants or gas storage facilities, the regulatory and financial environment controlled by the European Commission has reduced this freedom to a minimum in practice.

The sovereignty paradox evident in the European Union's energy policy manifests itself in practice in that, in the crisis situations described below, the need for joint action and the need to represent national interests appear simultaneously on the EU stage. A characteristic feature of our age is that climate neutrality, security of supply and the regulation of global corporations are cross-border, transnational problems that cannot be remedied by the traditional instruments of nation-state competences. However, using these issues, the European Union and the Commission are formulating common strategic goals, such as the Green Deal and the current crisis management mechanisms, which in many cases restrict national room for manoeuvre. This self-generating process can be seen as a sovereignty paradox, as the sharing of competences in certain areas has become a condition for preserving Member State sovereignty, but the European Union and the European Commission are taking advantage of the situation to gain increasing influence in energy policy, which was previously the sole responsibility of Member States.

3.1.1. Clarification of terms: extension of competences vs. withdrawal of competences

Terminological accuracy is essential to understanding the process. Blutman, Medvegy and Schiffner (2023)²²⁹ distinguish between "competence creep" and "creeping withdrawal of competences". A critical finding for our study is that EU institutions often confuse the two concepts: they reframe unlawful competence withdrawal (e.g. interference in Member States'

²²⁸ Iliopoulos, 2024, pp. 1268–1295.

²²⁹ Blutman- Medvegy- Schiffner, 2023, pp. 1–11.

energy mix) as necessary and functional competence creep (e.g. to achieve climate targets), thereby neutralizing Member States' political resistance and concerns.

According to the authors, the two terms refer to similar phenomena, but from different perspectives. The sovereigntist narrative, which defends national sovereignty, often uses the term "competence creep" to indicate that the EU is taking away the competences of Member States almost imperceptibly, in small steps. According to this view, the Union is gradually exceeding the limits of its competences as laid down in the founding Treaties through legislation or court rulings and is beginning to exert influence in areas that, in principle, fall exclusively within the competence of the Member States. The sovereigntist view considers this a negative development and would put a stop to such EU efforts, arguing that the self-determination of nations must be protected from the EU exercising even greater power over national affairs. The concept has appeared in political speeches, analyses and even official Member State documents, clearly demonstrating that sovereignty concerns have become a rhetorical weapon in European debates.

In contrast, those in favour of integration describe the phenomenon as an expansion of competences or a natural extension of the EU's competences. They emphasise that the EU is not arbitrarily seizing new competences, but is making fuller use of the competences conferred on it by the Member States. In the Treaties, the Member States have already set the goal of deepening cooperation (in line with the vision of "ever closer union"), so the expansion of the Union's sphere of activity is inherent in the logic of integration. From this perspective, the term 'competence creep' is misleading, and what is happening is not creeping but evolving, as we have common problems that nation states cannot solve on their own, and the EU is therefore gradually taking on more responsibility.

3.1.2. The "Green Revolution" as an attempt to change the system

The shift in competences from the status quo enshrined in the Treaties was not spectacular at first, but rather took the form of technical groundwork. From 2010 onwards, integration efforts in the field of energy also gained increasing prominence. The Energy Union Strategy, announced in 2015, sets out ambitious climate targets for 2030, which the Commission coordinates and holds Member States accountable for achieving.²³⁰ In 2019, Ursula von der Leyen, the newly elected President of the Commission, announced the European Green Deal, which opens a new chapter in

²³⁰ European Commission (2023)

the history of European energy policy and further shapes the balance of competences in an increasingly decisive manner.²³¹

The Green Deal is a comprehensive, systemic transformation strategy that aims to make the EU economy climate neutral by 2050. Kusiak-Winter (2023) aptly notes that the Green Deal and the climate neutrality objective are not a continuation of previous energy policy, but rather a kind of "revolution", a project of social engineering and economic management.²³² It forces all economic sectors to "go green", but focuses particularly on the energy sector, as the transformation of the energy system is an essential condition for achieving emission reduction targets. As part of the Green Deal, the European Commission legally enshrined the climate neutrality goal in the European Climate Regulation adopted in 2021 and launched a large-scale legislative package ("Fit for 55"), which introduced binding emission reduction measures in almost all areas of the EU economy. This package was adopted by a qualified majority in the area of energy and climate policy, which falls under shared competence, thus overriding Poland's opposition, as Kusiak points out in his study. It is clear that the Green Deal significantly interferes with the economic and social policies of Member States, requiring the transformation of their national energy, transport, industrial and other relevant strategies in order to achieve common EU goals.

There is also debate among researchers as to what extent this Green Revolution can be considered a continuation or a revolutionary shift from the EU's previous energy policy.²³³ According to some analysts, placing the EU's climate and energy policy goals at the centre of the Commission's political agenda opens up a whole new era of economic governance. From another perspective, however, the Green Deal is a significant and symbolic step, but only the next step in the integration process, the previous stage of which was the Energy Union, i.e. it should be interpreted as the culmination of integration to date rather than a completely new direction. In any case, Besnier states that a new paradigm has emerged in the Green Deal discourse: the principle of sustainability has been incorporated into all areas of EU policy and has become a central element of the EU's economic modernisation programme.²³⁴ According to the author, it is noteworthy that the Green Deal encountered relatively little open political resistance from Member States when it was launched. The Commission, led by Ursula von der Leyen, launched the programme in 2019 with a strong political mandate, and the majority of Member States, agreeing with the central narrative of climate change, did not dispute the objectives but rather focused on the means of

²³¹ Ursula von der Leyen, 2019

²³² Kusiak-Winter, 2023, pp. 105–116.

²³³ Uo.

²³⁴ Besnier, 2023

implementation. In this new paradigm, it seems that Member State autonomy is no longer a value to be protected, but rather an obstacle to efficiency, which EU institutions are seeking to dismantle through various methods, albeit in an increasingly visible manner.

3.2. Energy and sovereignty in Europe

The European Union acquired its current form with the entry into force of the Treaty of Lisbon, which established a new, broader framework for community cooperation on top of the existing foundations. One of the cornerstones of this was the division of competences laid down in the Treaty on the Functioning of the European Union (TFEU). This study examines the changes in the competences of energy and climate policy in light of events since 2009, with a particular focus on the legal, financial and geopolitical situation that has changed since the European Green Deal was finalized. This change has been accelerated by the COVID pandemic and Russia's invasion of Ukraine, which have triggered processes – such as economic recovery and the energy crisis – that the European Union considered best addressed through joint action. This led to the creation of the REPowerEU plan, which, alongside other decisions and mechanisms designed to achieve environmental goals, has become one of the European Union's main tools for achieving sustainability.

This EU package of measures also has a major impact on Hungary's energy policy, and its effects would have a fundamental impact on Hungarian citizens, so Hungary has taken a cautious stance on the full implementation of these programmes. In addition to the measures adopted by the EU to date, we must also examine the recent history of the common and Hungarian energy strategies and policies. Such an examination provides the analytical basis required to address the question of changes in competences that constitutes the focus of this study.

3.2.1. Treaty-based competences and Member State sovereignty

Member States are formally free to determine their energy mix, but their actual scope for decision-making is much more limited. Sovereignty here is not an abstract concept, but a very practical scope for action, which is jointly limited by infrastructure conditions, import dependency, technological costs and the EU regulatory environment. National decision-makers often do not exercise maximum freedom, but adapt to a system that increasingly organizes energy policy options within a European framework.

EU competences are primarily defined by the Treaty on the Functioning of the European Union, while in Hungary, in addition to the Fundamental Law of Hungary and relevant legislation, policy documents and studies form the backbone of energy policy.

3.2.1.1. The Treaty-based competences of the European Union

To understand this system, we need to start at the beginning. Let us review the relevant parts of the Treaties forming the basis of the European Union, in which competences related to energy are mentioned and defined. The Treaty on the Functioning of the European Union covers the main areas it regulates according to its competences. Let us first look at the topics relevant to the subject of this research. It has full competence in the field of trade policy,²³⁵ shared competence in the fields of environment and energy, and competence to implement measures supporting, coordinating or supplementing the measures taken by Member States in the field of industry.²³⁶

These competences are discussed in detail later in the Treaty, so let us take a look at them as well: The main objective of trade policy, based on Article 207 TFEU, is as follows:

‘The common commercial policy shall be based on uniform principles, particularly with regard to changes in tariff rates, the conclusion of tariff and trade agreements relating to trade in goods and services, and the commercial aspects of intellectual property, foreign direct investment, the achievement of uniformity in measures of liberalization, export policy and measures to protect trade such as those to be taken in the event of dumping or subsidies. The common commercial policy shall be conducted in the context of the principles and objectives of the Union’s external action.’²³⁷

With regard to environmental protection, Article 191 TFEU sets out the objectives to be pursued by Member States. Among its objectives, climate change is highlighted as a problem and measures to combat it are encouraged at international level.²³⁸ In addition, the protection of human health, the preservation, protection and improvement of the quality of the environment, and the prudent and rational utilization of natural resources are also listed as main objectives. Following this delimitation, Articles 192 and 193 define the legislative mechanism and its limits for EU decision-making, and also allow Member States to take more stringent measures in accordance with EU Treaties.

With regard to energy, Article 194 clearly defines the scope of competence. With regard to common objectives, the Treaty mentions the following: ensuring the functioning of the energy market, guaranteeing security of energy supply within the Union, promoting energy efficiency and energy saving, and promoting the development of new and renewable energy sources; and

²³⁵ Consolidated version of the Treaty on European Union, 2012, C 326/51

²³⁶ Uo., C 326/53

²³⁷ Uo., C 326/140

²³⁸ Uo., C 326/132

promoting the interconnection of energy networks. The same article guarantees Member States the right to exploit their own energy resources and determine their own energy mix:

"Such measures shall not affect a Member State's right to determine the conditions for exploiting its energy resources, its choice between different energy sources and the general structure of its energy supply, without prejudice to Article 192(2)(c)." ²³⁹

The EU's competence in the field of industry is highlighted in Article 173, which sets as its main objective the maintenance of the European Union's competitiveness and seeks to encourage, within the framework of open and competitive markets, measures to coordinate industrial production and operations within the Union encourage small and medium-sized enterprises to respond as quickly and effectively as possible to structural changes, and promote better exploitation of industrial opportunities in innovation, research and technological development policies.²⁴⁰

3.2.1.2. Hungarian energy strategy and relevant documents

Hungary's supreme law, the Fundamental Law, lays down the foundations of energy and climate policy. According to Article XXI of the Fundamental Law, the country recognizes and enforces everyone's right to a healthy environment. Article P) declares natural resources, such as arable land, forests and water resources, as well as biological diversity, in particular native plant and animal species, to be part of the national heritage. Article 38 states that the purpose of managing national assets is, among other things, to take into account the needs of future generations and to preserve natural resources.²⁴¹ The European Green Deal is integrated into the domestic legal system by Act XLIV of 2020 on climate protection, while Act LVII of 2015 on energy efficiency forms an important basis for the implementation of the REPowerEU plan.

In addition to the legislation in force, the National Energy Strategy 2030²⁴² and the updated National Energy and Climate Plan 2024 – NECP²⁴³ are the government documents that guide domestic energy policy.

The Energy Strategy is a 2011 document, as it was prepared in line with EU and domestic guidelines at the time. Accordingly, it provides a professional overview of the challenges of the 21st century that need to be taken into account when planning and implementing investments

²³⁹ Uo., C 326/135-136.

²⁴⁰ Uo. C 326/126

²⁴¹ The Fundamental Law of Hungary, 2011 (April 25th), Magyar Közlöny, 2011(43), pp. 10656–10681

²⁴² National Energy Strategy 2030, Magyar Közlöny 2011/119., pp. 30210.- 30359

²⁴³ Hungary's updated National Energy and Climate Plan 2024

related to the energy sector. It outlines the need for an energy structural change, highlighting the following key points:

- " (i) energy efficiency measures spanning the entire supply and consumption chain;*
- (ii) increasing the share of low CO₂ - intensive electricity generation based primarily on renewable sources of energy;*
- (iii) promoting renewable and alternative methods of heat generation;*
- (iv) increasing the share of low CO₂-emission modes of transport." ²⁴⁴*

It sets energy independence as a goal and identifies five areas for action: energy conservation, the highest possible use of renewable energy, safe nuclear energy and the electrification of transport based on it, the creation of bipolar agriculture, and connection to the European energy infrastructure. The document defines bipolar agriculture as the alternation between food production and biomass production. It is important to note that while the Energy Strategy considers nuclear energy to be a permanent element and refers to natural gas as a long-term energy source, it also considers the country's coal and lignite reserves to be strategic reserves, stating that it is not possible to completely abandon fossil fuels.

The Energy Strategy highlights various key points to ensure that Hungary's economy can operate with a competitive, sustainable and secure supply base. It sets consumption reduction as a general goal for 2030, which is partly defined in terms of energy efficiency, which can also be interpreted in the short term. The main source of this is the promotion and implementation of building energy upgrades, which, according to the document, could reduce primary energy consumption by 10 per cent by 2030, in line with the relevant EU directives. It also highlights power plant modernisation and the reduction of network losses, which could lead to a further 6-9 per cent reduction in consumption. The report attaches particular importance to shaping social attitudes, which could lead to further steps towards this goal. The next key point in the document is renewable and low-carbon energy production. According to the Energy Strategy's estimates, its share in energy consumption could rise from 7 to 20 per cent, and a separate action plan has been drawn up for this purpose. In addition to the more familiar solar and wind energy options, the report pays close attention to the opportunities offered by bioenergy. Developments related to solar energy are primarily planned for after 2020, due to falling technology prices. The report also highlights the growing role of nuclear energy, with the technical material anticipating the construction of new power plant units. They also see important capacities in power plant modernization, as these

²⁴⁴ National Energy Strategy 2023, Magyar Közlöny 2011/119. pp. 30213

provide a reliable basis for domestic energy production. Through these developments and the aforementioned nuclear power plant capacities, they expect a high degree of carbon dioxide emission reduction, which will enable the state to meet its relevant European Union obligations.

The energy efficiency improvements resulting from the aforementioned building modernizations could be complemented by the modernization of district heating and individual heat energy production, which is also a priority, not least in order to maintain the competitiveness of the service. The report also mentions increasing the energy efficiency of transport and reducing its carbon dioxide intensity, identifying electric and hydrogen propulsion as the primary means of reducing oil dependency in the rail and road sectors. According to the document, this electrification can primarily be based on nuclear energy production. The Energy Strategy also aims to take significant steps in the areas of green industry and renewable agriculture, where low-carbon technologies, organic farming and bioenergy would also play a major role. Waste utilization is also related to this, as municipal organic waste can also be considered biomass, and according to the authors of the document, the use of combustible waste for energy production through incineration only works in developed countries under very strict regulations. In their opinion, even at the time of writing, 60 per cent of combustible waste could be used for energy production in addition to these standards.

As a final cornerstone, the Energy Strategy emphasises strengthening the role of the state, which could be achieved primarily through state-owned energy companies (Paksi Atomerőmű Zrt., MVM Zrt., etc.), but the main area of focus remains regulation. The two companies mentioned above do indeed expand the current government's room for manoeuvre in the electricity industry, but this room for manoeuvre must also be extended to the oil and natural gas sectors. The strategy highlights market diversification and competition among service providers in the electricity sector as primary opportunities, but also considers it important to strengthen vocational training due to shortages.²⁴⁵

The National Energy and Climate Plan was first drawn up in 2020 as a result of the obligations set out in the legislative package behind the European Union's Energy Union strategy, with the aim of harmonising Member States' energy and climate policies with common EU action plans, programmes and relevant international agreements. These include the Paris Agreement, the European Green Deal, the Fit for 55 package and the REPowerEU plan. The main objective of the latest document, updated in 2024, is to achieve the EU's 2050 climate neutrality target, which was drawn up in line with various domestic regulations and the previously analysed National Energy

²⁴⁵ National Energy Strategy 2030, 2011, Magyar Közlöny 2011/119. , pp. 30210.- 30359.

Strategy 2030 document. In this plan, the objectives were defined in line with the five main principles of the EU. These objectives are: decarbonisation, energy efficiency, energy security, internal energy market, research and development, and competitiveness. An important element of the report is the interpretation of recent events and the lessons learned from them, which are used to formulate one of the main objectives as reducing natural gas consumption and diversifying energy sources. The main basis for this (as defined in the Energy Strategy) is the extension of the operating life of the existing units at the Paks Nuclear Power Plant, the commissioning of new units after 2030, and renewable energy, which in Hungary primarily means solar energy. In addition to new energy sources, the report states that the greatest potential for improving energy efficiency lies in the domestic building stock. With regard to climate change issues, the document emphasises that its effects are noticeable in Hungary and that the Hungarian state is committed to halting this process. Accordingly, the government has developed action plans to help achieve these goals. The authors of the strategic document have estimated the annual investment required for this at HUF 177 billion. EU subsidies are also expected to play a significant role in generating these resources.²⁴⁶

Overall, the available domestic policy documents seek to tailor EU targets to Hungary in such a way that the common goals, primarily the 2050 climate neutrality target date, can be achieved.

3.2.2. The European Union's energy and climate policy

Since the 1990s, the history of European energy policy has been closely intertwined with climate policy, as this was when the issue first began to be addressed at international level. Although the United States was the main proponent of this issue, the European Union quickly adopted the issue and has become its most prominent advocate today. It is important to examine the history of EU energy and climate policy because without adequate historical knowledge, it is impossible to properly interpret the events of the past 5-10 years in this segment.

3.2.2.1. The history of the common energy policy

The first step in interpretation is to establish the context and interpret the common energy policy. Now that we have clarified the competences of the EU and familiarised ourselves with the content of the relevant domestic documents, let us review the recent history of the common energy and climate policy. In their study, Szilárd Szélpál and János Varga emphasise that Europe's energy dependence was clear even before the Russian-Ukrainian war, and that there were events close to the political community that called into question the security of supply, not to mention the fact that

²⁴⁶ Hungary's updated National Energy and Climate Plan 2024

the internal reserves that could be used to solve this problem – connecting and developing energy infrastructure – were hardly or only slightly implemented in the case of the Member States that joined in 2004.

They describe the process by which the European political community gradually realised that it had to do something about its energy policy, because the winds of change – renewable energy sources, impending geopolitical challenges – could break down the gates of European industry. Not only competitiveness but also energy security came into question in 2014 when a dispute broke out between Russia and Ukraine over a gas supply contract, which arose from a technical – accounting – issue. The escalation of this dispute naturally affected more than just the two countries mentioned. For a period, Ukraine shut off the gas taps to those Central and Eastern European countries to which Russia was supplying natural gas in accordance with its contractual obligations. This event convinced European decision-makers to take action, and ‘thanks to this’, they launched a wave of storage capacity and infrastructure development in the field of natural gas, but also in the field of crude oil, for example. It was then that the obligation was established for each country to have 120 days' worth of oil reserves in order to maintain secure operations (which has been necessary on several occasions since then!).

Given the existing European energy infrastructure, the question rightly arose in the 1990s as to why it would be necessary to incorporate large amounts of renewable energy sources into the energy supply. It is important to note that since 1992, energy production in the EU has been steadily declining, while the share of renewables has only increased, resulting in significant savings for Member States' budgets, not to mention the fact that there is considerable potential for energy savings in this segment. This growth is also due to the fact that unconventional methods of extracting fossil fuels are both environmentally damaging and highly rejected by society (see shale gas). The potential of building modernisation was also recognised relatively early on by EU decision-makers, who sought to address it primarily through domestic innovation tools.

The draft Energy Union created in 2015 defined five main areas for action:

- “Security, solidarity and trust
- A fully integrated internal energy market
 - Energy efficiency
- Climate action – decarbonising the economy
- Research, innovation and competitiveness.”²⁴⁷

These areas highlighted the need for a new agreement that would set out the tasks to be carried out in detail, while a comprehensive climate strategy would elevate the EU to the ranks of the leading representatives and advocates on this issue. The Energy Union laid the foundations for this at Member State level by encouraging the achievement of the climate targets set for 2030 through legislation and by developing and annually reviewing and adjusting the National Energy and Climate Plans. The Paris Agreement also burst onto the political scene, giving the EU a further boost, beyond being one of its biggest lobbyists and initiators.

Following her election in 2019, Ursula von der Leyen announced the European Green Deal, which, as we have seen, was by no means without precedent. The resulting package supported the creation of a resource-efficient, environmentally conscious European economy, which they intended to achieve in the shortest possible time. The aim was not only to reduce energy dependence, but also to promote environmentally friendly solutions in all areas of the economy. They sought to ensure the necessary transition with the following objectives:

- *reducing greenhouse gas emissions and achieving net zero emissions by 2050;*
- *decoupling the volume and pace of growth in the European economy from resource use;*
- *ensuring that all regions and citizens of Europe benefit from the advantages generated by economic transformation.*²⁴⁸

To this end, policy areas have been identified within which Member States must align their budgets and plans with the objectives set. In order to achieve these objectives, several hundred billion euros have been earmarked for green objectives from a number of available sources.

The amounts available for spending are to be distributed among various strategic priorities (policy areas) in the following proportions:

“Sustainable Growth / Natural Resources – 39%

²⁴⁷ European Commission, 2025 (November 12th)

²⁴⁸ Umbach, 2020

Economic, Social and Territorial Cohesion – 34%

Competitiveness for growth and jobs – 13%

Administration – 6%

Global Europe – 6%

Security and citizenship – 2%"

The agreement also takes into account the consequences of the transition, which may have a negative impact on certain groups in society, so resources have been set aside for a just transition. The Green Deal is expected to bring about comprehensive improvements in emissions reduction, the state of the environment, and essentially everywhere where nature is concerned, while also maintaining the competitiveness of European industry.

In summary, Szélpál and Varga conclude that the need for structural transformation of the economy was independent of Russia's 2022 invasion of Ukraine, but also of events since 2014, for which the Green Deal was a concrete step.²⁴⁹

3.2.2.2. The history of the European Union's climate diplomacy

Since the early 1990s, the European Union's international climate policy role has been a key element of the community's external action, and the Union has been a flagship in the fight against international climate change. Niklas Bremberg and Anna Michalski examined the history of EU climate policy in their study. This history is the result of two parallel processes: the continuous tightening of internal environmental legislation and the active role played in international climate negotiations (particularly within the framework of the United Nations). Since the 1992 Rio Conference, the EU has strived to become a global leader in climate protection, but this is no easy task, as we will see below. The UN Framework Convention on Climate Change, adopted in 1992, marks the beginning of modern global climate policy, which was first set out in the form of commitments in the Kyoto Protocol adopted at the COP3 conference in Kyoto in 1997, obliging some developed countries to reduce greenhouse gas emissions. The partial success of this did not discourage the EU's leading climate policymakers, and so from the 2000s onwards, the EU sought to lead by example. This approach was based on normative persuasion and conviction: the EU leadership was confident that its ambitious internal goals and technological solutions would serve as an attractive model for the rest of the world, based on the premise that these models were the right ones to follow. By the mid-2000s, the institutional framework supporting this approach had

²⁴⁹ Szélpál – Varga, 2023, pp. 185–199

also been strengthened: in 2003, the Green Diplomacy Network (GDN) was established, and in 2004, the 'lead negotiator' system was introduced, enabling more effective coordination between Member States and the Commission.

With the entry into force of the Lisbon Treaty, new EU institutions were created, including the European External Action Service (EEAS, Hungarian abbreviation: EEAS), expected more significant results due to the autonomous power of joint action, but the results of the 2009 COP15 climate summit in Copenhagen came as a blow to EU leaders, according to Bremberg & Michalski, and can therefore be considered a decisive turning point in joint climate policy. Instead of a new, ambitious package of commitments, the participating countries only took on marginal burdens, but the reason for this can be found in the lack of interest of the world competences. The US, Russia and Japan were generally opposed to binding emission reductions, so the 2009 plans came to nothing and the EU's efforts were unsuccessful. This shock led to a refinement of climate diplomacy and more unified action. In reality, this is a full-scale effort, using all means at its disposal, from member state embassies to strengthening bilateral relations with international energy and climate organisations to reshaping the narrative, in which geopolitics is now linked to climate issues. According to the two authors, this, among other things, led to what they call the relative success of the Paris Agreement, thanks to the different kind of leadership provided by the new mechanisms.

Bremberg & Michalski summarise the practice of the EU's joined-up & universal approach by identifying four components: narration, coordination, outreach and mainstreaming. By examining each of these individually, we can learn the "official" names and objectives of the main elements of the study. Narration, i.e. a unified communication image, helps to achieve the EU's goals. With this, the Union, which presents itself as an actor with expertise, experience and a mission, wants to show itself as a frontrunner in the fight against climate change. Coordination serves to stimulate internal, unified action, and the institutional framework is provided by the Green Diplomacy Network and the European External Action Service. An even more interesting component is outreach, which involves the use of various soft power tools (campaigning, use of EU financial resources, shaping public discourse in favour of the issue), which may open up opportunities for steering the country in question towards Team Europe in international climate policy issues. Mainstreaming is the final component, bringing together the first three steps, which cement the role taken by the EU, attempting to place this issue above the political spectrum and establish it as a unified topic of unquestionable importance. To this end, this issue has been brought to the same level as other mainstream issues that the European Union actively supports/represents (migration,

human rights, new geopolitical challenges following the outbreak of the Russian-Ukrainian war), which means that, overall, success has been achieved at the level of climate diplomacy.

Bremberg and Michalski conclude their study by stating that the European Union has sought to maintain its role in international climate negotiations by strengthening the instrument of closer diplomatic cooperation in the four main areas discussed above, in addition to acting with the power of example. They also highlight the EU's diplomatic recognition that linking climate issues to geopolitics was an important and necessary step towards achieving the goals, and that linking it to development aid provided a real tool for achieving this goal.²⁵⁰

3.2.2.3. The practice of common energy policy

In their 2024 study, Brucker, Jóna and Szemerédi examined the changes in the European Union's common energy and climate policy and the transformation of the Hungarian energy market. In their interpretation, the legal significance of the classification of energy policy as a shared competence under the TFEU is that as long as the European Union exercises its competence, Member States may not exercise theirs. They also summarised the common objectives for 2030, which were finalized in 2018 and include the following targets:

- *"increase the share of renewable energy consumption to 32% of total energy consumption;*
- *increase energy efficiency by 32.5%;*
- *achieve at least 15% interconnection of EU electricity systems."*

The targets were finally amended in 2021 by the "Fit for 55" package, which modified the obligations of Member States as follows:

- *at least 55% reduction in greenhouse gas emissions by 2030 compared to 1990 levels;*
- *achieve net-zero greenhouse gas emissions by 2050."*²⁵¹

The outbreak of the Russian-Ukrainian war on 24 February 2022 led to an immediate review of the common energy policy, which fundamentally reshaped the common goals. This resulted in the REPowerEU plan, which sought to reduce the EU's dependence on imports. The resulting plan, prepared by the European Commission at the request of the Member States, focused on the diversification of energy sources, energy savings and other important measures, but its main objective was to move away from Russian fossil fuels while continuing to fully comply with climate protection requirements. The fundamental reason for this, as openly acknowledged by the

²⁵⁰ Bremberg – Michalski, 2024, pp. 1–30

²⁵¹ Brucker - Jóna - Szemerédi, 2024

EU's high representatives, was to stop financing Russia through the purchase of various energy sources in order to persuade Russia to abandon its war efforts. In addition to the common energy policy plans, the adoption of sanctions packages also affected the situation of the common energy markets. The study cites the fifth package of sanctions, which banned imports of Russian coal, as an example. However, the authors of the study note that this did not meet with political resistance due to the surmountable nature of the problem, but did not have a significant impact on either the Russian or EU economies. This was followed in July 2022 by the sixth package of sanctions, which banned imports of Russian crude oil products into the EU.

Hungary, together with Slovakia, was able to obtain an exemption due to our high level of exposure. In 2023, the climate targets were further modified, setting the following unofficial goals:

- *"increase the share of renewable energy sources in energy consumption to 42.5%, with a target of 45%;*
- *reduce the EU primary and final energy consumption by 11.7% compared to 2020 projections for 2030 (representing a 40.5% and 38% reduction compared to 2007 projections)."*²⁵²

At the time of publication of this study, no decision had been made to discontinue Russian natural gas imports in any way, but the situation has now changed. At the end of 2025, the European Union made a decision whereby EU member states would discontinue purchases of Russian natural gas by autumn 2027 as part of the REPowerEU plan.²⁵³ This decision could not be vetoed due to the legislative mechanism, so the Hungarian government brought an action before the Court of Justice of the European Union.²⁵⁴ In addition, the United States also imposed sanctions on the two largest Russian oil companies²⁵⁵(Rosneft, Lukoil), from which Hungary managed to obtain a one-year exemption.²⁵⁶

3.2.3. Main channels of EU influence

Having reviewed the legal and other common and national rules and strategies, we will now use a few specific examples to illustrate the processes that have recently increased the EU's influence and, contrary to the existing rules, have created situations that are incompatible with them, based on various studies and cases.

²⁵² Brucker - Jóna - Szemerédi, 2024

²⁵³ European Parliament, 2025

²⁵⁴ HVG, 2026

²⁵⁵ U.S. Department of the Treasury, 2025

²⁵⁶ Le Monde, 2025

3.2.3.1. A new definition of sovereignty

One of the central legal safeguards of European energy policy is Article 194(2) of the TFEU, which states that Member States shall determine their energy mix themselves. On paper, this provision provides strong protection for national sovereignty, particularly on strategic issues such as nuclear energy, natural gas or the share of renewables. However, a model developed by Raillard-Cazanove et al. examining the joint decarbonisation of industry and the energy system shows that this legal protection is becoming increasingly hollowed out by economic and technological constraints. The combination of carbon prices, financing conditions and state aid rules is steering investment in a direction that severely limits the actual room for manoeuvre of Member States.

According to the model's results, industrial decarbonisation will dramatically increase demand for electricity and hydrogen. In the six industrialised countries examined, the additional consumption generated by industry will increase electricity demand by 5–8 per cent across the EU-15, while demand for hydrogen will rise by 29–41 per cent. This is not merely a question of quantity. Meeting demand on this scale will require the mass construction of new power plants, electrolyzers, hydrogen storage facilities and pipelines. These investments are long-lived, capital-intensive infrastructures that will lock in the structure of the energy system for decades to come. This is where the lock-in effect, which the study implicitly identifies, becomes particularly significant.

According to the Raillard-Cazanove model, the future energy system will remain predominantly renewable and nuclear-based, even when considering different political and technological paths. More than 85 per cent of electricity generation will come from renewable sources in 2050, while nuclear energy will retain a 10–11 per cent share. This in itself would be compatible with the freedom of Member States to choose their energy mix. The problem arises because most of the hydrogen demand generated by industry does not come from electrolysis, but from natural gas-based technologies combined with carbon capture and storage, except in scenarios that assume a complete phase-out of fossil fuels. This means that the combination of industrial structure and hydrogen infrastructure has an impact on gas consumption, even in a theoretically decarbonised system.

One of the most important findings of the model is that the development of hydrogen networks is not just a matter of technical optimisation, but also creates new dependencies. In the H2 Exch Plus scenario, the interconnection of national hydrogen markets reduces the total system cost while balancing price differences between Member States. In practice, this means that countries with more favourable renewable potential, such as France or Spain, lose their relative cost advantage,

while production flows to higher-cost countries. The infrastructure is therefore not neutral, but redistributes economic advantages and disadvantages, while making it politically extremely difficult to leave the system.

This infrastructure is one of the most powerful mechanisms for hollowing out sovereignty. Member States can still legally decide on their energy mix, but if the hydrogen needed for their industries to survive is only available through a common European network, their actual choices are extremely limited. The study shows that in the fossil phase-out scenario, the EU will become increasingly dependent on imports of low-carbon hydrogen and methanol, particularly from the MENA region. This will also create new external dependencies, while internal infrastructure will push decision-making towards central coordination.

Carbon prices and financing conditions further reinforce this process. According to the model, lower carbon taxes reduce energy prices but also make the use of fossil technologies more attractive to industry, slowing down decarbonisation. This encourages regulators to maintain high carbon prices, which in turn exert capital and technological constraints on companies and, indirectly, on Member States. The resulting investment path is becoming increasingly irreversible, especially once hydrogen pipelines, storage facilities and electrolyzers have been built.

All this means that there is a growing gap between the formal guarantee of Article 194 TFEU and economic reality. Member States can legally retain their energy policy sovereignty, but the European energy system linked to industrial decarbonisation creates an infrastructure and financial straitjacket in which the scope for national interest-based planning is constantly narrowing. The Raillard-Cazanove model is thus not only a technical forecast, but also an institutional warning about how deeply the green transition is transforming the actual content of European sovereignty.²⁵⁷

3.2.3.2. Defence strategies and "ultra vires" control

The next line of defence, which would provide a contractual framework, is the traditional EU legal remedies, which have recently proved to be of limited use in curbing EU overreach. According to the analysis by László Blutman, Dalma Medvegy and Imola Schiffner, the Court of Justice of the European Union is both the final interpreter of competences and the reviewer of the legal acts of EU institutions, which creates a peculiar institutional closedness. If the Court approves a conflict between an EU legal act and a Member State measure, that interpretation becomes formally unquestionable in the EU legal order. This means that the creeping withdrawal of competences

²⁵⁷ Raillard-Cazanove – Knibiehly – Girard, 2024

often remains invisible in legal terms, because EU institutions validate each other's decisions within their own legal system.

This is where national constitutional courts come in as key players. According to Blutman and his co-authors, the only institutional level capable of challenging the Court of Justice of the European Union's interpretations of competences from the outside is the circle of national courts, which are considered the guardians of constitutional order. These bodies do not proceed from the logic of the primacy of EU law, but examine, on the basis of their own constitutions, whether EU acts and EU court rulings are consistent with the protection of sovereignty and constitutional identity. This is where the red line separating the internal logic of the EU legal order from the constitutional self-determination of Member States emerges.

The practices of the Polish, Romanian and German constitutional courts offer three different but mutually reinforcing examples of how this red line can be legally defined. In several judgments, the Polish Constitutional Court has argued that the Court of Justice of the European Union exceeded its competences when it began to examine issues relating to the organisation of the judiciary using EU legal standards. The court interpreted this as a violation of constitutional identity and subsidiarity, and concluded that such EU rulings may be *ultra vires*. Although the Polish approach is debatable from a legal point of view, its political message is clear: there are areas where the national constitution takes precedence.

The Romanian Constitutional Court has moved in a similar direction by limiting the effect of certain EU court rulings in the Romanian legal system. Although the Romanian decisions are less explicit about exceeding competences, the underlying logic is the same. EU law cannot override the fundamental structural elements of the national constitution and constitutional identity. When the Court of Justice of the European Union gives too broad an interpretation of its own jurisdiction, the national constitutional court has the right to intervene.

However, the strongest precedent was set by the German Federal Constitutional Court in its 2020 PSPP ruling. In this case, the Karlsruhe court ruled that the Court of Justice of the European Union had given an interpretation of the European Central Bank's asset purchase programme (PSPP) in the Weiss ruling that was methodologically incomprehensible and disproportionate. It therefore classified the judgment as *ultra vires* and prohibited its implementation in Germany. This was the first time that the constitutional court of a leading Member State had openly broken the EU court's monopoly on interpretation.

According to Blutman's analysis, a more general legal lesson can be drawn from this. The Court of Justice of the European Union exceeds its competences when it gives an interpretation of the

law that clearly disregards the common constitutional traditions of the Member States, fails to apply the principle of proportionality correctly, or provides methodologically incomprehensible reasoning. In such cases, it is not simply a matter of a controversial judgment, but of an unlawful extension of EU competences.

In this sense, national constitutional courts are the last institutional brake on the creeping encroachment of competences. If they do not intervene, the internal logic of the EU legal order will reinforce itself and further expand EU competences. The red line is therefore not political, but constitutional in nature. It lies where national constitutional courts declare that integration cannot cross the boundaries of democratic self-determination and constitutional identity. This is the only point where sovereignty can still take legal form in the era of the EU's permacrisis.²⁵⁸

3.2.4. The REPowerEU plan

The present state of the European energy industry would be unimaginable without the so-called REPowerEU plan, which was developed by the European Commission in response to the outbreak of the Russian-Ukrainian war and which has already been mentioned briefly in this study. In order to obtain an objective picture, we will first examine the official EU information and available materials, and then delve deeper into this plan, which sounds quite significant at first glance, with the help of domestic and international literature.

Not only does it sound significant, it is significant, as the European Union intends to use this package of measures to completely eliminate its energy dependence on Russia, among other things. This will be achieved through energy conservation, diversification and clean energy production, all of which are based on the "Fit for 55" package already discussed. The EU energy sector has/had significant exposure to Russia, primarily in the areas of natural gas, oil and nuclear energy, but there were also significant Russian suppliers in the coal sector. This action plan describes in detail how these will be phased out. We have already mentioned the phase-out of natural gas by 2027 in this study, as well as the ban on Russian coal imports under the fifth package of sanctions. The sixth package of sanctions banned EU member states from importing Russian crude oil, and this plan also aims to phase out all oil shipments from Russia by 2027. Similar to the measures listed above, the EU leadership would also impose sanctions on Russian uranium imports, although a comprehensive import ban has not yet been introduced due to the numerous Russian nuclear reactors operating in Central and Eastern Europe.

²⁵⁸ Blutman et al. , 2023

However, it is not easy to replace the energy sources that have been banned in this way, which is why various rules and procurement systems have been established to meet natural gas demand, especially in winter (joint natural gas purchase option, e.g. AggregateEU,²⁵⁹ natural gas storage obligation²⁶⁰). Thanks to EU investments and incentive programmes in the field of renewable energy, as well as the fulfilment of Member States' climate policy commitments, renewable sources will cover nearly 47 per cent of the European Union's energy needs by 2022, and wind and solar energy capacities have also been significantly increased. The plan is financed by the Recovery and Resilience Facility (RRF) with a value of nearly €300 billion.²⁶¹

3.2.4.1. Geopolitical playing field and the reality of EU energy policy

In relation to REPowerEU, Marco Siddi, who examines EU action, identifies the securitization of energy policy as a new key concept in the EU narrative, while also analysing and evaluating REPowerEU as a whole. In his study, he notes that the EU leadership is using all means at its disposal to eliminate exposure to Russia, and that one key area for this could be the modernisation of buildings across Europe, while also explaining that this will lead to significant price increases in the industry concerned. Recognising that this is the area where the most energy could be saved, he mentions the unofficial requests of the European political elite to their citizens to save on heating in winter and cooling in summer, which is estimated to save 10 billion cubic metres of Russian natural gas per year.

It identifies diversification as a key element of REPowerEU's success. It places the procurement of at least 60 billion cubic metres of gas from non-Russian sources among its top priorities, which would mean 50 billion cubic metres of LNG and at least 10 billion cubic metres of pipeline gas imports. It is important to note that this will require new infrastructure, which is currently only partially developed or only developed towards Russia. The European Commission estimates the cost of this at around €10 billion.²⁶² Qatar and the United States are identified as the primary sources of LNG supplies, while Azerbaijan and Algeria are proposed for pipeline gas imports. Siddi notes, however, that this will increase their dependence on a serious competitor (the US). The EU energy platform, created to counter possible price increases, would allow for joint gas purchases, which would not only put member states in a better bargaining position, but also seek to rule out the possibility of buying from each other. New energy sources derived from hydrogen

²⁵⁹ European Commission, 2025a (June 17th)

²⁶⁰ Regulation (EU) 2022/1032 of the European Parliament and of the Council of 29 June 2022 amending Regulations (EU) 2017/1938 and (EC) No 715/2009 with regard to gas storage (Text with EEA relevance), L 173/17

²⁶¹ European Commission, 2025b (June 17)

²⁶² Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions: REPowerEU Plan, 2022 (May 18th)

are also an integral part of the decarbonisation plan, which requires the development of the necessary infrastructure in three directions: towards the Mediterranean, towards the North Sea and, as soon as possible, towards Ukraine. The third pillar is the opportunity created by the expansion of climate targets to date for the increased installation of solar panels and heat pumps, which could also generate a significant amount of energy. In addition, they want to significantly increase energy production from biomethane to 35 billion cubic metres per year by 2030.

Siddi notes that the plan described above may encounter several difficulties that are difficult to overcome. He points out that it is far from certain that the almost immediate reduction of Russian dependence by 100 and then 70 billion cubic metres is an achievable goal, as substitutes and household savings may not provide a sufficient backdrop. He mentions the possible negative environmental impacts of LNG transport and conversion, not to mention the aforementioned variable dependency. The price increases expected in this situation and the resulting rising costs may be exacerbated by unfavourable geopolitical developments, as the EU's expectations in this regard may not be correct. He also refers to the infrastructure investments already made, which are the hallmarks of decades of European-Russian cooperation and which may become stranded assets in the form of pipelines, distribution stations and other equipment, resulting in additional costs for the European Union. The return to coal and other fossil fuels in order to meet gas targets also poses a major threat, both from an environmental perspective and in terms of determining actual decarbonisation capacity, which may also be a problem in achieving the targets.

From the perspective of natural gas infrastructure investments, it highlights that the billions of euros needed for implementation could be diverted from climate targets, which could jeopardise the climate targets set so far, while investing in a sector that should actually be phased out in the near future. The EU has also recognised these problems, but no meaningful action has been taken to address them. According to the 2022 regulation, certain gas-related investments can be classified as green investments, which may cause further problems in achieving the EU's own goals.

According to experts, the regulations on biomethane energy production may also threaten food security, as this technology is based on various feed and crop plants. The package also briefly touches on nuclear energy, noting that the vulnerability of reactors in Central and Eastern European countries due to their dependence on Russian fuel supplies makes these countries, and thus the EU, vulnerable, and that a plan to reduce this dependence must be developed.

In summary, Siddi concludes that Europe recognised the problem in time, but changes in the geopolitical situation may result in the postponement of climate targets, and in this respect, the possible loosening of international organisations may not bode well for the European Union.²⁶³

3.2.4.2. Centralisation in the name of security

The 2022 European energy crisis was not just a market shock, but also a political turning point that reshaped the institutional architecture of the European Union. The war, the use of Russian gas supplies as a weapon and the surge in energy prices created a crisis environment in which the security policy reflexes of Member States overrode their previous attitudes of defending sovereignty. According to Thibault Besnier's analysis within the framework of "liquid authority", REPowerEU was not just a crisis management package, but brought about a sudden concentration of EU power in energy policy without any treaty changes.

The key mechanism was the so-called rally around the flag effect. The war and the security of supply panic caused such a psychological and political shock that Member States sought strategic unity against Russia, even if this meant giving up their economic autonomy in the short term. According to Besnier's interviews and document analysis, the Commission deliberately exploited this situation to introduce measures that Member States had previously considered an infringement of their sovereignty during the debates on the Clean Energy Package and the Energy Union. Joint gas procurement, mandatory storage levels and direct market intervention were all measures that would have met with strong resistance in peacetime, but were accepted as a necessary evil in times of crisis.

The joint gas procurement platform is one of the most symbolic elements of this new centralised energy policy. Through the Energy Platform, the Commission has become a de facto trading house, aggregating member states' demand and acting as a single European buyer on the global LNG market. This fundamentally overrides the previous decentralised procurement model, in which individual countries and, in many cases, their large energy companies entered into contracts independently with Norway, Qatar or the United States. Although the joint platform is formally voluntary, Besnier points out that in a crisis situation, Member States are de facto forced to adapt to it because individual procurement becomes politically and economically risky. The Commission thus acts not only as a coordinator but also as an actual market player, which strongly relativises the classic concept of energy sovereignty.

²⁶³ Siddi, 2022

An even more direct intervention was the obligation to fill gas storage facilities. The 90% mandatory level requirement, regardless of market prices or the timing of procurement, meant that the decisions relating to security and supply of Member States and energy companies were directly overridden. Besnier emphasises that in the summer of 2022, at the peak of prices, this rule imposed a huge cost burden on Member States, as they were forced to fill their storage facilities in the most expensive market environment. Here, the EU is no longer merely regulating, but also allocating risk and financial burdens to Member States, which clearly signals an increase in centralised power.

Paradoxically, the crisis has not diminished the EU's power, but rather strengthened it. While during the Green Deal period the expansion of competences took place primarily through normative and legislative means, under REPowerEU the Commission has also become a direct executive and market player. The sovereignty-based resistance of Member States has been temporarily pushed into the background, and the debate has been limited to how the EU uses its acquired power rather than whether it has the right to intervene at all.

In this sense, REPowerEU is not only a crisis management tool, but also a precedent. It has shown that, in exceptional circumstances, the EU is capable of rapidly and deeply centralising energy policy without the need for formal treaty changes. In the longer term, this raises the question of the extent to which security policy logic can become a lasting justification for the centralisation of EU industry and energy policy.²⁶⁴

3.2.4.3. Article 122: The suspension of democratic control

REPowerEU has not only transformed the content of energy policy, but also the legal logic of EU governance. According to Virginia Volpi's analysis, the European Union has entered a new mode of integration, which she calls "integration by stealth through permacrisis". The essence of this is that successive crises create a permanent state of emergency in which the Treaties can be interpreted flexibly and the EU can act even where it does not formally have competence.

The key to this mechanism is Article 122 of the TFEU, which was originally intended as a narrow, temporary crisis management tool. The article allows the Council to adopt special measures on a proposal from the Commission in exceptional circumstances, in particular in the event of supply disruptions or energy crises. However, Volpi shows that during the crises after 2010, this provision became a kind of 'open-ended' legal basis, allowing the ordinary legislative process to be bypassed and new EU competences to be created without amending the Treaties.

²⁶⁴ Besnier, 2023.

The particular feature of Article 122 lies in the fact that it grants the Council executive rather than legislative competences, while effectively excluding the European Parliament from the decision-making process. This means that, on the basis of a proposal from the Commission, Member State governments can take decisions behind closed doors that would normally require a full legislative procedure, parliamentary debate and amendments. According to Volpi, this mechanism has created a kind of EU-level regulatory governance under the pretext of crisis management.

This logic was already clearly evident during the Covid crisis when NextGenerationEU was created. Relying on Article 122, the Commission was given the right to issue joint EU debt and then distribute the funds raised among Member States. This would have been unthinkable in the past, as EU budgetary and debt policy has traditionally been one of the most sensitive areas of sovereignty for Member States. However, according to Volpi, the crisis has given EU institutions such legitimacy that temporary and exceptional measures have become part of normal operations.

The same pattern was repeated during the energy crisis under REPowerEU. Joint gas procurement, solidarity mechanisms, gas price caps and the taxation of extraordinary profits of energy companies were all established by Council regulations based on Article 122. These decisions were not taken through the ordinary legislative process, but according to emergency logic, without parliamentary control. In Volpi's interpretation, this means that the EU applied the same exceptional governance model in energy policy as it had previously done in dealing with the budgetary and financial crisis.

The political significance of this process lies in the fact that the temporary becomes permanent. The application of Article 122 is, in principle, limited to temporary, exceptional situations. In practice, however, successive crises have created a permanent state of emergency in which the Commission and the Council are constantly expanding their scope of action on this legal basis. Volpi calls this the logic of the permanent crisis, in which the exception becomes the rule.

This fundamentally redefines the question of EU sovereignty. Member States formally retain their competences, but in the name of crisis management they cede decision-making competences to Brussels that directly affect their autonomy in fiscal, industrial and energy policy. Since this is not done through a treaty amendment but on the basis of technical legal grounds, democratic control of integration is blurred and political responsibility is difficult to trace back to the electorate.

Volpi's final conclusion is particularly serious for the future. If crises become permanent, EU decision-making will increasingly operate under an exceptional legal regime. In this system, the Commission and the Council will be able to act quickly and effectively, but the price of democratic legitimacy and Member State self-determination will be increasingly high. REPowerEU is

therefore not merely an energy policy shift, but an institutional precedent that will transform the entire governance model of the European Union.²⁶⁵

3.3. Evolution of competences over time

The development of energy policy within the European Union has not followed a linear path predetermined by the Treaties, but rather reflects a gradual dynamic shaped by crises and strategic interests. The central question here is how and by what means the reinterpretation of competences between the EU and Member State levels took place, with particular regard to the institutional, political and legal mechanisms through which the European Union's role in energy policy governance has become increasingly significant. The study takes as its starting point the fact that energy policy was originally a Member State competence and that EU-level interventions were limited and fragmented. Over time, however, particularly as a result of crisis situations, there has been a shift of competences towards the Community level, which the literature interprets as a "creeping extension of competences ". For a long time, energy policy was considered a symbol of Member State sovereignty. Member States insisted on being able to decide independently on their energy mix, energy sources and their regulation. This attitude was respected for a long time by the Treaties, and the first steps towards integration, such as the European Coal and Steel Community and Euratom, did not result in the creation of a comprehensive Community energy policy. Although the first attempts to manage energy security at Community level appeared in the 1970s, they did not represent a breakthrough in terms of competence. Until the 2000s, the European Union's energy policy was, in essence, linked to the *acquis* primarily through horizontal policies (e.g. competition law, environmental protection and the internal market).

The breakthrough came with the establishment of the internal energy market, which opened up new dimensions for Community intervention. The liberalisation of the internal market, in the form of three successive energy packages, enabled the EU to regulate the organisational and operational framework of energy services through normative instruments. Unbundling (separation of ownership and operations), third-party access, consumer protection rules and the promotion of cross-border energy flows were all measures that effectively became part of national energy policies. It is important to note that Member States ultimately transposed these rules into their national legal systems (albeit with some resistance), thereby implicitly accepting the extension of Community competences. With the entry into force of the Lisbon Treaty in 2009, energy policy was formally included in Article 194 of the TFEU as a shared competence.²⁶⁶ Although this Treaty

²⁶⁵ Volpi, 2024

²⁶⁶ Talus - Aalto, 2024, pp.15–32.

provision does not deprive Member States of the right to determine their energy mix, it clearly sets out the common objectives – such as the functioning of the internal market, security of supply, energy efficiency and increasing the share of renewables – on the basis of which the EU is entitled to regulate. The TFEU thus provided a new legal basis for the Community management of energy policy, while retaining Member States' room for manoeuvre in certain key areas. This duality creates the conditions for EU institutions to gradually but increasingly effectively build their influence, often under the pretext of legal and political crises.

One of the most important mechanisms of EU competence creep is secondary legislation. Through directives and regulations, the Commission and the Council are able to establish binding rules that ensure the functioning of the internal market. This practice became particularly evident in the case of the third energy package, where market organisation principles directly affected the operation of state-owned companies and regulatory authorities. This expansion of competences often takes place indirectly: not by amending the Treaties, but by extending the interpretation of existing competences. Soft law instruments also play a central role in the competence creep. These instruments are not formally binding, but they exert strong political pressure on Member States. REPowerEU, the Green Deal and Fit for 55, for example, are comprehensive framework strategies that define the objectives and structural directions of energy policy, so national energy strategies inevitably have to align with them. Crises play a particularly important role in the redistribution of competences. The 2009 Russian-Ukrainian gas crisis clearly demonstrated the risks of the EU's energy dependence and brought the issue of security of supply to the fore. This led to the first Gas Security Regulation, which already contained mandatory elements for Member States' risk analysis and crisis management plans. The 2021–2023 energy crisis brought even more dramatic shifts in competences. The EU institutions adopted emergency regulations on gas savings, storage targets and joint gas procurement, which have a direct impact on national energy policies. Furthermore, the REPowerEU plan is not only a strategic document but also a financing framework that links EU support policy with energy policy objectives. Energy efficiency, support for renewables and infrastructure development are EU priorities that determine Member States' reform programmes and, at the same time, reduce national autonomy. Through REPowerEU, the Commission not only plays a coordinating role, but also has a direct influence on the content of national energy policies as a resource allocator. Particular attention should be paid to the mechanism by which new EU roles are emerging, bypassing Member States, on the grounds of crises. During the energy crisis, for example, the regulation aimed at reducing gas consumption was launched on a voluntary basis, but then included mandatory elements, thus gradually giving the EU the right to shape national energy consumption structures. The same can be observed in

the case of joint procurement: Member States must notify the EU of their needs in advance, which thus becomes a direct player in the global energy supply market. This is not only technical coordination, but also a political realignment of competences. Talus and Aalto (2024) highlight in their study that such crisis management measures become institutionalised over time. The Commission requests regular reporting, establishes joint supervisory systems (e.g. ACER, ENTSOG) and grants decision-making competences to new EU actors. These elements represent not only an expansion of EU competences, but also a reinterpretation of the concept of sovereignty. Member State sovereignty does not disappear, but in response to crises it becomes increasingly 'shared', 'delegated' and 'conditional'.

3.3.1. The development of the internal market

In EU energy policy, the gradual development of the internal market has moved from an initial state of strong Member State control towards future competition and integration. The first liberalisation package, launched in the late 1990s, took the first step: it obliged Member States to grant third parties access to the network and to set up national regulatory authorities. This was followed by the second energy package, which extended the right to switch suppliers to industrial and domestic consumers and allowed new electricity and natural gas suppliers to enter Member State markets. The intention was to ensure that the benefits of the single market (lower prices, greater willingness to invest) were enjoyed not only by professionals but by all EU consumers, regardless of national borders. The third energy package (2009) aimed at deeper market integration than before. It required mandatory ownership and operational unbundling between energy production and network operation, strengthened the independence of national regulators, and established the Agency for the Cooperation of Energy Regulators (ACER) and international networks of Member State transmission systems. The aim was to prevent any single company from gaining a competitive advantage from a network monopoly. The third package's legislation had to be incorporated into national law by 2011, but many Member States delayed transposition. As a result, the Commission launched several infringement proceedings to ensure the unbundling of networks and the harmonisation of competition conditions at international level. At the same time, by 2009, the previous national monopoly situation that had trapped consumers had largely disappeared in most Member States: competition in the electricity and gas markets had accelerated, so the third package brought with it more European-level coordination, common rules for networks (so-called network codes) and further strengthening of consumer protection.

The Treaty of Lisbon (2009) also reinforced the construction of the internal market in legal terms. It now grants specific EU competence in energy policy and sets four main common objectives:

creating a functioning energy market, guaranteeing security of supply, increasing energy efficiency and interconnecting energy networks. At the same time, the treaty emphasises shared competence: security of energy supply can best be achieved by applying EU principles, but the EU can only intervene if it can provide a more effective solution than the Member States. It is specifically stated that the EU can only intervene in Member States' choice of energy sources by unanimous decision and on the basis of environmental considerations. This conflict between common goals and Member State autonomy has been evident in several debates: for example, the ownership unbundling in the third package was criticised by France, Germany and others as a constitutional problem and a social risk. At the same time, the Lisbon Treaty also enshrines the principle of solidarity: if one or more Member States experience energy supply disruptions, the others are obliged to provide shelter to those affected. Although EU solidarity mechanisms are still in the process of being developed, the rule sends a clear message about the importance of cooperation.

In connection with the establishment of the single market, secondary legal instruments (Commission communications, action plans) have also come to the fore. The Commission has highlighted the shortcomings of integration in several strategic documents and made proposals to remedy the situation. In its 2010 Energy 2020 communication, the Commission highlighted that the implementation of internal market legislation had fallen short (for example, more than 40 infringement proceedings were ongoing in relation to the 2003 Energy Market Directive)²⁶⁷ This document set the goal that by 2015, no Member State should remain effectively isolated from the internal market, and that cross-border energy corridors should also be developed. The subsequent Energy Union Strategy (2015) and the 2019 "Clean Energy for All Europeans" package continued in this direction: they defined the basic principles of renewable energy support, state aid schemes and consumer rights at EU level so that differing national practices would not distort competition.

Specific regulatory examples also illustrate integration well. ²⁶⁸Under the third package, ACER and ENTSO-E developed various network codes based on the European framework regulation. This led to the creation of, for example, the market coupling and electricity balancing codes, which set out uniform rules for intraday and system-level energy trading, as well as the conditions for connecting producers and consumers to the network. The regulations developed by ENTSO have placed the security and system management tasks of network operators on an equal footing at Union level. Similar new EU regulations are being developed to harmonise the operation of gas networks. All these common rules serve to ensure that geographical borders do not constitute a

²⁶⁷ Talus – Aalto, 2024

²⁶⁸ Uo.

barrier to energy flows and competition in the EU market, in contrast to the previous national decision-making process, in which each country applied its own, often differing rules.

Overall, it can be said that during the development of the internal market, many national competences were transferred to the EU level. Analyses in the literature point out that, through the energy packages, more and more rules have gradually been brought under a common legal framework – this is referred to as the 'creeping' redistribution of competences.²⁶⁹ According to the EU position, the common market strengthens security of supply and reduces consumer prices, but this requires solidarity between Member States and uniform regulation. According to several analyses, after every major energy crisis (e.g. the 2009 gas crisis or the 2022–2023 Russian-Ukrainian conflict), the EU introduced new, common measures (e.g. solidarity obligations, emergency plans, market mechanisms), which have increased the EU's role in the longer term. Thus, unlike in the early 1990s, the majority of electricity and gas market regulation is now determined by European-level framework regulations, cross-border organisations and EU decision-making, signalling the success of the common internal market and the harmonisation of Member States.

3.3.2. Crises as turning points

3.3.2.1. The 2009 gas crisis

EU energy policy has long been a balancing act between Member State sovereignty and the need for EU coordination, but this tension only becomes truly apparent in times of crisis. Gas and electricity systems operate as interconnected networks across borders, so a single national decision or external shock can quickly have a ripple effect: what initially appears to be a bilateral conflict can quickly escalate into an EU-wide security of supply issue.²⁷⁰ This gives rise to the 'crisis-driven' institutionalisation logic that can be observed repeatedly in the energy sector: an acute supply shock first forces temporary joint action, and then, over time, the lessons learned are enshrined in a binding, permanent legal and institutional framework, particularly in the area of security of supply. This dynamic was spectacularly illustrated by the Russian-Ukrainian gas dispute in early 2009. According to the Commission's crisis assessment, the disruption started as a fundamentally commercial dispute, but very quickly became a systemic risk for the EU, as the outage affected several Member States simultaneously via transit routes. This vulnerability was not only due to external dependence, but was also exacerbated by internal factors: inadequate connections, limited alternative transport options, differing national crisis management capacities

²⁶⁹ Sztankó, 2013, pp. 5–19.

²⁷⁰ European Commission, 2009

and limited access to information. Detailed literature points out that in the most vulnerable regions, the disruption had not only economic but also social consequences, and crisis management in many places was limited to reactive, improvisational measures.^{271 272}

At EU level, the Commission took on a mediating and coordinating role, but the situation highlighted the limitations of the pre-crisis framework. Among the lessons learned, the lack of data transparency and the weakness of joint contingency planning were particularly striking: there was no uniform, pre-established set of scenarios and procedures that would have enabled a rapid and coordinated response in the event of a major, unexpected supply shock. At the same time, secondary analyses also highlight that the EU's influence on the disputing parties was limited from the outset; much of the actual crisis management was carried out through market, corporate and Member State measures. It was precisely this experience that made it increasingly clear that the sum of parallel national responses did not guarantee the stability of the internal market, paving the way for security of supply to become an area of EU regulation in the 'common interest'. The first major institutional turning point came with the 2010 Gas Security Regulation, which the Commission's subsequent evaluation explicitly links to the lessons learned from the 2009 crisis.²⁷³ The key point was not the complete "communitarisation" of responsibility, but the introduction of minimum standards: the logic of protecting consumers became more uniform, measurable infrastructure requirements were introduced, and risk analyses, preventive and emergency plans became mandatory – all of which were increasingly subject to EU and regional coordination requirements. This construction also strengthened the practical side of solidarity: if all Member States meet a basic level of preparedness, there is less risk of "free rider" behaviour in a crisis.²⁷⁴ The next step was to recognise that alternative sources alone are not enough if gas cannot be physically delivered to the areas in need. This brought the development of interconnections and cross-border infrastructure to the fore and took EU infrastructure policy to a new level: the rules on trans-European energy networks were already being applied in the EU-level priority system, with regional coordination and fast-track procedures for the selection of key projects.²⁷⁵ In the wake of geopolitical tensions that brought eastern exposure back into focus, the Commission's energy security strategy and stress test logic brought about a methodological shift: regular scenario analysis became part of crisis management, providing a comparative picture of Member States' vulnerabilities and possible responses. The third major turning point in regulation can be seen in

²⁷¹ Pirani – Stern - Yafimava, 2009

²⁷² Westphal, 2009

²⁷³ European Parliament and Council, 2010

²⁷⁴ Aoun - Rutten, 2016

²⁷⁵ European Parliament and Council, 2013

the 2017 regulatory framework, which placed risk management on a regional basis and elevated solidarity – as a last resort, alongside compensation – to a legally enforceable obligation. The weight of the principle of solidarity has also been reinforced by developments in case law: following the Luxembourg ruling, the literature increasingly interprets ‘energy solidarity’ not as a mere political reference, but as a substantive consideration in EU decisions.²⁷⁶

The 2009 Russian-Ukrainian gas crisis provided the EU with profound lessons. It highlighted the vulnerability of the energy system and the fact that the interdependence of individual Member States requires genuine solidarity mechanisms. In response, the EU strengthened its institutional preparedness and legal framework: it launched new EU-level crisis management rules, coordinated plans and joint infrastructure developments to ensure security of supply. At the same time, the EU's role in energy policy has been consolidated: the Lisbon Treaty provided a legal basis for joint action, while Member States gradually accepted that national energy security could no longer be addressed in isolation. After the 2009 crisis, Europe's energy policy became more integrated and conscious: security of supply and diversification became top priorities, and the principle of 'one for all, all for one' is now considered not only a political slogan but also a specific legal obligation of the EU. According to academic analysts, this is clearly due to the catalytic effect of the crisis and shows how a crisis can shape a community's policy: in the case of the EU, towards a firmer and more unified energy security policy.^{277 278}

3.3.2.2. Energy crisis in the wake of the Russian-Ukrainian war

The second major energy crisis of the 2020s began at the end of 2021 as a result of the post-coronavirus recovery and global market tensions, but it turned truly serious in 2022 with the outbreak of the Russian-Ukrainian war. Uncertain supply and soaring prices simultaneously tested security of supply and internal market pricing, prompting the EU to quickly switch to a "crisis mode" of security of supply and affordability, complementing its previous focus on climate policy. The response was twofold: in the short term, to mitigate the shock with emergency rules, and in the longer term, to permanently reduce dependence on Russian fossil fuels. The strategic framework for this was provided by REPowerEU, which addressed both the demand and supply sides: it reduced consumption by encouraging energy saving and efficiency measures, while diversifying sources through new suppliers, a greater role for LNG and accelerated renewable energy development. An important message of the plan was that crisis management is not just

²⁷⁶ Sesini, 2023

²⁷⁷ De Jong – Wouters – Sterkx, 2010, pp. 511–538.

²⁷⁸ Maltby, 2013, pp. 435–444

about 'firefighting', but about permanently reducing geopolitical exposure by accelerating the energy transition.

To strengthen short-term security of supply, the EU adopted several extraordinary, directly applicable rules. One of the most notable was the requirement to fill gas storage facilities: storage, which had previously often been the result of market and national decisions, was now linked to EU-level targets, monitoring and implementation regulated by exceptions. The same logic was applied to the mechanism for reducing gas consumption: essentially voluntary, but linked to a joint alert mechanism if necessary, it also made the demand side a central element of EU crisis management. In practice, these steps signalled that 'how much you consume' was no longer solely a national matter in a crisis situation, but part of a coordinated European stabilisation policy. On the supply side, the EU sought to avoid Member States competing with each other to drive up prices, and therefore created platforms to support joint procurement and mechanisms to aggregate demand. At the same time, diplomatic and infrastructural diversification accelerated: new supply connections, more LNG, and rapidly built receiving capacities and interconnections helped to avoid the most severe shortages during the winter months. One of the lessons of the crisis here was that source diversification is only worthwhile if the system is physically capable of delivering gas to where it is needed. As gas prices directly drove up electricity prices, the EU also resorted to extraordinary interventions in the electricity market. Temporary consumption reduction targets, restrictions on extra revenues for non-gas producers and redistribution to consumers all served to prevent market pricing from causing unmanageable social and economic damage during the crisis. This was accompanied by a one-off solidarity levy on the extraordinary profits of fossil fuel companies, which, although not a classic tax, sent a strong signal: in exceptional circumstances, the EU can intervene in the management of crisis profits in accordance with common principles. After lengthy discussions, a gas price correction (price cap) mechanism was also created, specifically designed to be activated only in extreme market situations and not to divert shipments away from Europe. Although in practice this did not become the main tool for crisis management, in political terms it set a precedent for the EU to jointly limit the rise in wholesale prices in exceptional circumstances. This was complemented by 'softer' measures: Commission recommendations on targeted support for those in need, the use of Member States' room for manoeuvre in pricing and taxation policy, and energy-saving campaigns. The sanctions policy (in particular the restriction of coal and oil imports) linked the reduction of war financing to the diversification of supply.

The energy crisis posed a dramatic challenge to EU Member States and had a direct impact on their national energy policies. Many countries were forced to change their strategies: for example,

Germany had relied on cheap Russian gas for years, but in 2022 it was forced to build new LNG terminals and extend the operation of coal-fired power plants as an emergency measure for security of supply reasons. France relied on its nuclear capacity, while Spain and Portugal, which were less dependent on Russia, found it easier to secure their supply despite high energy prices. One of the lessons of the crisis was that individual countries' efforts to achieve energy independence (their national 'energy sovereignty') did not in themselves guarantee protection: strategies focused exclusively on self-sufficiency proved vulnerable in a market where Member States are interdependent in terms of energy infrastructure and resources. As experts have pointed out, several eastern Member States (e.g. Hungary, the Czech Republic and Slovakia) were particularly vulnerable to the assistance of their neighbours due to their lack of LNG terminals, while some western countries (e.g. Spain) were unable to automatically share their resources through spontaneous market mechanisms despite their excess capacity. The crisis revealed that the invisible hand of the internal energy market alone cannot ensure territorial balance and fairness – state and EU intervention is also needed in the spirit of solidarity.

As a result of joint EU action, the relationship between Member States' energy policies has also changed. Some of the decisions that were previously taken at national level are now coordinated at European level. For example, the target of reducing gas consumption by 15% required coordinated government measures: Member States launched energy saving campaigns, supported fuel switching in industry, and introduced legislation to limit heating/cooling temperatures in public buildings, etc. Although formally a voluntary commitment, Member States felt strong political pressure to meet the common target, as the prospect of it becoming mandatory was raised. Similarly, EU regulations on gas storage required several governments to intervene, either by purchasing gas for strategic reserves with public funds or by obliging market players to store gas. At the regulatory level, therefore, the scope for national energy policies has narrowed: certain decisions (such as strategic stockpiling or consumption restrictions) are now determined at EU level as a framework. At the same time, the governments of the Member States supported these measures politically, as they recognised that without coordinated action they would suffer even greater damage.

Finally, it should be noted that during the crisis, the financial room for manoeuvre of Member State governments has also narrowed and been brought into line. To protect households and businesses, Member States provided a total of hundreds of billions of euros in national support (price compensation, tax relief, price caps) in 2022 and 2023. To this end, the European Commission temporarily relaxed state aid rules by adopting a "state aid crisis framework" that allowed Member States to increase energy price subsidies. Although this is not formally an EU-

level policy, it was the joint amendment of EU rules that made national measures possible. This also shows that national energy policies converged in response to the crisis: market intervention by one Member State (e.g. government price caps) had an impact on its neighbours, so the EU sought to provide a framework for these measures (e.g. by temporarily allowing price controls in EU internal market rules).

In dealing with the energy crisis, the EU introduced forms of intervention that had not existed before, or had existed only to a limited extent. These extensions of competence were not brought about by formal amendments to the Treaties, but rather as a pragmatic response to the crisis situation, mostly through a flexible interpretation of existing EU legal bases (internal market, energy, crisis management). Joint action thus created new practices through ‘secondary legislation’ – mainly rapidly adopted Council regulations – which brought several elements of Member States’ energy sovereignty into the EU framework. One of the most striking innovations was the introduction of minimum gas storage requirements. For the first time, it became an enforceable obligation at EU level for Member States to maintain a certain level of stocks of a strategic energy source. The storage targets established a quasi-mandatory reserve requirement, meaning that supply planning, which had previously been largely based on national and market logic, was transformed into a common, measurable EU requirement. In this context, the crisis also extended the EU's toolkit to the demand side. Whereas previously the Union had mainly intervened by improving supply and infrastructure conditions, during the crisis EU regulations set collective consumption reduction targets. The mechanism for reducing gas consumption, which can be made mandatory if necessary, and the electricity consumption savings targets have both set a precedent that, in times of supply shocks, the EU can coordinate not only the supply capacities but also the consumption patterns of its Member States. Price caps and direct market interventions also represented a new dimension. The limit mechanism for wholesale gas prices and the revenue cap introduced in the electricity market were EU-level price regulation tools that temporarily overrode the normal functioning of the internal market. Although these were intended to be temporary measures, they nevertheless signalled that, in times of crisis, the EU is capable of taking on a more direct role as an ‘economic regulator’ in order to mitigate extreme fluctuations in energy prices. Another new development was the institutionalisation of joint purchasing competences. The creation of joint gas procurement platforms made the EU the operational coordinator of supply and demand on the international market: it not only regulated but also helped to organise procurement and required a certain degree of mandatory participation in joint tenders. This step strengthened the EU's capacity at the intersection of competition and trade policy, as it allowed Member States to act ‘together’ on global markets rather than competing with each other. In the

wake of the crisis, transparency and supervision have also been significantly strengthened. New data and information reporting obligations have been introduced for regular reporting on consumption, savings and storage levels, as well as for the publication of certain wholesale contract information. These requirements have increased EU-level monitoring and provided deeper insight into Member States' energy transactions, which represents an increase in competences in both crisis management and market supervision. There has also been a shift in the area of solidarity: the previous, more theoretical obligations have been transformed into more concrete rights and obligations in the event of a crisis. The introduction of default solidarity rules was intended to ensure that there would be no "legal vacuum" in an emergency in the absence of a bilateral agreement, i.e. the EU can prescribe the framework within which Member States must help each other in the event of a supply shortage. A special – and, from the point of view of sovereignty, sensitive – development was the acceleration of the authorisation of renewable energy projects by means of a regulation. Mandatory deadlines and simplifications temporarily interfered with Member States' administrative procedures, which under normal circumstances would have been implemented through directives with longer transposition periods. However, the logic of the crisis gave priority to "immediate effect" and rapid enforceability. Finally, the crisis also created a quasi-fiscal precedent: through the solidarity contribution, the EU imposed a tax-like obligation that encroached on the traditionally closely guarded tax policy leeway of Member States. Although not formally an EU tax, the common regulation nevertheless enforced the partial withdrawal of extraordinary profits according to uniform principles, which in practice can be interpreted as an extension of competences.

3.3.2.3. General trend: EU strengthening after crises

Based on the above events, a clear trend can be observed that EU competences and institutional mandates are strengthened after every major energy crisis. In the wake of both the 2009 gas crisis and the recent Russian-Ukrainian energy conflict, the EU has established new regulatory frameworks and coordination mechanisms. This clearly shows that, in crisis situations, new EU-level community decision-making mechanisms and competences have been created in order to coordinate national interests. As a result, from the 1990s onwards the Union progressively shifted from a sector falling predominantly within Member State competence towards an increasingly common energy policy, particularly in the fields of security of supply and sustainability. The consolidation of EU integration following the crisis management has thus permanently enhanced the EU's role in shaping energy supply. One of the most important legacies of the 2021–2023 energy crisis is that the EU's increased role during the crisis does not appear to be merely a temporary detour: although several measures were adopted with a time limit, there are many signs

that the EU's influence on energy policy has been permanently 'locked in' at a higher level than before the crisis. One reason for this is that several crisis tools have either been extended or gradually incorporated into existing legislation. The gas storage obligation is a good example: it was originally introduced as a temporary measure, but it was soon decided to make it permanent because the crisis had shown that stockpiling was a basic prerequisite for security of supply. Joint procurement is following a similar path: the joint platform continued to operate after the crisis, and based on experience, the Commission has already indicated that it would like to extend the model to other energy sources, such as hydrogen. In other words, joint market action introduced as an ad hoc solution during the crisis could easily become a permanent tool that Member States use year after year, for example in the period before filling storage facilities. This permanence is reinforced by the fact that the crisis has not only produced extraordinary regulations, but has also accelerated longer-term structural regulatory changes. The raising of the EU's renewable energy targets – and the alignment of national planning with this – indicates that the pace set by REPowerEU is not a one-off reaction, but sets the course for the rest of the decade. This is also reflected in the fact that some of the licensing reliefs – which were originally crisis acceleration measures – have been partially "slid" into permanent rules: thus, the acceleration logic developed during the crisis may become part of standard governance.

Meanwhile, the narrative of deepening the Energy Union has also gained political strength. During the crisis years, 'resilience' and 'strategic sovereignty' became not just slogans, but agenda-setting principles linked to concrete reforms. The comprehensive reform of the electricity market, for example, reflects the desire to make the EU less vulnerable to gas price shocks in the future and to put consumer prices on a more stable footing. The same long-term logic is evident in new EU-level industrial and financing initiatives (such as plans to build a hydrogen market), which assume a community role in the next era of the energy system. The legacy of the crisis can be measured not only in legislation but also in institutional capacities. During the crisis, the Commission acted as a quasi-operational coordinator: continuous situation assessment, coordination of Member States' contingency plans and daily crisis management routines were established. This created an information advantage and an organisational 'knowledge base' that will not disappear once the crisis is over. Similarly, EU agencies and network organisations (e.g. market surveillance, system operator cooperation) have taken on tasks and tools that can strengthen coordination in the future, including the development of new reference prices, benchmarks or common market analysis methods (). These 'soft' capabilities will in themselves result in a more permanent EU presence, even if not all of them are explicitly enshrined in new legislation. There has also been a shift in Member States' political attitudes. The shared experience of the crisis – that EU-level coordination

succeeded in averting the most serious supply scenarios – may have increased the willingness to cooperate, even in areas where there was previously a strong reflex to protect sovereignty. This does not mean that conflicts have disappeared, but it does reduce the political cost of Member States accepting common solutions on certain issues. The Commission's subsequent action plans and packages of proposals build on this momentum: they seek to turn many of the instruments developed during the crisis into permanent programmes. The impact of legal precedents is also an important factor. The accelerated decision-making and emergency legislative models used during the crisis – in particular the use of emergency Council regulations and extraordinary legal bases – have created a kind of 'standby' legal mosaic. If another energy crisis looms in the future (whether for geopolitical reasons or due to extreme weather events), there is now a tried and tested set of tools that can be quickly reactivated. At the same time, questions of limits have come to the fore: how far can the EU go in the name of crisis management, and under what democratic control? It is no coincidence that the question has been raised: in the future, a more transparent framework for emergency decisions should be institutionalised, possibly with some form of accelerated involvement of the European Parliament.

Finally, the crisis has also transformed the conceptual framework: "energy security" no longer means only physical supply, but price stability and affordability have also become part of the definition. This creates political expectations on the part of the public: if the EU was once able to take joint action against price and supply shocks, then in the future it will be held accountable for not allowing dependencies and prices to get out of hand.

3.4. The "Green Revolution" as an attempt to change the system

The shift in competences was not initially spectacular compared to the status quo laid down in the Treaties, but rather took the form of technical adjustments. From 2010 onwards, integration efforts in the field of energy also gained increasing prominence. The Energy Union Strategy, announced in 2015, sets out ambitious climate targets for 2030, which the Commission coordinates and holds Member States accountable for achieving.²⁷⁹ In 2019, Ursula von der Leyen, the newly elected President of the Commission, announced the European Green Deal, which opens a new chapter in the history of European energy policy and further shapes the balance of power in an increasingly firm manner.²⁸⁰

The Green Deal is a comprehensive, systemic transformation strategy that aims to make the EU economy climate neutral by 2050. Kusiak-Winter (2023) aptly notes that the Green Deal and the

²⁷⁹ European Commission, 2023

²⁸⁰ Ursula von der Leyen, 2019

climate neutrality objective are not a continuation of previous energy policy, but rather a kind of "revolution", a project of social engineering and economic management.²⁸¹ It forces all economic sectors to "go green", but focuses particularly on the energy sector, as the transformation of the energy system is an essential condition for achieving emission reduction targets. As part of the Green Deal, the European Commission has also enshrined the climate neutrality goal in law with the European Climate Regulation adopted in 2021, and has launched a major legislative package ("Fit for 55"), which introduced binding emission reduction measures in almost all areas of the EU economy. This package was adopted by a qualified majority in the area of energy and climate policy, which falls under shared competence, thus overriding Poland's opposition, as Kusiak points out in his study. It is clear that the Green Deal significantly interferes with the economic and social policies of Member States, requiring the transformation of their national energy, transport, industrial and other relevant strategies in order to achieve common EU goals.

There is also debate among researchers as to what extent this Green Revolution can be considered a continuation or a revolutionary shift from the EU's previous energy policy.²⁸² According to some analysts, placing the EU's climate and energy policy goals at the centre of the Commission's political agenda opens up a whole new era of economic governance. From another perspective, however, the Green Deal is a significant and symbolic step, but only the next step in the integration process, the previous stage of which was the Energy Union, i.e. it should be interpreted as the culmination of integration to date rather than a completely new direction. In any case, Bensier states that a new paradigm has emerged in the Green Deal discourse: the principle of sustainability has been incorporated into all areas of EU policy and has become a central element of the EU's economic modernisation programme.²⁸³ According to the author, it is noteworthy that the Green Deal encountered relatively little open political resistance from Member States when it was launched. The Commission, led by Ursula von der Leyen, launched the programme in 2019 with a strong political mandate, and the majority of Member States, agreeing with the central narrative of climate change, did not dispute the objectives but rather focused on the means of implementation. In this new paradigm, it seems that Member State autonomy is no longer a value to be protected, but rather an obstacle to efficiency, which EU institutions are seeking to dismantle through various methods, albeit in an increasingly visible manner.

²⁸¹ Kusiak – Winter, 2023

²⁸² Uo.

²⁸³ Besnier, 2023

3.4.1. The economic and physical constraints of the "green transition"

The most critical point of EU energy policy is the widening gap between physical realities and political objectives. As Raillard-Cazanove, Knibiehly and Girard (2024) in their detailed industrial and energy system modelling (POMMES and IND-OPT models), Member States will have to pay a significant economic price for following the "Brussels" decarbonisation targets and the relevant roadmaps.²⁸⁴

3.4.1.1. The price shock of the 'No Fossil 2050' scenario

The above-mentioned study examined three main scenarios: a reference scenario, a low-carbon scenario and a radical 'No Fossil 2050' (complete phase-out of fossil fuels) scenario. The results may seem shocking, especially in terms of costs.

The most striking increase would be in electricity prices in the community: with a complete phase-out of fossil fuels, the average electricity price in the EU-15 could rise significantly, by around €3-5/MWh, compared to the reference scenario. This increase is even more dramatic in those EU-15 countries that do not have sufficient nuclear or hydroelectric capacity to balance renewables.

A striking example is Spain, where solar energy potential is extremely high and the system already relies on this energy source to a greater extent than is safe. Due to system management costs and import requirements, the price increase could reach €14/MWh in the event of a forced transition. When the study was prepared in 2024, the authors could not have foreseen the serious security of supply consequences that the "nuclear experiment" carried out in Spain would have in the following year. The aim of the policy decisions at the time was to test in a real-world environment the extent to which the electricity system of an advanced industrial country could operate in a stable and reliable manner if, in addition to a radical reduction in nuclear generation capacity, the system increasingly relied exclusively on solar energy. What originally started as a technological and regulatory stress test has become a system-level security of supply risk by 2025, highlighting that an energy mix based on weather-dependent generation without adequate reserves and balancing capacities is not only more expensive but also structurally more vulnerable.²⁸⁵

Another interesting finding related to hydrogen, which could even become an obstacle to European competitiveness: modelling has shown that exclusively promoting 'green' hydrogen (produced by electrolysis) is economically irrational. Omitting "blue" hydrogen (produced from natural gas with carbon capture and storage, or CCS) from the mix would cause an average price increase of

²⁸⁴ Raillard-Cazanove et al., 2024

²⁸⁵ Hárfás, 2025

€0.32/kg in the end user price of hydrogen. As hydrogen is a key element in industrial decarbonisation (steel production, chemical industry), this additional cost directly undermines the global competitiveness of European heavy industry. The decline of heavy industry could also have serious security policy implications, as we will highlight in the following sub-chapter.

3.4.1.2. Heavy industry shock and new security policy realities

The European Union's climate policy shift is not merely a matter of environmental or industrial policy, but is increasingly becoming a strategic factor that directly affects the continent's security policy room for manoeuvre. Steel, as the most important structural material for modern weapon systems, is an indispensable input for the military industry, the availability and cost of which directly determine the sustainability of military capabilities. The mass production of tanks, armoured vehicles, warships, artillery systems and many other military platforms would be unthinkable without steel, which is why steel industry capacities are not only of economic importance, but also of particular military and security significance.²⁸⁶

At the same time, through the ETS and CBAM mechanisms, the European Union has set heavy industry on a decarbonisation path that will rapidly and drastically increase the costs of steel production. The phasing out of free emission allowances and the incorporation of carbon costs for imported steel are putting financial pressure on European manufacturers, which is not only causing investment uncertainty but also leading to actual capacity reductions. According to the study's data, EU steel production has been declining steadily since 2018, while imports already account for about a quarter of domestic demand, pointing to a classic industrial outsourcing spiral. This process does not represent technological modernisation, but de facto industrial decline.

The strategic significance of the situation lies in the fact that it coincides with a globally accelerating arms race. Military spending is growing rapidly worldwide, and particularly in Europe, while the raw material requirements of the defence industry are also increasing. In this environment, the rise in prices and contraction of the European steel industry, enforced by regulation, directly undermines the supply capabilities of the defence sector. Based on the hypothetical "war loss basket" presented in the study, the cost of steel replacement is about 74 per cent higher when using green steel than when using Russian coal-based steel, which means that replacing the same military losses in Europe becomes significantly more expensive. This cost difference also undermines military industrial capacity in the event of a protracted conflict.

²⁸⁶ Rozs, 2025

Regulatory asymmetry further exacerbates the situation. While the European Union is imposing increasingly stringent carbon limits on its own heavy industry, Russia, China and, to some extent, the United States are maintaining their steel capacities within a much more flexible framework. As a result, the centre of gravity of global steel production has shifted to Asia, and Europe is increasingly becoming a net importer of a strategic raw material that is most valuable in times of war. This is not merely economic dependence, but also a potential geopolitical vulnerability.

In its current form, EU green regulation not only undermines the competitiveness of European heavy industry, but also undermines the continent's defence autonomy. The artificial reduction of steel production costs and capacities is taking place at a time when the geopolitical environment is moving towards military mobilisation. This double squeeze means that Europe is forced to maintain its military capabilities at an increasingly high cost, relying on an ever-smaller domestic industrial base, which in the longer term could put the continent's security policy on an unsustainable path in strategic terms.

3.4.2. Infrastructural traps and new dependencies

The EU's green strategy does not eliminate energy dependence, but merely transforms its structure and geographical orientation. The shift away from fossil fuels will not lead to an autonomous European energy system, but will create a new type of external exposure, this time based on hydrogen and synthetic fuels. According to models developed by Raillard-Cazanove and colleagues, Europe will not be able to produce enough hydrogen and e-methanol from its own resources to achieve the "No Fossil 2050" scenario and will therefore have to rely on significant imports, primarily from the Middle East and North Africa. In practice, this means that dependence on Russian gas will be replaced by dependence on another geopolitically fragile region, which carries similar strategic risks.

At the same time, the European Commission's REPowerEU plan and hydrogen strategy envisage large-scale infrastructure developments, including the construction of trans-continental hydrogen trunk pipelines and related terminals. Although these investments would in principle serve market integration and security of supply, the models also point out that the expansion of the hydrogen network has a dual impact on individual producing countries. While it would equalise prices across the continent, domestic prices in countries with large production capacities, such as Spain or France, could rise due to export market demand, undermining the competitiveness of their own industries. Thus, the European green transition creates new external dependencies and internal economic tensions, which in the longer term could undermine the stability of energy supply and industrial competitiveness.

3.4.2.1. Asymmetric dependence on China

If we take a step back, the whole European "de-risking" narrative runs into a strange paradox. The official goal was for the continent to reduce its external exposure, especially its dependence on Russian energy sources, and thus regain its strategic room for manoeuvre. In reality, however, the result has been not a more autonomous but a much more complex and vulnerable dependency structure. Fossil fuels have been replaced by technology chains that are almost entirely controlled by a single geopolitical actor, China.

Critical elements of the green transition, such as solar panels, batteries, components for electric vehicles, rare earth metals and specialised semi-finished products, are all based on global value chains where Chinese dominance is not only strong but in many cases amounts to a virtual monopoly. This is particularly evident in the European solar energy sector. While the EU's climate strategy is based on a robust expansion of solar capacity, import dependency already exceeds 90% at the most critical levels of production, namely the manufacture of ingots and wafers. This means that one of the pillars of the European energy system relies on a supplier network whose pricing, volumes and export conditions are essentially determined by Beijing.

In this situation, the concept of sovereignty takes on a new meaning. Formally, the European Commission is taking more and more competences away from Member States in the areas of energy, industry and climate policy, on the grounds that this is the only way to effectively address global challenges. But if the physical conditions for the continent's green transition depend on the industrial policy of an external actor, this centralisation does not actually strengthen European strategic autonomy, but rather undermines it. Decision-making is concentrated in Brussels, while the actual room for manoeuvre is in Beijing.

This structural contradiction becomes particularly dangerous when geopolitical tensions are running high. An export restriction, a trade conflict or a shift in Chinese industrial policy could immediately halt European green investments, energy production expansion and industrial decarbonisation. In other words, the green transition does not create a more stable energy and industrial policy balance, but a much more fragile one.

In this sense, the de-risking strategy does not eliminate risks, but reshapes them. Dependence on Russian gas is being replaced by dependence on Chinese technology, which is less visible but much more difficult to manage in the long term. This means that the European green transition, in

its current form, is pushing the continent not towards strategic autonomy but towards a new kind of geopolitical vulnerability.^{287 288}

3.4.2.2. Official admission of competitiveness deficit: The Draghi report

Mario Draghi's 2024 report is much more than a technocratic assessment of the situation. It provides a diagnosis of the state of the European economy that essentially confirms in official form all the concerns that have often been dismissed in recent years as sovereignist or Eurosceptic criticism. The document describes the decline in European competitiveness not as a temporary cyclical problem, but as an existential challenge, particularly in the area of energy prices. The fact that European companies today pay two to three times more for electricity than their American competitors is not merely a market anomaly, but a sign that the EU's energy policy and market organisation model, in particular the merit order system, puts European industry at a structural disadvantage.

The report goes even further, pointing out that without adequate funding, the current "No Fossil" strategy will push the continent straight towards deindustrialisation. The estimated investment gap of around €800 billion per year is not simply an accounting item, but a sign that the European Union has embarked on a transformation path for which it lacks the necessary financial and institutional background. Member State budgets are unable to cover this volume of investment on a permanent basis, so the financing gap for the green and digital transition is gradually turning into a competitiveness gap. In this environment, the lack of investment not only causes a loss of growth, but also permanently cements the global lag of European industry behind the United States and Asia.

This is further exacerbated by what Draghi's report describes as regulatory suffocation. EU legislation and administrative compliance requirements place such a burden on companies that they themselves are already holding back investment, innovation and productivity growth. In this sense, regulatory overreach acts not as a protective barrier but as an economic brake, slowing down adaptation to increasingly fierce global competition. Thus, Brussels' overregulation, originally intended to stabilise markets and protect consumers, paradoxically weakens the very economic base on which European prosperity and strategic autonomy would be built.²⁸⁹

²⁸⁷ Nobletz - Svartzman - Dikau, 2024

²⁸⁸ Seaman, 2024

²⁸⁹ Draghi, 2024

3.4.3. System equilibrium and technological realities

Energy modelling is increasingly showing that planning based on political ambitions often conflicts with physical and system engineering realities. Beyond a certain point, increasing the share of renewable energy sources no longer results in linear cost efficiency improvements, but rather in steeply rising system costs. Due to the weather dependency of wind and solar energy, high penetration requires ever-increasing storage capacity, backup power plants and extensive network development, which exponentially increases the total cost of the system. Models show that the total cost of the energy system is lowest when, in addition to renewables, there is also a significant, stable nuclear capacity. In the so-called Nuke Plus scenario, calculated with a four per cent cost of capital, the electricity system is cheaper and more reliable than one that relies almost exclusively on weather-dependent sources.

Carbon capture and storage technology is another important element that has long been sidelined politically. For a long time, climate policy in Brussels focused exclusively on promoting renewables, while treating CCS as a secondary or temporary solution. However, energy and industrial models clearly indicate that without the combined use of fossil fuels and CCS, industrial decarbonisation, especially in sectors with high hydrogen demand, will become virtually unaffordable. The combination of ATR and CCS technologies enables lower-cost hydrogen production, compared to which the path based on purely green hydrogen represents a multiple of the cost level.

The political marginalisation of these two technologies, nuclear energy and carbon capture, together creates a distorted incentive system that artificially keeps energy prices high in Europe. Instead of allowing the most cost-effective and stable technology mix to prevail, EU regulations select solutions through an ideological filter. The result is not only a decline in industrial competitiveness, but also an increasing burden on Member States' budgets due to expensive energy and compulsory compensation, even though a cheaper and more robust energy system would actually be technologically feasible.

3.4.3.1. Institutionalised resistance: The Nuclear Alliance

Along the fault lines that have emerged on the Franco-German axis, a new balance of power is emerging in EU energy policy, symbolised by the 2024 Nuclear Alliance Declaration. Led by France, a bloc of 12–14 Member States openly opposed the traditional anti-nuclear doctrine of the Commission and Germany, demanding technological neutrality. This decisive action led to the breakthrough of the Net-Zero Industry Act (NZIA), which finally recognised nuclear energy as a strategic technology. This legislative success sets a precedent: it proves that organised cooperation

between Member States can effectively stop the competence creep and that the right to freely choose the energy mix, guaranteed in the Treaties (Article 194 TFEU), can be enforced in practice. The process signals the rise of "climate pragmatism", where Member States are no longer willing to sacrifice their security of supply for ideological reasons and consider nuclear energy to be an indispensable element of competitive decarbonisation.²⁹⁰

3.5. The mechanism of gaining power

The transfer of competences is carried out using technocratic and legal instruments that are difficult for the public to understand. This phenomenon is referred to in the literature as 'integration by stealth', whereby the actual exercise of power is slowly transferred to the centre of the Union without the democratic authorisation (amendment of the Treaties) of the Member States.²⁹¹

From the outset, there has been tension between national sovereignty and integration efforts in EU energy policy.²⁹² The common energy market was taboo for a long time; due to the strategic importance of energy supply, Member States jealously guarded their competences and deliberately excluded energy from European integration in the early decades. Under the basic treaty framework in force since Lisbon, energy policy is an area of shared competence, and the EU can set common objectives in the field of energy (e.g. internal market, security of supply, sustainability), but Member States have the exclusive right to decide on the conditions for their own energy mix and the extraction of their energy sources. Despite these constraints, in recent years the EU has used increasingly creative integration techniques to exert influence over energy issues that fall within the competence of Member States, citing the challenges of the energy and climate crisis. Below, we examine the methods of competence creep from two perspectives. First, we summarise the traditional, primarily legal and economic, "hard" tools of competence expansion based on the literature. Second, we use the "soft" theory of fluid competence to shed light on the relationship between the EU and its Member States, with a particular focus on the crisis policies of recent years.

3.5.1. The impact of crises on shared competences

The past decade and a half in the EU has been characterised by a series of persistent crises, or "permacrisis", ranging from the financial and economic crisis and the eurozone debt crisis to the migration crisis and the COVID-19 pandemic, and even the Russian-Ukrainian war. According to Volpi's work, these serious and overlapping crises have usually served as a springboard for further

²⁹⁰ EU Nuclear Alliance (2024): Declaration of the EU Nuclear Alliance. Meeting of March 4th, 2024.

Volpi (2024)

²⁹¹ Volpi, 2024

²⁹² Talus – Alto, 2017

deepening European integration.²⁹³ The EU's ability to forge new momentum from crises is an increasingly frequently studied phenomenon. The Green Deal programme, which offers a solution to the climate crisis that has been on the agenda for decades at the cost of unprecedented joint measures, can also be identified as such. The author points out that in times of emergency, there is a greater need to revise the EU system, and that in crisis management, the EU leadership develops new, creative solutions that often result in a reduction in the competences of the Member States. Thus, in response to the crises listed above, the EU has used a whole range of *sui generis* instruments to covertly extend its sphere of influence.

Volpi has identified several mechanisms within this phenomenon: indirect legislation, new types of economic governance, soft law instruments, parallel integration, negative integration through the courts (invalidation of Member State legislation through judgments of the Court of Justice of the European Union), and the conclusion of international agreements. These forms of competence creep have all resulted in the EU's crisis management practices concentrating ever greater influence in Brussels. Volpi cites the example of the COVID crisis, during which the EU created the Recovery and Resilience Facility (RRF), thereby incurring debt at the Union level for the first time, even though public debt and fiscal policy were originally the responsibility of Member States. Similarly, in response to Russian aggression, the EU acted as an actor and built a strong political narrative that legitimised the REPowerEU plan, which, in addition to the recovery fund, also enabled the financing of energy projects, thus creating a quasi "super-competence" for the EU at the intersection of energy and economic policy. Similarly, citing the security risks posed by the war, the EU is preparing to ban Russian energy from its markets altogether, which would also reinforce the trend under review.

3.5.2. The "rally around the flag" effect

Besnier (2023) identifies the "rally around the flag" effect as a catalyst for centralisation in the context of the 2022 energy crisis and the Russian-Ukrainian war.²⁹⁴ His observations are in line with the permacrisis phenomenon examined in the previous chapter. The shock caused by Russian aggression and the uncertainty of gas supplies created a political climate in which the defence of national sovereignty in response to the crisis was characterised as a "lack of solidarity" or a "breakdown of European unity" in political communication, thereby delegitimising it in the eyes of the public and the political elite.

²⁹³ Volpi, 2024

²⁹⁴ Besnier, 2023

After the outbreak of the Russian-Ukrainian war, EU Member States feared that they would run out of natural gas in winter if Russia turned off the taps. This quickly led to calls for EU-level action to secure energy supplies. Almost immediately after the outbreak of the war, on 8 March 2022, the European Commission presented the REPowerEU plan, which not only aimed to accelerate the green transition, but also included emergency measures to guarantee immediate security of supply. Member States unanimously supported, for example, the creation of an EU Energy Platform to coordinate gas procurement in order to act as a stronger negotiator on the world market. Using an exceptional legal basis (Article 122 TFEU), the Council of the EU issued a regulation encouraging joint gas purchases and the pooling of Member States' demand, as a result of which European companies have already secured significant quantities of natural gas through joint tenders in 2023.²⁹⁵ This would have been unthinkable in the past, as gas procurement was traditionally an exclusive national competence.²⁹⁶ However, the crisis rallied countries together around one flag, and the common interests that emerged during the crisis overrode previous principles.

3.5.3. The theory of liquid authority

The theory of liquid authority was first outlined by Nico Krisch in his work "The Structure of Postnational Authority".²⁹⁷ He argues that the analysis of postnational, i.e. transnational, governance often examines the traditional model of solid authority in the international arena from a domestic political context, and therefore ties authority too closely to formal, legally binding provisions, identifiable institutions or hierarchies. In contrast, the soft instruments (soft law, rankings, evaluations, guidelines, best practices) that actually work in global governance are often extremely effective and serve as tools of governance rather than recommendations, and they actually shape the behaviour of the parties involved in a meaningful way. Krisch therefore suggests that this should also include fluid forms of authority, which are typically informal, based not on formal or legal authority but on substantive grounds, distributed among several institutions and forums, and flexible in time and open to interpretation.

In his 2017 study entitled "Liquid authority in global governance", Krisch takes the idea of liquid authority further and emphasises the importance of a system based on consent and acceptance of authority, rather than the traditional command model based on instructions and legal force.²⁹⁸ According to this, authority does not primarily stem from someone giving a formally binding

²⁹⁵ Európai Bizottság, 2023a

²⁹⁶ Talus – Alto, 2017

²⁹⁷ Krisch, 2015

²⁹⁸ Uo.

instruction, but from the recipient transferring part of their own discretion to an actor they recognise, thereby distancing themselves from the actual decision. Consequently, according to Krisch, the relationship of authority can be understood in terms of recognition and social practices, and the addressee often accepts the guidance of the authority because other relevant actors also treat the same actor or procedure with respect. The peculiarity of fluidity lies in its dynamics, since the less stable and institutionalised the authority system is, the more authority moves between different forums and instruments, the more difficult it is to say where the substantive decision-making authority lies, and the more it lies on a solid-fluid scale.

3.5.4. Trends in liquid authority in EU energy policy

Herranz-Surrallés and his colleagues were the first to apply the theory of liquid authority to EU energy policy, primarily in relation to the Energy Union.²⁹⁹ According to their explanation, energy policy in the European Union is typically a hybrid policy area: it is linked to the internal market and competition policy, climate and environmental policy objectives, and security of supply and foreign policy issues that are sensitive from the point of view of sovereignty. Consequently, authority, i.e. whose judgement commands deference, is not a stable given, as it constantly reappears as a renegotiated system of relations. From this perspective, the Energy Union can be interpreted not only as a formal transfer of legal competence, but also as a process whereby expectations, roles and capacities for action are rearranged between the EU, Member States and market players in the midst of crises, functional constraints and political conflicts.

The study concludes that, in relation to EU Member States, the liquid authority can be seen in the fact that the EU was able to establish a meaningful leadership role without any spectacular institutional or jurisdictional expansion at the EU level. The study emphasises that the Energy Union did not involve further transfers of competence or the creation of new institutions, yet a new energy governance architecture has emerged. The Commission's agenda-setting, monitoring and coordination capacities have been strengthened, which in practice may result in increased authority even if the Treaty competences are not formally modified.

At the same time, it can be observed that Member States are trying to protect their competences. According to the authors, this is in fact one of the most fundamental characteristics of fluidity. Member States are trying to maintain or, at times, regain the initiative and, where appropriate, the right to make decisions in several areas, particularly with regard to the energy mix and external supplier relations, which regularly manifests itself in sovereignty-based disputes. The authors

²⁹⁹ Herranz-Surrallés – Solorio – Fairbrass, 2020, pp.1-17.

describe the conflicts surrounding the 2030 framework as episodes in which Member State governments attempted to scale back the targets set by the Commission, which they considered overly ambitious, and their binding nature. This also demonstrates that deference is not permanent and definitive, but repeatedly leads to debate in specific political situations.

The study explains in detail how the infrastructure and market interconnections that developed under the Energy Union influenced practical decision-making. The energy market has become a three-player game in which the EU sets long-term guidelines, Member States seek to protect their sovereignty, and companies work to ensure a return on investment. In EU-company relations, the typical vehicle for liquid authority is lateral transfer of authority, whereby certain energy policy functions fall within the remit of market players, meaning that organisations responsible for infrastructure and operation exert greater influence. The study highlights electricity transmission system operators (TSOs) as actors who, due to their functional expertise and public service nature, were able to exert significant regulatory and coordination influence even before their formal EU role was established. The EU has partially channelled this private authority into the integration of the internal market (e.g. network codes, system management, planning). The practical impact of the triangle becomes particularly noticeable when authority shifts both upwards (to the EU level) and sideways (to independent or private-sector actors), while Member State policy often seeks to manage conflicts through technical frameworks and to remove them from public attention. In the interpretation of the study, depoliticisation as a conflict management strategy can lead to hidden integration in certain areas of the internal energy market. According to the researchers, the role of TSOs as operational and technical cooperation can moderate the intensity of open sovereignty disputes, while the EU regulatory direction remains unchanged.

In the external dimension, particularly in the context of gas supply and pipeline projects, the liquid authority is more likely to manifest itself in the form of content-based disputes over the sovereignty claims of Member States and the targeted use of resources. The authors interpreted the conflict surrounding the construction of Nord Stream 2 as an area where multiple levels and multiple actors simultaneously claim decision-making authority (local authorities, Member States, EU institutions, third countries) and where the EU's market regulation logic directly conflicts with geopolitical risks. The debate is thus not limited to technical details. At this point, the question arises as to whether the EU should act solely as a market regulator, self-restraining and neutral market supervisor, or whether it should assert a risk management, geopolitical role, even though the Treaty framework clearly establishes the former.

Besnier took the liquid authority further along the Herranz-Surallés energy line, applying it to the Green Deal and RePowerEU.³⁰⁰ According to the author, the Green Deal and the 2022 energy crisis have created a context in which EU influence and related competences can be built simultaneously on value-based policy objectives, such as decarbonisation and the green transition, and the need for crisis governance, while the authority remains constantly contested and renegotiated. As a result, the Commission achieves its goals not always through binding legislation, but through policy guidelines, strategies (e.g. the Hydrogen Strategy) and communication. Through the Green Deal, the Commission has successfully positioned itself as the only possible competent leader of the green transition. According to the author, this has led Member States and market players to voluntarily comply with Brussels' guidelines even before they became binding legislation. As he writes, "the policy programme represented by the von der Leyen Commission represented a fundamental paradigm shift from previous programmes: it significantly increased the EU's competences. The change was value-driven, with sustainability as the value, and Member States entrusting the EU with leadership".

The same liquid authority dynamics are accelerating with REPowerEU through the crisis mechanism, and the 2022 energy crisis has led to a decline in resistance because the risk of fragmented crisis management by Member States and the geopolitical imperative of unified action have made the EU the natural centre of coordination, and through the Commission's entrepreneurial role, the authority has not only shifted vertically (Member State-EU), but also horizontally, through its ability to intervene in market players. In REPowerEU, the focus in the triangle of priorities is shifting towards security of supply, but presented with a green tint. Sustainability is no longer an end in itself, but is framed as a means of ensuring security of supply, while the EU is able to intervene in the functioning of the market with emergency measures (e.g. storage obligations, joint procurement platform) and by speeding up authorisation procedures, it is also consolidating its own role at critical points in the implementation chain.

3.6. Soft law and institutional effects

The theory of liquid authority cannot be separated from the instruments of soft power. Besnier, in line with other literature, emphasises that the European Union, and in particular the Commission, is keen to use these instruments to achieve its goals. As mentioned earlier, the power of the communication narrative was also striking in the context of the introduction of the Green Deal, which also characterised RePowerEU in response to the post-war energy crisis. As we have already established, the enforcement of intentions was successful. However, in addition to agenda setting,

³⁰⁰ Besnier, 2023

the EU has a number of other tools at its disposal within the framework of soft law, which have been the subject of numerous studies.

Based on these, a trend is emerging whereby European Union decision-makers are increasingly relying on soft power and soft law instruments in their decision-making. This includes influence techniques that are not legally binding, such as recommendations, guidelines and strategies. Soft law can in fact be interpreted as a tool of liquid authority, facilitating governance processes, adapting quickly to changes, and although not legally enforceable, it can effectively influence the actions of Member States, thereby helping to achieve common EU goals and paving the way for subsequent binding legislation. Excessive use of soft law can also lead to tensions, as such instruments can bypass traditional legislative processes, posing a risk of weakening parliamentary control and undermining democratic accountability, as critics of the EU leadership often point out. Supporters of EU soft law instruments argue that such soft power is a key facilitator of integration and should therefore not be hindered, but applied transparently.³⁰¹

3.6.1. The role of soft law in EU energy policy

The prominence of soft law in EU energy policy stems, logically, from the fact that the EU has only limited competences in this area. Although the Lisbon Treaty introduced EU competence in energy matters in 2009, Member States have retained a significant degree of sovereignty and remain free to determine the conditions for the use of their own energy resources, their energy mix and their supply structure.³⁰² This sovereignty clause places a *de facto* limit on the EU's ability to enact hard law in the field of energy, and the adoption of many measures would still require unanimity among Member States. In practice, this has led the European Union to often turn to softer, voluntary forms of governance in climate and energy policy. Soft governance, i.e. governance based on soft law instruments, typically occurs in areas where the EU does not have strong legislative competences, such as the energy mix of Member States. According to the Treaty, the Union can only intervene in this area through recommendations and coordination rather than legislation and binding regulations, as Knodt also notes.

According to Oberthür (2019), the 2010s saw the beginning of a new chapter in EU energy and climate policy, which is also clearly reflected in the application of soft law. While EU renewable energy targets were achieved through hard legal instruments until 2020, the 2009 Renewable Energy Directive (Directive/2009/28/EC) set mandatory national targets for all Member States, which were adopted by consensus, the EU moved away from mandatory targets broken down by

³⁰¹ Terpan, 2024

³⁰² Knodt, 2023

Member State in the 2030 framework.³⁰³ The 2030 climate and energy targets adopted by the European Council in 2014 (at least 32 per cent share of renewables, 32.5 per cent improvement in energy efficiency and 40 per cent reduction in emissions by 2030), the renewable and efficiency targets were only binding at EU level, rather than for individual Member States. This softer approach was made possible by a new governance framework, the Energy Union and the related Governance Regulation (2018/1999/EU), which introduced the National Energy and Climate Plan (NECP) system.³⁰⁴ Under this framework, each Member State must prepare integrated plans in five-year cycles on its own national targets and measures in the five dimensions of the Energy Union (including renewable energy and energy efficiency contributions) and submit a long-term strategy for achieving climate neutrality. The planning obligation actually functions as a soft law instrument of the Commission, bringing together the efforts of Member States and, instead of unilaterally prescribing national targets, providing a framework for Member State planning and ultimately overseeing implementation.

Although at first glance the 2030 framework may seem weaker than its predecessors (as it lacks enforceable national targets), experts believe that the system as a whole has not become less stringent or ambitious. Oberthür's (2019) analysis examined the rigour of the governance framework from four perspectives (legal binding force, nature of regulations, precision of targets, accountability for implementation) and concluded that the EU's 2030 climate and energy framework scores highly in these areas. In other words, despite the soft solutions, the system may be able to ensure that the set targets are met. It should be noted that although the EU has abandoned the renewable energy targets broken down by Member State, it has compensated for this by strengthening the system of procedural obligations. Member States are now required to prepare national plans and long-term strategies, submit regular reports, and the Commission has been given broader competences for monitoring and supervision. In other words, the previous hard law-type target allocation has been replaced by soft law-based influence, in which the European Commission uses soft power to ensure that EU-level targets are met. This includes instruments of influence such as the dissemination of best practices, public rankings and reports, and the linking of financial support and incentives to performance.

3.6.2. Institutional effects and tougher soft governance

The spread of soft law instruments in EU energy policy has also brought about significant institutional changes, notably the strengthened coordination and supervisory role of the European

³⁰³ Oberthür, 2019

³⁰⁴ Knodt, 2022

Commission. Since the Commission cannot impose direct sanctions within the framework of soft law, it exerts pressure on Member States in alternative ways through professional persuasion, data reporting, advice, publicity and agenda setting through recommendations. These are already identified in the literature as harder soft governance instruments. The 2018 Governance Regulation explicitly sets out certain new mechanisms that give soft governance a harder edge. For example, Member States must publish a public explanation if they do not incorporate the Commission's recommendations on draft NECPsp.³⁰⁵ These two provisions create a new situation: although the recommendations are still not formally binding, the "comply or explain" principle allows the EU to exert institutional pressure on reluctant governments. Ignoring the recommendations carries political risk, as Member States must expect their failure to comply to be made public and become a source of criticism, which could cause serious embarrassment in domestic politics.

The Commission's soft influence has also been strengthened by the use of new instruments. Within the framework of the Energy Union, the State of the Energy Union report is prepared annually and discussed by the European Parliament and the Council. This is intended to increase transparency, but in reality it provides an opportunity for EU institutions to pillory Member States that are lagging behind, as Knodt explains.³⁰⁶ In addition, the Commission has been authorised to amend certain technical details by means of delegated acts, which makes governance more flexible and operational. Finally, the common targets themselves have been defined more precisely at EU level: the 2030 renewable energy and energy efficiency targets have been legally enshrined at EU level, and a mechanism has been introduced to align Member States' renewable energy targets with EU expectations. Under this mechanism, if the combined commitments of the Member States are insufficient to achieve the EU target, the missing extra effort will be distributed proportionally among the Member States according to a predefined formula.³⁰⁷ Although this mandatory algorithm was ultimately only introduced for renewable energy (and not for energy efficiency), its mere existence indicates the tougher nature of soft instruments.

It is important to emphasise that despite these changes, the system has remained fundamentally soft, and the governance regulation does not contain any actual penalties for non-compliance, so enforcement ultimately depends on the goodwill and mutual influence of the Member States.³⁰⁸ The institutional effectiveness of soft law thus depends largely on the extent to which softer instruments can generate political pressure in Member States. The method appears to be effective,

³⁰⁵ Knodt et al., 2020

³⁰⁶ Knodt, 2022

³⁰⁷ Knodt et al., 2020

³⁰⁸ Uo.

as research shows that if the soft governance system is properly reinforced, it can significantly improve Member States' willingness to cooperate and their performance. Knodt and his colleagues have shown that in the first round of 2030 plans, in areas where stronger soft incentives were in place (e.g. the algorithm and the Commission's strong recommendations on renewables), nearly half of the Member States largely complied with the Commission's recommendations, compared to the area of energy efficiency, where only a few countries did so. This seems to prove that tougher soft governance leads to a higher willingness to comply. At the same time, experience to date also indicates that even this tougher soft governance framework in its current form does not fully guarantee the achievement of EU targets, and Member States' commitments have fallen short of the 2030 target, for example in the case of renewable energy, and energy efficiency commitments have been particularly far off the mark, according to Knodt.

3.7. Political and economic tools against renitent states

The European Union's competences creep is achieved through a number of instruments, but the phenomenon is not limited to the adoption of EU legislation (or over-regulation), but also includes a number of other forms of integration that go beyond the strict framework of EU law. In her study, Garben (2019)³⁰⁹ identifies six main forms of competence creep, all of which encourage the approximation of national legislation, regulations and/or administrative practices.

- **Indirect legislation:** this is most often referred to as the core of the problem, the adoption of EU legislation in areas where the EU's direct legislative competence is limited. The functional competences of the Treaties – which are mostly, but not exclusively, related to the internal market – can cut across all policy areas, including those where the EU has no or only complementary competence. This means that the EU can use these indirect competences to legislate in areas that fall within national competence.
- **Case law:** if the Court of Justice finds that a national provision is contrary to EU law and therefore cannot be applied, regardless of whether it falls within the competence of the Member State or not.
- **International agreements:** Competences may also be extended through international agreements, particularly in the EU's trade policy. International trade agreements may affect Member States' competences in areas where the EU's legislative competence is limited.

³⁰⁹ Garben, 2019

- **Soft law:** This is not very different from harmonisation of legislation, but it is adopted without the checks and balances and safeguards that exist in the legislative process. Signs of this can be seen in the theory of fluid competence.
- **Economic governance:** There is debate in the field of economic policy about the need for a transfer of competences to the EU level. Member States are concerned about giving the EU competence in this area, as they fear that this could enable the EU to take redistributive decisions.
- **Parallel integration:** Another form of extending competences is through measures taken outside the EU framework, governed by international law, and implemented by all Member States or a constitutionally significant group of Member States (e.g. all euro area Member States). Such measures may complement, facilitate or support other EU policies and may even be intertwined with EU measures, becoming de facto integrated into them.

The Union's energy policy is increasingly creating a two-speed Europe, where the dividing line is not geographical but based on the 'cleanliness' of the chosen energy mix. The Commission uses financial resources and competition rules to penalise fossil fuel or nuclear-based systems and favour renewables, ignoring the physical requirements of system balance.

3.7.1. The political separation of the "green" and "brown" economies

A study by Wisniewski et al. (2024) reveals a relatively new but increasingly prominent political pattern whereby the European Commission uses the rule of law mechanism to exert pressure on Member States whose energy policies are not progressing fast enough.³¹⁰ The research points to a close correlation between countries with a high share of fossil fuels in their economies, such as Poland, Hungary and Bulgaria, and those against which the Commission has launched rule of law proceedings. The study empirically examines the correlation between Member States' dependence on fossil fuels and the frequency of rule of law proceedings. To this end, it first compared the energy mix of each EU Member State, with a particular focus on the share of fossil fuels, especially coal and natural gas. It then analysed which countries were regularly affected by rule of law proceedings initiated by the European Commission and which Member States had their access to EU recovery funds restricted due to rule of law concerns. A statistical correlation analysis was performed between the two variables thus obtained, "brown economy" and "rule of law target", which showed a significant positive correlation. In other words, countries whose energy policies are still heavily fossil-based are more likely to become targets of rule of law proceedings. The authors emphasise that although correlation does not automatically imply causation, the result

³¹⁰ Wisniewski et al., 2024

raises the possibility that EU institutions are indirectly attempting to influence energy policy by invoking the rule of law.

According to the research, the rationale behind this mechanism is both legal and political. Under Article 194 of the Treaty on the Functioning of the European Union (TFEU), Member States may retain control over their energy mix, which essentially precludes the Commission from directly sanctioning Member States with a 'brown' energy structure. However, the Commission can enforce the rule of law as a horizontal principle through other means. One such means is the NextGenerationEU Recovery Fund, whose resources are tied to compliance with the rule of law. In this way, the Commission enforces energy policy objectives indirectly, through the withdrawal of funds.

This practice is questionable in several respects. On the one hand, the principle of the rule of law, which is fundamentally intended to guarantee the independence of the judiciary, transparency and the fight against corruption, is increasingly being used as an instrumental tool to enforce political objectives (e.g. the green transition). On the other hand, Member States that are not yet technologically or economically ready for rapid decarbonisation are at a disadvantage due to a lack of financial resources. Withholding the Recovery Fund not only means a withdrawal of economic development resources, but also that these countries will be unable to carry out large-scale network development or energy efficiency investments with state support, further increasing their competitive disadvantage and making them even more dependent on fossil fuels. This vicious circle calls into question whether the rule of law mechanism in its current form is suitable for promoting genuine energy convergence, or whether it rather deepens divisions within the EU.

3.7.2. Competition law as a technology control tool

One of the most direct EU intervention tools in energy policy is the competition law control of state aid, which, according to the Iliopoulos (2024) study, the Commission often uses to influence Member States' energy decision-making.³¹¹ Although formally this control serves to protect the integrity of the internal market, in reality it also influences the energy mix, especially when it only allows support for certain technologies under strict conditions.

EU directives and guidelines on renewable energy support schemes (e.g. the CEEAG - Climate, Energy and Environmental Aid Guidelines) effectively prescribe competition-based support models, such as the use of bilateral Contracts for Difference (CfDs). Although these appear to be technology-neutral, in practice they favour technologies that can produce quickly and cheaply

³¹¹ Iliopoulos, 2025

below market prices, such as solar and wind energy. In contrast, alternative low-carbon technologies such as nuclear or biomass find it more difficult to access state aid because their investments take longer to pay off and involve higher capital costs. According to Iliopoulos, this could result in Member States formally deciding on their own energy mix, but in reality their options are limited by the conditions for support.

From an investment climate perspective, it is particularly worrying that the Commission conducts lengthy competition investigations into certain projects, mainly large base load power plants. The study cites the British Hinkley Point C and Hungarian Paks II projects as examples, where investigations have dragged on for years. As energy investments are extremely capital-intensive, the lengthy approval process in itself increases the cost of capital, making the project less attractive to investors and participants. This regulatory uncertainty can therefore indirectly hinder the development of certain technologies, and even strategic investments, without the Commission having to openly prohibit them. Iliopoulos interprets this as a Trojan horse: the Commission is using its competition law competences to indirectly enforce its own energy policy preferences.

3.7.3. Solidarity as a risk security of supply

In energy policy, solidarity in Article 194(1) TFEU ('in a spirit of solidarity among Member States') is not merely a political slogan, but now also a legal standard that influences the EU's energy markets and energy policy. This issue is also addressed by Kaschny (2023) and Talus and Aalto.^{312 313} In the 2021 OPAL case (C-848/19 P), the CJEU explicitly interpreted the principle of solidarity as creating "rights and obligations" on the part of both the Union and the Member States, and therefore as a relevant factor in the judicial review of decisions.³¹⁴ However, the emphasis is not on an automatic 'pass-through order'. In practice, this does not mean that the EU assumes greater competences by invoking solidarity, but if an energy policy decision significantly affects the security of supply, economic and political viability or diversification efforts of other Member States, the institutions and Member States must take the interests concerned into account. Solidarity thus creates a procedural and material justification constraint and influences the classic national autonomy of discretion by invoking mutual dependence.

The 'hardening' of solidarity typically becomes tangible when the primary legal principle is embodied in secondary legal mechanisms, in this case primarily in the area of security of supply. In the gas market, this means that crisis management and crisis prevention considerations partially

³¹² Kaschny, 2023

³¹³ Talus – Alto, 2017

³¹⁴ Iakovenko, 2021

elevate Member States' stockpiling and procurement decisions to the level of joint risk management. The aim of Member States' energy systems is thus not only to ensure the functioning of local markets, but also to manage the supply risks of other Member States. This is the first, often contested precedent. In the case of Member States with storage capacity, regulatory thinking, using the argument of solidarity, can more easily legitimise solutions that make the 'sharing' or making available of part of stocks in a crisis situation an expected and enforceable behaviour (especially with a focus on supplying protected consumers). Based on the sources, the main risk is not that solidarity in itself automatically means mandatory stock transfers, but that it may distort the incentives of Member States: if the system sends the message that the results of conscious preparation and stockpiling can be easily reallocated in a crisis, then countries that invest and stockpile may feel "penalised", while others may be encouraged to delay or rely on external assistance. All this takes place within a decision-making framework in which institutions and Member States are required to weigh up interests in a manner that is justifiable on the basis of solidarity and verifiable in court.

The second type of precedent, the narrowing of the application of export restrictions by Member States, fits into the same logic. In the OPAL judgment, solidarity does not appear as an absolute prohibition, but as a requirement that requires balancing in the event of a conflict: a Member State cannot rely solely on national security of supply without taking into account the risks spreading to neighbouring systems and the functioning of the internal market. The source also emphasises that the enforceability of solidarity is limited by physical and infrastructural constraints, as effective assistance or transfer is only realistic where interconnections and capacities allow it. This can also be interpreted as a restriction on national security of supply controls. Solidarity therefore does not have permanent legal force, but it consistently narrows the situations in which a purely national, sovereign decision can be enforced without substantive consideration regarding EU law.

3.7.4. Changes in energy policy competences

Talus and Aalto³¹⁵ point out how competences relating to the definition of energy policy have evolved from being the exclusive competence of Member States to now being a shared competence. The Treaty of Lisbon classified energy issues as shared competences in Article 4 TFEU and introduced Article 194 TFEU on energy issues. Previously, progress in this area was mainly driven by general competences relating to the internal market and environmental protection. The Lisbon Treaty also stipulates that energy policy must be formulated 'in a spirit of solidarity between Member States' (Article 194 TFEU). This concept arose in part because markets

³¹⁵ Talus – Alto, 2017

were unable to adequately ensure security of supply after supply disruptions, which necessitated a public sector response mechanism. The Court confirmed that this principle is a general obligation requiring the EU and Member States to take into account and balance the interests of all stakeholders in terms of security of supply, economic viability and diversification.

Although the regulation in theory does not restrict Member States' rights to determine their own energy mix and energy sources, the article notes that this Member State competence is limited in practice, particularly due to obligations relating to the promotion of renewable energy. The division of competences results in a multi-level energy governance system in which the Commission, Member States and various public and private actors work together. In recent years, driven by ambitious transition policies such as the Green Deal and the RePowerEU plan, the EU's energy policy model has been shifting from a 'regulatory state' to a 'catalyst state', which means increased market intervention and closer cooperation between the public and private sectors.

Besnier³¹⁶ in his research examined how the EU's authority has changed as a result of these two transitional policies. The final results confirmed his hypothesis that, thanks to the Green Deal and REPowerEU plans, more decision-making power has been transferred to the EU from national, local and private actors as a result of the 2022 energy crisis.

3.7.5. Investment monitoring

The EU's current Investment Screening Regulation (Regulation (EU) 2019/452,³¹⁷ fully applicable from 11 October 2020) provides the regulatory framework that, according to Reins (2019),³¹⁸ represents a potential extension of the EU's competences, particularly in sensitive sectors such as the energy industry. The framework allows the Commission to issue a non-binding opinion if a foreign direct investment (FDI) threatens the security or public order of several Member States or if it could jeopardise a strategic project or programme of interest to the EU as a whole. In the energy sector, these strategic interests concern all projects and programmes of the Trans-European Energy Network for Energy (TEN-E), which gives the Commission additional influence over investments in European energy networks.

Although formally within the EU's competence, the framework arguably infringes or disregards shared competences, such as those related to energy, as it deals with the impact of incoming foreign direct investment on the EU's internal order and on critical sectors such as energy. The EU's current investment screening regulation is a specific legislative instrument that has been implemented by

³¹⁶ Besnier, 2023

³¹⁷ European Commission, 2020

³¹⁸ Reins, 2019

exercising the EU's competence in the field of investment, with the aim of increasing centralisation and influence over Member States' policies, particularly in the areas of energy and national security.

3.7.6. Secret integration

'Secret integration' is a special form of EU integration that does not require any amendment to the Treaties. It takes place through various phenomena that can be collectively described as 'competence expansion', whereby the EU legislates or acts without having been specifically granted competence to do so.

Volpi (2024)³¹⁹ in his article " " discusses how the European Union (EU) responds to continuous, overlapping crises ("permacrisis") by expanding its scope of activity and integration, often bypassing the need for formal treaty amendments. This method is slowly becoming the EU's standard mode of operation in the face of successive crises. A good example of this is one of the current measures, the creation of "supercompetence" in energy policy. In response to the increasing risk arising from the Russia-Ukraine war, the REPowerEU plan was created, mobilizing unused NGEU resources and creating the EU Energy Platform in order to improve the coordination of gas purchases, on the legal basis of Article 122 TFEU. This link between energy transition and economic recovery clearly demonstrates the EU's 'supercompetence', which goes beyond the literal limits of the Treaties.

3.7.7. Legislative competences

Fehling (2021)³²⁰ concludes that the division of legislative competences should not be interpreted statically, but rather dynamically in order to adapt to new challenges. In other words, the EU's rules on competences should be interpreted in such a way as to enable effective climate action in line with the Paris Agreement. At the same time, the primacy of EU law within shared competences should not be applied rigidly, as this hinders national experimentation.

The sovereignty exception in Article 194(2) TFEU must be interpreted so it is in line with the reasoning in the Poland judgment. This protects Member States from requirements concerning the choice of energy sources, but does not preclude EU-level targets for the share of renewable energy sources or for the decarbonisation of the economy as a whole. Furthermore, where EU legislation sets comprehensive emission reduction targets, its legal basis must remain environmental competence. In other words, climate policy legislation setting broad decarbonisation targets should

³¹⁹ Volpi, 2024

³²⁰ Fehling, 2021

continue to rely on environmental competence, thereby ensuring that stricter national measures remain possible, increasing overall policy effectiveness. In order to maintain flexibility and support transformative policies, it is worth using adaptive, innovation-friendly systems rather than static ones. It remains uncertain whether such a functional, innovation-sensitive interpretation of competences will be incorporated into political practice and whether the Court of Justice of the European Union will support this legally.

Blutman (2023)³²¹ and colleagues examined the legal limits of Member States' sovereignty issues with regard to competence creep. This means that the EU can imperceptibly and gradually expand its competences at the expense of Member States' competences. Their conclusion is that it only acquires substantive legal content if we link it to ultra vires control of CJEU judgments, i.e. if the Court itself exceeds its judicial mandate under Article 19(1) of the TEU by committing a manifestly serious error of interpretation. In the author's view, in most cases, this is merely an extension of competences rather than an unlawful withdrawal of jurisdiction, and the source of the disputes is the uncertainty surrounding the demarcation of overlapping EU and 'primary' Member State competences.

Based on the practice of national constitutional courts (primarily the German PSPP decision and the Polish, Czech and Romanian decisions), four situations can be identified in which interpretation may be ultra vires

- if the basis for the interpretation of the law cannot be justified,
- if the interpretation of the law cannot be justified methodologically
- if the comprehensive review is incomplete
- and if it deviates from previous case law without justification.

The content of the legal concept of 'competence creep' therefore depends solely on whether we are able to objectively justify that the CJEU has clearly committed a serious error of interpretation in interpreting the EU competence clauses, thereby exceeding its own jurisdiction. According to the authors, the management of jurisdictional tensions requires transparent, strict and commonly accepted standards of interpretation, stronger proportionality controls and institutionalised judicial dialogue, because without these, 'competence creep' remains at most a political category that cannot be dealt with legally.

According to Reuter (2013),³²² it is becoming increasingly accepted in the EU's external relations that the mere existence of Member State competences does not mean that they can be exercised

³²¹ Blutman et al., 2023

³²² Reuter, 2013

freely and without restriction. He argues that Article 4(3) TEU does not seek to enforce political harmony between the Member State and EU levels through creeping withdrawal of competences, to enforce political harmony between the Member State and EU levels, but rather emphasises cooperation and mutual compliance in areas where a rigid division of competences would lead to the dysfunction of the external relations system. Thus, although it is often accused of being a means of competence creep by EU institutions, it actually functions as a dynamic constitutional mechanism that allows for flexible management of the division of competences. This approach is closest to Halberstam's vision of liberal fidelity, which recognises the multi-level division of power but expects the actors in the system (the EU and the Member States) to take into account the needs of the system as a whole, in addition to their own interests, thus ensuring the Union's unified and effective action on the international stage.

3.8. Experiences from professional interviews

3.8.1. Interview I.

The interview focused on the relationship between EU energy policy and Member State sovereignty, specifically from the perspective of the differences between the formal division of competences and practical decision-making. The expert pointed out that the European Commission exerts a significant, albeit indirect, influence on the energy sector through competition law instruments, in particular state aid rules. Although the determination of the energy mix is, in principle, a matter for the Member States, the approval of aid schemes, the definition of financing frameworks and the enforcement of internal market considerations create a set of conditions that significantly influence national decisions. This practice is not an open withdrawal of competences, but rather the creation of a framework that restricts the actual room for manoeuvre and can thus be interpreted as the indirect exercise of competences.

The respondent painted a nuanced picture of corporate responses. In his view, larger, well-capitalised companies often see the green transition as a strategic opportunity, especially when EU regulations are predictable and indicate a long-term direction. At the same time, many market players see the process as a necessity to adapt and only comply with the requirements to the minimum extent necessary. Caution due to a wait-and-see attitude, transitional investments and regulatory uncertainty continues to prevail, which shows that the green transition is not solely driven by market innovation logic, but is also significantly driven by regulation.

With regard to the practical application of the principle of solidarity, the interviewee emphasised that EU coordination is strengthened in crisis situations, but that Member States continue to assert

their interests. Joint gas procurement mechanisms, mandatory storage levels and consumption reduction targets are measures that have given concrete form to the principle of solidarity. At the same time, these have always been preceded by intensive political consultation and compromise, suggesting that solidarity is not automatic but the result of a bargaining process.

With regard to the level of lobbying activity, the expert emphasised that companies target national governments and EU institutions in parallel. If the regulation takes the form of a directly applicable regulation, the focus of lobbying shifts to Brussels. This trend suggests that an increasingly significant part of energy regulation is decided at EU level, which reinforces the practical limitations of Member State autonomy.

Speaking about the impact of secondary EU legislation, the respondent pointed out that, due to their direct applicability, regulations impose immediate and binding constraints on national energy policy. Commission communications, guidelines and strategies are not formally binding, but they play an effective guiding and disciplining role in relation to financial resources, state aid approvals and investment decisions. Thus, soft law instruments are also capable of influencing the direction of national policies.

Regarding the impact of the RePowerEU and Fit for 55 programmes, the interviewee stated that they do not directly prescribe the composition of the energy mix, but they do set binding targets, emission reduction trajectories and renewable energy shares that significantly narrow the decision-making alternatives available to Member States. Member States retain their freedom to choose the means, but the strategic direction and timing are determined at EU level, which limits the exercise of sovereignty.

The Commission's control mechanisms include monitoring, evaluation reports and the possibility of infringement proceedings. These ensure that the common objectives of energy market integration and security of supply do not remain merely declarative. According to the expert's assessment, the 2022 energy crisis marked a turning point, as it enabled rapid and deep EU interventions that would have been more difficult to accept politically in the past. The long-term question is whether these temporary measures will be reversed or whether they will set a lasting institutional precedent for further centralisation.

Speaking about the room for manoeuvre of smaller or energy-import-dependent Member States, the respondent emphasised the importance of coalition building in the Council, regional cooperation and active participation in expert working groups. At the same time, they acknowledged that structural differences in resources and the political weight of larger Member States mean that interests are represented on an uneven playing field.

According to the summary of the interview, EU energy policy formally preserves the competences of the Member States, but in practice, decision-making is increasingly aligned with EU objectives and legal frameworks. The development of national energy strategies is thus increasingly taking place in an environment where the exercise of sovereignty is not absolute, but requires continuous adaptation to the common regulatory framework.

3.8.2. Interview II.

According to the expert interviewed, the green transition of the corporate sector in Europe is mostly not driven by internal strategic convictions, but is essentially a forced course of action: the EU regulatory environment creates compliance conditions under which non-compliant players may find themselves at a significant competitive disadvantage. In his interpretation, this situation is also contradictory because Europe is responsible for a relatively small proportion of global emissions, yet the continent is committing to the most stringent decarbonisation path, while emissions from several major emitting regions continue to grow and the time horizon for climate neutrality commitments is longer (e.g. in the case of China and India). The expert believes that the regulatory direction set out in the European Green Deal and Fit for 55, particularly through ETS quota prices, directly prices the cost of carbon, thereby having a significant impact not only on corporate operations but also on European energy policy and industrial competitiveness. The expert emphasises that the competitive position of European industry is significantly weakened by the difference in electricity prices between Europe and other regions, which has a particularly strong impact on energy-intensive sectors as a cost-increasing factor. In his view, higher energy prices make it more difficult for EU manufacturers to compete with regions where energy costs are lower, while Europe's own companies are subject to increasingly stringent compliance requirements. In this context, the expert sees the introduction of CBAM and the phasing out of free allowances in the ETS as processes that could significantly increase production costs in a number of product categories. In his view, large multinational companies are likely to be able to adapt more flexibly, while the SME sector and part of the energy-intensive industry are more likely to wait and see, postpone investments or even consider locating outside Europe. Overall, he believes that current corporate responses tend to follow the logic of regulatory compliance rather than pointing towards innovation-driven competitive advantage.

According to the expert the EU's energy policy requirements have expanded significantly in recent years in terms of both volume and detail, while becoming less transparent. Although formally the definition of the energy mix is a matter for Member States, the expert believes that in practice Member States' room for manoeuvre has narrowed because EU secondary law – in addition to

regulations, 'soft law' instruments such as Commission communications and strategies – substantially structures national decision-making. He illustrates this process with the NECP system operating under the Governance Regulation: in his interpretation, the mandatory planning and reporting mechanisms (integrated national energy and climate plans, biennial progress reports, long-term strategies) establish a set of indicators and targets to which national policies must adapt. The expert emphasises that although NECP are not, in all respects, directly enforceable legal obligations in the classical sense, the commitments can become normative constraints through Commission evaluations and links to financing conditions. As a result, he believes that Member States' room for manoeuvre remains mainly in the technical details of implementation, while the strategic direction is increasingly set by the EU framework.

The expert also criticises the fact that the functioning of the NECP-based system is weakened by methodological and data quality problems: Member States use different data sources, measurement tools and units of measurement, and many plans and background materials are based on outdated data. In his assessment, this creates a 'robust' climate policy regime that is not always based on formally binding documents, but where public, structured commitments serve as a reference point for EU-level assessment and, indirectly, for resource allocation. Based on his conclusion, if the regulatory trend continues, formal sovereignty over the energy mix may gradually evolve into a decision-making option constrained by framework regulations.

The expert interprets the impact of the RePowerEU and Fit for 55 framework programmes as follows: although they do not directly prescribe the composition of the Member States' energy mix, they indirectly determine its structure at the systemic level through emission reduction, renewable energy and energy efficiency targets. In his view, EU climate policy has introduced a number of energy and economic regulations as a "Trojan horse" that could blur the boundaries of Member States' competences in practice. He cites ETS 2, which aims to decarbonise the transport and building sectors, as a striking example of this process: according to the expert, this tool can contribute to the achievement of climate policy goals, but it can also have significant social and economic consequences, especially for households and small businesses that are heavily dependent on fossil fuels. In his view, the scheme could also have regressive effects if the compensation mechanisms are not sufficiently targeted and the burden falls disproportionately on the most vulnerable players.

The expert sees similar regulatory dynamics in the field of renewable energy. Although the directive framework on the promotion of renewable energy use in principle allows Member States room for manoeuvre in transposition, the expert believes that the detailed rules and prohibitive

provisions actually restrict national discretion. He considers it particularly problematic that the Directive specifies what qualifies as renewable by technology, and in his view, this approach does not always adequately reflect the actual emission parameters of individual technologies or the different economic and social conditions of Member States. In his assessment, the expectations placed on Member States are often based not on country-specific impact assessments, but on aggregated EU modelling and generalised scenarios, to which legislative obligations, monitoring mechanisms and EU resource allocation logic are also aligned. In summary, the expert concludes that the EU's climate policy decisions and the related regulatory instruments are continuously narrowing the scope for autonomous action by Member States in the field of energy policy.

4. Conclusion for policy makers

Based on the study, the most important insight for policy makers is that, in the field of energy policy, Member State sovereignty remains enshrined in law (particularly the principle of choosing the energy mix), but de facto, the actual scope for decision-making has narrowed significantly in recent years. This is not due to a single "open" transfer of competences, but to a continuously strengthening, multi-channel process: through secondary legislation, mandatory rules linked to internal market and climate policy objectives, as well as soft law (strategies, guidelines, framework programmes) create an orienting and disciplining framework to which national energy strategies inevitably have to adapt. Crises – especially the 2021–2023 energy crisis – act as catalysts: in exceptional circumstances, the EU level is able to centralise decisions quickly and deeply, and this dynamic may set a precedent for the future. In this logic, REPowerEU is not merely crisis management, but also an institutional signal: it shows that the use of extraordinary legal bases can reduce the weight of the ordinary legislative order and democratic control, while the autonomy of Member States in terms of budgetary, industrial and energy policy becomes more vulnerable in practice. The conclusion in terms of policy is that the protection of sovereignty today is not primarily a matter of declarations, but of building capabilities and positions: in order to achieve national objectives, it is necessary to maintain a constant presence in the Council and expert forums, to build coalitions and to intervene at an early stage in the soft law phase, because subsequent obligations at the regulatory level allow less room for correction. The results clearly show that the "Green Revolution" is emerging as a systemic transformation, whose economic and physical constraints (price and competitiveness risks, infrastructure traps, new dependencies) require decision-makers to address both the fulfilment of climate targets and the political realities of security of supply/competitiveness. In line with this, the study's findings suggest that system

stability (balancing capacities, reserves), technological realities and the mitigation of strategic dependencies are key issues in shaping the energy mix. Furthermore, due to the increasing influence of the EU in the regulatory and financing environment, national planning must be structured in such a way that it retains meaningful room for manoeuvre while aligning with common objectives. Overall, based on the results, the key conclusion is that sovereignty should be treated not as a static right, but as a continuously negotiated and institutionally managed margin for manoeuvre: it seeks to channel national interests into the EU at an early stage, to consciously control the risks arising from the persistence of crisis legal bases, and to ensure that climate policy compliance in the transformation of the energy system is not an end in itself, but a sustainable path in terms of security of supply and competitiveness.

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References

- Consolidated version of the Treaty on the Functioning of the European Union, 2012, Official Journal of the European Union, last accessed on 9 February 2026.
- Fundamental Law of Hungary. (25 April 2011). Hungarian Gazette, 2011(43), 10656–10681.
- Regulation (EU) 2022/1032 of the European Parliament and of the Council of 29 June 2022 amending Regulations (EU) 2017/1938 and (EC) No 715/2009 on natural gas storage. Official Journal of the European Union, L 173/17. <http://data.europa.eu/eli/reg/2022/1032/oj>, last accessed: 09.02.2026.
- European Commission. (18 May 2022). Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions: REPowerEU Plan. COM/2022/230 final. <https://eur-lex.europa.eu/legal-content/HU/TXT/?uri=CELEX:52022DC0230>, last accessed on 9 February 2026.
- National Energy Strategy 2030, 2011, Hungarian Gazette No. 2011/119, pp. 30210-30359. <https://magyarkozlony.hu/dokumentumok/f6046e07f146a6a859a94689ab54f0509567dc7d/megtekintes>, last accessed: 09.02.2026.
- Hungary's revised National Energy and Climate Plan 2024, Ministry of Energy, <https://cdn.kormany.hu/uploads/document/a/a7/a7d/a7da5f85f73cf6cfc825947142eeacad bba8b96e.pdf> last accessed: 09.02.2026.
- Bremberg, Niklas and Anna Michalski. "The European Union Climate Diplomacy: Evolving Practices in a Changing Geopolitical Context." *The Hague Journal of Diplomacy* 19, no. 3 (2024): 1–30. <https://doi.org/10.1163/1871191x-bja10188>.
- Szélpál, Szilárd, & Varga, János (2023). History of sustainability strategies, proposals and programmes in the EU – creating a Green Europe and the antecedents of the Green Deal. *Acta Humana*, 11(3), 185–199. <https://doi.org/10.32566/ah.2023.3.9>
- Siddi, Marco. “Assessing the European Union’s REPowerEU Plan: Energy Transition Meets Geopolitics.” FIIA Working Paper 130 (October 2022). Helsinki: Finnish Institute of International Affairs.
- Brucker Balázs, Jóna László, Szemerédi Eszter. Comprehensive analysis of Hungary’s energy market in light of the changing priorities of the European Union, *Tér és Társadalom* 38th year, issue 1, 2024 <https://doi.org/10.17649/TET.38.1.3516>

- Besnier, T. (2023). Repower EU: The authority turn for the EU in energy policies? (Bruges Political Research Papers No. 91/2023). College of Europe.
- Blutman, L., Medvegy, D., & Schiffner, I. (2023). European Union: the legal context of ‘creeping competence transfer’. *European Law*, 2023(4), 1–11.
- Raillard-Cazanove, Q., Knibiehly, T., & Girard, R. (2024). Decarbonisation of industry and the energy system: exploring mutual impacts and investment planning [Preprint]. Mines Paris, PSL University.
- Volpi, V. (2024). To Have or Not to Have Competence: EU Integration by Stealth through Permacrisis (IAI Papers 24|17). Istituto Affari Internazionali. ISBN 978-88-9368-334-0
- European Parliament. (11 December 2025). EU to phase out imports of Russian gas. <https://www.europarl.europa.eu/news/en/press-room/20251211IPR32169/eu-to-phase-out-imports-of-russian-gas>, last accessed: 9 February 2026.
- U.S. Department of the Treasury. (22 October 2025). Treasury sanctions major Russian oil companies, calls on Moscow to immediately agree to ceasefire. <https://home.treasury.gov/news/press-releases/sb0290>, last accessed: 9 February 2026.
- European Commission. (17 June 2025). REPowerEU: Affordable, secure and sustainable energy for Europe. https://commission.europa.eu/topics/energy/repowereu_en, last accessed: 09.02.2026.
- European Commission. (17 June 2025). AggregateEU – questions and answers. https://energy.ec.europa.eu/topics/energy-security/eu-energy-platform/aggregateeu_en, last accessed: 09.02.2026.
- European Commission. (12 November 2025). Energy union. https://energy.ec.europa.eu/strategy/energy-union_en, last accessed: 10 February 2026.
- Umbach, F. (10 February 2020). European Green Deal: Reaching for the stars. GIS Reports. <https://www.gisreportsonline.com/r/european-green-deal/>, last accessed: 10 February 2026.
- Le Monde. (8 November 2025). Trump grants Hungary sanctions exemption on Russian oil. https://www.lemonde.fr/en/international/article/2025/11/08/trump-grants-hungary-sanctions-exemption-on-russian-oil_6747242_4.html, last accessed: 09.02.2026.
- HVG. (2 February 2026). Szijjártó: Hungary to file lawsuit with the Court of Justice of the European Union over Russian gas and oil ban. https://hvg.hu/gazdasag/20260202_szijarto-repowereu-rendelet-orosz-gaz-olaj-betiltasa-per-europai-birosag, last accessed: 09.02.2026.

- Besnier, T. (2023). Repower EU: The authority turn for the EU in energy policies? (Bruges Political Research Papers No. 91/2023). College of Europe.
- Blutman, L., Medvegy, D., & Schiffner, I. (2023). European Union: the legal context of ‘creeping devolution’. *European Law*, 2023(4), 1–11.
- Ministry of European Union Affairs. (2025). Research plan: Examination of the division of competences between Member State sovereignty and EU energy and climate policy [Internal working document].
- Iliopoulos, T. G. (2024). The Role and Competence of the EU in the Area of Supportive Financing Policies for Renewable Energy Projects. *European Papers*, 9(3), 1268–1295. <https://doi.org/10.15166/2499-8249/809>
- Kaschny, L. (2023). Energy Justice and the Principles of Article 194(1) TFEU Governing EU Energy Policy. *Transnational Environmental Law*, 12(2), 270–294. <https://doi.org/10.1017/S2047102523000110>
- Kusiak-Winter, R. (2023). The evolution of the European Union’s energy policy. *Acta Universitatis Wratislaviensis*, 4187(PRAWO CCCXXXVII), 105–116. <https://doi.org/10.19195/0524-4544.337.9>
- Raillard-Cazanove, Q., Knibiehly, T., & Girard, R. (2024). Decarbonisation of industry and the energy system: exploring mutual impacts and investment planning [Preprint]. Mines Paris, PSL University.
- Talus, K., & Aalto, P. (n.d.). Competences in EU energy policy [Manuscript/Book chapter].
- Volpi, V. (2024). To Have or Not to Have Competence: EU Integration by Stealth through Permacrisis (IAI Papers 24|17). Istituto Affari Internazionali. ISBN 978-88-9368-334-0
- Wisniewski, R., Nowakowska-Krystman, A., Kownacki, T., & Daniluk, P. (2024). The Impact of the Rule of Law on Energy Policy in European Union Member States. *Energies*, 17(3), 739. <https://doi.org/10.3390/en17030739>
- Nobletz, C., Svartzman, R., & Dikau, S. (2024). The EU’s dependency on critical minerals: meeting decarbonisation targets in the context of geopolitical risk. London School of Economics. https://iep.unibocconi.eu/sites/default/files/media/attach/Critical%20Minerals%20Policy%20Brief_final%20for%20IEP%20BU.pdf
- Seaman, J. (2024). China’s supply of critical raw materials: Risks for Europe’s solar and wind industries? French Institute of International Relations,

https://www.researchgate.net/publication/308272027_China's_supply_of_critical_raw_materials_Risks_for_Europe's_solar_and_wind_industries

- Draghi, M. (2024). The future of European competitiveness. European Commission. https://commission.europa.eu/topics/competitiveness/draghi-report_en
- EU Nuclear Alliance. (2024). Declaration of the EU Nuclear Alliance. Meeting of 4 March 2024. <https://www.elysee.fr/en/emmanuel-macron/2024/03/21/european-nuclear-alliance-leaders-declaration>

Examination of the European Union's competences in the field of energy policy

1. Introduction: the EU's energy policy framework

The European Union's competences in the field of energy policy are based primarily on the EU's founding Treaties, in particular Article 194 of the Treaty on the Functioning of the European Union (TFEU). This article sets out the objectives, principles and instruments of the common energy policy, thus providing the main legal basis for energy regulation and common action. Article 194(1) TFEU sets out four main objectives for EU energy policy, to be achieved in the context of the functioning of the internal market and with regard to environmental protection, in a spirit of solidarity between Member States: (a) ensuring the functioning of the energy market; (b) guaranteeing security of energy supply in the Union; c) promoting energy efficiency, energy saving and the development of new and renewable energy sources; d) encouraging the interconnection of energy networks.

One of the key elements of the division of competences in energy policy is the second subparagraph of Article 194(2) TFEU, which provides that the Member States may, within their own competences, determine the general structure of their energy mix and freely regulate the conditions for the exploitation of energy resources. The European Union's competence in the field of nuclear energy is based primarily on primary law, namely the Treaty establishing the European Atomic Energy Community (hereinafter referred to as the Euratom Treaty), which was signed in 1957. The division of competences between the institutions in the Euratom Treaty differs from that in the EEC Treaty; in particular, the European Parliament has fewer competences, which are purely consultative. The main legal acts in the field of nuclear energy are the nuclear safety framework (Directive 2009/71/Euratom³²³ and Directive 2014/87/Euratom³²⁴ amending it), radiation protection and health (Directive 2013/59/Euratom³²⁵), the management and final

³²³ Council Directive 2009/71/Euratom of 25 June 2009 establishing a Community framework for the nuclear safety of nuclear installations

³²⁴ Council Directive 2014/87/Euratom of 8 July 2014 amending Directive 2009/71/Euratom establishing a Community framework for the nuclear safety of nuclear installations

³²⁵ Council Directive 2013/59/Euratom of 5 December 2013 laying down basic safety standards for protection against the dangers arising from exposure to ionising radiation, and repealing Directives 89/618/Euratom, 90/641/Euratom, 96/29/Euratom, 97/43/Euratom and 2003/122/Euratom

disposal of radioactive waste and spent fuel (Directive 2011/70/Euratom³²⁶), and the transport of radioactive substances (Council Regulation 1493/93/Euratom³²⁷). The Euratom Community also has its own safeguards system: all users of nuclear substances within the EU must provide information on their facilities and report to the Commission on the flow and stocks of nuclear substances in accordance with Commission Regulation 2025/974/Euratom.³²⁸

In addition, EU energy policy often uses recommendations, joint declarations, guidelines and strategies (soft law), which are not legally binding but serve as political guidance. Examples include the EU's long-term energy security strategies and documents setting out sustainability targets.

In addition to Article 194 TFEU

- Article 122 TFEU on energy supply emergencies,
- Articles 170-172 TFEU for energy network infrastructure,
- Article 114 TFEU covers the internal energy market, while
- Articles 216-218 TFEU contain provisions on the Union's external relations in the field of energy.

Although two of the founding Treaties that laid the foundations for the European Union as we know it today – the Treaty of Paris establishing the European Coal and Steel Community and the Treaty of Rome establishing the European Atomic Energy Community – were built around the field of energy, the development and implementation of energy policy in the general sense remained within the competence of the Member States until the Treaty of Lisbon. The first push towards the development of a common energy policy came with the first oil crisis in 1973. The Commission responded to this situation with its document ‘Towards a new energy policy for the Community’, published in June 1974, which can be considered the European Communities’ first common energy strategy. The Council's decision of September 1974 reflected the Commission's energy strategy: it referred to the importance of Community energy policy, pointing out the need to set common targets and guidelines for the development of Member State policies and to establish common positions on energy policy issues.

³²⁶ Council Directive 2011/70/Euratom of 19 July 2011 establishing a Community framework for the responsible and safe management of spent fuel and radioactive waste

³²⁷ Council Regulation (Euratom) No 1493/93 of 8 June 1993 on shipments of radioactive substances between Member States

³²⁸ Commission Regulation (Euratom) 2025/974 of 26 May 2025 on the application of Euratom safeguards

The EU's competences in the field of energy policy have gradually expanded under the EU Treaties. The Maastricht Treaty (1992) already mentions energy, but does not confer broad competences on the EU. The Amsterdam Treaty (1997) strengthened the possibility of cooperation on energy. Several 'energy packages' adopted since the late 1990s have gradually liberalised the electricity and gas markets, requiring the unbundling of production, transmission and distribution activities and ensuring non-discriminatory access to networks. The focus shifted from security of supply to economic efficiency and competition. In addition, as a result of the Kyoto Protocol, energy policy has become increasingly intertwined with environmental and climate protection since the early 2000s (e.g. the 2009 Renewable Energy Directive and the launch of the EU Emissions Trading System (ETS) in 2005). A landmark change was that the Lisbon Treaty, which entered into force on 1 December 2009, elevated energy policy, which had previously been regulated on an intergovernmental basis, to a policy area of shared competence, thus definitively strengthening the EU's role in energy matters, particularly in the development of common energy security policies, and also strengthening the legal basis for European energy policy.

The Energy Union strategy announced in 2015 attempted to integrate the five dimensions of energy policy (security of supply, internal market, energy efficiency, decarbonisation, research and innovation). From 2019, the first Von der Leyen Commission placed climate neutrality by 2050 at the heart of all EU policies. Accordingly, the "Fit for 55" package drastically raised the 2030 targets for renewable energy and energy efficiency.

The latest turning point was the outbreak of the Russian-Ukrainian war in February 2022 and the ensuing deepening energy price crisis. In the crisis situation, the Commission often used emergency legislation to adopt rapid, extraordinary measures, in which case the Council decides by qualified majority without the involvement of the Parliament. Although the regulations adopted under Article 122(2) TFEU have already expired, they significantly restricted the Member States' room for manoeuvre. An example of this is Regulation (EU) 2022/1369 on voluntary gas demand reduction in EU countries³²⁹ and Regulation (EU) 2022/1854³³⁰, which provides for emergency interventions to address high energy prices and sets targets for reducing electricity demand by 10% and 5% during peak hours. In none of its proposals did the Commission examine their impact on competitiveness or take into account the specific characteristics of the Member States. Von der Leyen also used the war in Ukraine as an apparent justification for putting pressure on Member States to re-regulate energy policy at EU level. The REPowerEU plan set the goal of complete independence from Russian energy sources and forced Member States to implement it through

³²⁹ Council Regulation (EU) 2022/1369 of 5 August 2022 on coordinated gas demand reduction measures

³³⁰ Council Regulation (EU) 2022/1854 of 6 October 2022 on emergency intervention to address high energy prices

country-specific recommendations linked to the European Semester. Although the TFEU stipulates that Member States are free to decide on the composition of their energy mix, the Commission has linked the distribution of EU funds to these recommendations, thereby making it practically mandatory to adopt measures that restrict Member State sovereignty. It should also be noted that Hungary's amended Recovery and Resilience Plan, approved at the end of 2023, includes a total of approximately EUR 10.4 billion in RRF funding (Recovery and Resilience Facility), of which € 4.6 billion is linked to the REPowerEU chapter. Hungary has so far received only € 0.92 billion in pre-financing (of which € 0.14 billion is grant funding and €0.78 billion is a loan), meaning that the majority of the funds – around € 9.5 billion – have not yet been disbursed, partly due to the debate surrounding the fulfilment of the rule of law conditions.

The REPowerEU plan's energy network developments and the deepening of the internal market are expected to be further shaped by the European Grid Package³³¹, which is currently under negotiation. The package prepared by the Commission aims to increase the capacity and flexibility of European electricity networks and accelerate cross-border infrastructure and network digitalisation in order to achieve the 2030 climate and renewable energy targets. The Commission estimates that around €584 billion in investment will be needed over the next decade to develop and modernise the networks. The package also includes simplifying permit granting procedures, encouraging forward-looking investments and strengthening EU-level network planning. Hungary supports the development of energy networks and the strengthening of EU network interconnections, as these can contribute to the stability of the domestic energy system, strengthen our transit role and integrate renewable sources. The Hungarian Recovery and Resilience Plan also includes measures aimed at simplifying network connections and accelerating infrastructure investments. At the same time, the government has reservations about any initiative that would centralise network planning and resource allocation, as this would lead to a further reduction in Member States' energy policy sovereignty. Hungary therefore advocates a balanced approach to the European Grid Package, supports EU cooperation and the expansion of the interconnection, but emphasises that EU coordination must not be at the expense of national decision-making.

³³¹Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 'European Grids Package' – COM(2025) 1005 final; Proposal for a Directive of the European Parliament and of the Council amending Proposal for a Directive of the European Parliament and of the Council amending Directives (EU) 2018/2001, (EU) 2019/944, (EU) 2024/1788 as regards acceleration of permit-granting procedures – COM (2025) 1007; Proposal for a Regulation of the European Parliament and of the Council on guidelines for trans-European energy infrastructure, amending Regulations (EU) 2019/942, amending Regulations (EU) 2019/943 and (EU) 2024/1789 and repealing Regulation (EU) 2022/869 – COM(2025) 1006 final

1.1 The role of the Court of Justice of the European Union in defining the boundaries of EU energy policy

While Article 194(2) TFEU appears to give Member States considerable leeway in determining their energy mix, the case law of the Court of Justice of the European Union imposes significant constraints on national sovereignty in the areas of the internal market and State aid rules. The Court's interpretation of the law (see Case C-5/16 Republic of Poland v European Parliament and Council of the European Union) is extremely strict and leaves no room for measures restricting the determination of the energy mix. It is necessary to refer to Article 192(2)(c) TFEU as the legal basis (in which case the Council must decide unanimously) if the primary result sought by the EU act in question – based on the purpose and content of the act – is to significantly affect the choice of different energy sources and the overall structure of energy supply in one of the Member States. Similarly, the Court has confirmed in several judgments that energy prices regulated at Member State level are fundamentally contrary to the objectives of the internal energy market directives, as they hinder the development of competition. The landmark judgments in Case C-265/08 Federutility and the subsequent ANODE (C-121/15) case confirmed that state price regulation is only permitted under strict conditions: it must serve a general economic interest (e.g. security of supply, social cohesion), it must be limited in time and proportionate, i.e. it must not go beyond what is necessary to achieve the objective. This case law directly affects the question of the compatibility of Hungary's regulated prices policy with EU law. With regard to the issue of Member State support for green energy, the Court has also clarified the interaction between energy policy objectives and the rules on State aid in several judgments (C-379/98 PreussenElektra and C-405/16 P EEG 2012).

1.2 Derogations, special statuses:

The most common and accepted reason for derogation is geographical isolation. Malta and Cyprus, as island states physically isolated from the continental European energy systems, enjoy a number of exemptions. Some Member States, including Poland, Slovakia, Hungary and Romania, have been granted longer or more flexible transition periods to meet their energy policy obligations due to their specific economic and energy supply characteristics. Member States that are in a special situation due to their geographical location or energy resources, such as Finland or Sweden, may apply certain rules in a specific way, for example in the field of renewable energy sources or energy efficiency. Specific timetable for the development of renewable energy sources: countries that treat renewable energy targets differently due to their specific environmental or economic

circumstances, such as the countries of Central and Eastern Europe, where fossil fuels continue to play a significant role, are granted special status in the field of energy policy.

1.3 Application of the principle of subsidiarity

In many areas of energy policy, such as energy regulation, energy efficiency or the development of energy networks, the EU only intervenes if action at Union level promises more effective or better results than national or local measures. EU legislation and directives are generally adopted in cases where individual measures taken by Member States are not sufficient to increase energy security, reduce energy poverty or combat climate change.

2. From the perspective of Hungarian national interests, where is it advantageous for the EU to have regulatory competences in a given area?

2.1 Achieving sustainable development and climate protection goals

The EU's unified approach makes it possible to reduce the carbon footprint, supports the spread of renewable energy sources and helps to combat climate change. The primary objective of Regulation (EU) 2018/1999 on the Governance of the Energy Union and Climate Action³³² is to ensure that EU-level climate policy objectives can be translated in a uniform manner to the level of each Member State, thereby ensuring an even distribution of burdens among the Member States. In view of this main objective, the EU's competence is advantageous in terms of cooperation between Member States, regulation aimed at uniform burden sharing and the preparation of supporting analyses. The EU carries out the related tasks in a cooperative system, granting Member States the right of initiative and consultation. The EU sets the main objectives, while the development and implementation of the implementation strategy remains within the competence of the Member States. It is important to emphasise that Hungary's interest lies in an orderly transition, not an excessive, ideology-based and regulation-driven green transition.

³³² Regulation (EU) 2018/1999 of the European Parliament and of the Council of 11 December 2018 on the Governance of the Energy Union and Climate Action and repealing Regulations (EC) No 663/2009 and (EC) No 715/2009 of the European Parliament and of the Council, Directives 94/22/EC, 98/70/EC, 2009/31/EC, 2009/73/EC, 2010/31/EU, 2012/27/EU and 2013/30/EU of the European Parliament and of the Council, amending Council Directives 2009/119/EC and (EU) 2015/652 and repealing Regulation (EU) No 525/2013 of the European Parliament and of the Council (Text with EEA relevance).

2.2 Increasing economic competitiveness and strengthening market efficiency

An EU-level energy policy can strengthen economic competitiveness by creating more efficient market functioning and a more stable investment environment. A uniform regulatory framework reduces transaction and administrative costs, facilitates capital attraction, and encourages technological development and investment in the energy sector. Joint infrastructure developments, the interconnection of regional energy markets and joint procurement mechanisms improve resource allocation, increase economies of scale and reduce the specific costs of energy supply. These processes strengthen market competition, increase supply flexibility and reduce energy price distortions, which is particularly beneficial for energy-intensive industries. Market integrity and transparency are further strengthened by the REMIT framework,³³³ which aims to ensure the fair functioning of wholesale energy markets. The legislation aims to prevent insider trading and market manipulation, thereby supporting fair pricing and undistorted competition. The harmonisation of market surveillance and data transmission increases trust among market participants and improves the predictability of the investment environment, which supports the economic competitiveness of the EU and its Member States in the longer term.

2.3 Strengthening energy security and regional cooperation

One of the main benefits of EU energy policy is the increase in security of energy supply and the coordinated implementation of infrastructure developments. Regulation (EU) 2019/941³³⁴ (Regulation on risk-preparedness in the electricity sector) lays down the principles of cooperation and risk sharing between Member States with regard to the security of electricity supply. In line with this, EU strategies aimed at diversifying energy sources and developing networks reduce energy import dependency and ensure a more reliable supply for the whole Community.

However, security of supply is a shared responsibility not only at Member State level, but also at regional level. This is served by EU-coordinated cooperation formats such as the Central and South Eastern Europe Energy Connectivity (CESEC) initiative and the Electricity Coordination Group, Oil Coordination Group and Gas Coordination Group operated by the Commission. These forums support the elimination of transmission bottlenecks, the harmonisation of standards and the coordination of emergency response, thus contributing directly to strengthening the EU's security of supply. A logical consequence of these regional processes is the EU requirement to expand

³³³ Regulation (EU) 2024/1106 of the European Parliament and of the Council of 11 April 2024 amending Regulations (EU) No 1227/2011 and (EU) 2019/942 as regards improving the Union's protection against market manipulation on wholesale energy markets (Text with EEA relevance)

³³⁴ Regulation (EU) 2019/941 of the European Parliament and of the Council of 5 June 2019 on security of electricity supply and repealing Directive 2005/89/EC

cross-border transmission capacities, according to which Member States must ensure at least 70% physical capacity for cross-border electricity trade by the end of 2025. Increasing capacity not only helps to optimise energy flows, but is also a prerequisite for market integration and long-term security of supply. Regulation (EU) 2022/869 on trans-European energy infrastructure³³⁵ and the Connecting Europe Facility³³⁶ provide the financial and legal framework to support this process. Cross-border electricity and gas pipeline developments implemented through these programmes further strengthen interconnectivity, reduce market isolation and increase the resilience of the EU system.

2.4 Balancing capacity in the electricity market

The balancing energy platforms set up by the EU are key elements in the development of a single European electricity market, enabling Member States to ensure system balance in a coordinated manner across borders. Through the common market, system operators across the EU can access the most cost-effective and rapidly deployable balancing energy, which increases system security, reduces costs and improves resource efficiency.

One of the most significant technical changes in the electricity market in recent years is that hourly settlement has been replaced by 15-minute settlement under the Single Day-Ahead Coupling (SDAC) mechanism. The aim of the reform is to better align the functioning of the market with the fluctuating production of renewable energy sources, strengthen grid stability and provide greater flexibility for traders in optimising their portfolios. The change also directly affects Hungary, as MAVIR and HUPX are active participants in the initiative to create a single European market.

2.5 Cross-border capacities

The EU's requirement that Member States must ensure at least 70% physical transmission capacity for cross-border electricity trade by the end of 2025 is key to strengthening regional energy market integration and competitiveness. Sharing cross-border capacities and meeting the 70% target will help optimise energy flows between countries, increase security of supply and contribute to the efficient use of network infrastructure.

³³⁵ Regulation (EU) 2022/869 of the European Parliament and of the Council of 30 May 2022 on guidelines for trans-European energy infrastructure, amending Regulations (EC) No 715/2009, (EU) 2019/942 and (EU) 2019/943, and amending Directives 2009/73/EC and (EU) 2019/944 and repealing Regulation (EU) No 347/2013
Regulation (EU) 2021/1153 of the European Parliament and of the Council of 7 July 2021 establishing the European Network Financing Instrument and repealing Regulations (EU) No 1316/2013 and (EU) No 283/2014 (Text with EEA relevance)

2.6 Promoting consumer rights at EU level

The European Union considers consumer rights to be a priority in the field of energy supply, as the basis for creating an open, competitive and sustainable energy market is that consumers feel secure and can make informed decisions about their energy consumption and service providers based on transparent information. The aim of EU energy policy is to involve consumers as active, informed and protected participants in the functioning of the energy market. (Directive (EU) 2024/1711³³⁷), which entered into force in July 2024, continues the Clean Energy Package by transforming the structure of the EU electricity market to reduce consumers' exposure to short-term price volatility and increase the predictability and competitiveness of energy supply. The Directive, amending the previous Directive (EU) 2019/944³³⁸, requires Member States to ensure fair treatment, transparent contractual terms and access to real-time consumption data. The Directive pays particular attention to encouraging consumer participation in the energy market. It supports the spread of energy sharing and community energy production and provides for a quick and easy process for switching suppliers.

All this brings tangible benefits for Hungarian consumers. EU rules encourage digital administration and online solutions that increase market transparency (such as price comparison portals and consumer information platforms), which make it easier for households and businesses to access energy prices and service conditions. As a result, Hungarian consumers can choose their supplier more consciously, manage their affairs more quickly and exercise their rights more effectively in a competitive and transparent energy market.

2.7 Uniform regulations and standards

Uniform legal frameworks ensure innovation and competition and facilitate the implementation of cross-border projects.

2.8 Strengthening social and political unity

EU-level coordination promotes cooperation between Member States and enables unified action in response to emerging global challenges.

³³⁷ Directive (EU) 2024/1711 of the European Parliament and of the Council of 13 June 2024 amending Directives (EU) 2018/2001 and (EU) 2019/944 as regards improving the Union's electricity market design (Text with EEA relevance)

³³⁸ Directive (EU) 2019/944 of the European Parliament and of the Council of 5 June 2019 on common rules for the internal market in electricity and amending Directive 2012/27/EU (recast) (Text with EEA relevance)

3. From the perspective of Hungarian national interests, where is it disadvantageous that the EU has regulatory competences in this area?

3.1 Structural disadvantages:

3.1.1 Reduction in sovereignty

The application of EU rules reduces the independent decision-making competences of individual Member States in the field of energy policy, as they are required to comply with binding legislation that in some cases is not suited to national circumstances. An example of this is Regulation (EU) 2022/879³³⁹, which introduced a ban on imports of crude oil and petroleum products from Russia. According to the Commission, this rule serves to ensure the uniform application of sanctions, but at the same time significantly restricts the energy supply options and commercial freedom of choice of Member States with exemptions, such as Hungary.

3.1.2 Inflexibility, difficulties in adaptation and economic burdens

Uniform EU rules often fail to take into account the different energy characteristics, economic situations and levels of development of Member States, which makes it difficult to adapt flexibly to local circumstances. Overly ambitious mandatory targets for the share of renewable energy³⁴⁰, the extension of the emissions trading system to transport and buildings³⁴¹, and uniform energy saving requirements³⁴² impose the same requirements on Member States, regardless of their level of development and energy dependence. These uniform standards impose a disproportionate economic burden on smaller and less affluent Member States, as they require significant investments in energy infrastructure, energy efficiency and renewable energy production in order to meet the mandatory targets. The alignment of national energy policy projects with EU requirements often increases implementation costs and limits Member States' room for manoeuvre in the field of fossil fuel-based developments. Parallel and often conflicting objectives, such as

³³⁹ Council Regulation (EU) 2022/879 of 3 June 2022 amending Regulation (EU) No 833/2014 concerning restrictive measures in response to Russia's actions destabilising the situation in Ukraine

³⁴⁰ Directive (EU) 2023/2413 of the European Parliament and of the Council of 18 October 2023 amending Directive (EU) 2018/2001, Regulation (EU) 2018/1999 and Directive 98/70/EC as regards the promotion of energy from renewable sources, and repealing Council Directive (EU) 2015/652

³⁴¹ Directive (EU) 2023/959 of the European Parliament and of the Council of 10 May 2023 amending Directive 2003/87/EC establishing a system for greenhouse gas emission allowance trading within the Union and Decision (EU) 2015/1814 concerning the establishment and operation of a market stability reserve for the Union greenhouse gas emission trading system (Text with EEA relevance)

³⁴² Directive (EU) 2023/1791 of the European Parliament and of the Council of 13 September 2023 on energy efficiency and repealing Directive 2012/27/EU

emission reduction, energy efficiency and renewable energy targets, further complicate the implementation of a balanced national energy strategy.

3.1.3 Excessive administrative burdens

EU countries must develop integrated National Energy and Climate Plans (NECPs) for the period up to 2030, submit reports on their progress every two years, and develop consistent long-term national strategies to achieve the agreed energy targets and the goals of the Paris Agreement. Although the objectives are indisputable, the EU's energy policy expectations are becoming increasingly significant in terms of volume, less transparent and more detailed. Both the administrative requirements related to strategic planning and the expectations in certain areas can be considered excessive.

3.1.4 Regulated prices

The European Union is attacking the maintenance of universal service in both electricity and natural gas, taking away and restricting Member States' right to regulate end-user prices.³⁴³ One of the most recent measures taken by the Commission in Brussels came on 12 February 2025, in the form of a reasoned opinion issued in an infringement procedure launched for failure to notify national transposition measures for Directive (EU) 2019/944 of the European Parliament and of the Council on common rules for the internal market for electricity and amending Directive 2012/27/EU.³⁴⁴ In its reasoned opinion, the Commission emphasised, among other things, that it was unable to identify in Hungarian law the transposition of the right of service providers to freely determine the price at which they offer electricity to consumers. The Hungarian Government continues to insist on maintaining universal service, as this institution provides effective protection—tailored to national specificities and to society's capacity to bear costs—for those entitled to it against the effects of market price fluctuations.

During the negotiations on the electricity market package, we indicated from the outset that, in order to take into account the various emergency situations and specific factors in the Member States, the right to declare an electricity price crisis under Article 66a of Directive (EU) 2019/944 should be shared between the Member States and the Council, or that it should be retained by the Member States. We consider that Article 66a does not provide sufficient flexibility for Member States, in the event of an energy crisis, to apply where necessary and in order to protect household

³⁴³ Infringement proceedings No 2021/0052 concerning the failure to notify the transposition of Directive (EU) 2019/944 of the European Parliament and of the Council on common rules for the internal market in electricity and amending Directive 2012/27/EU

³⁴⁴ Directive (EU) 2019/944 of the European Parliament and of the Council of 5 June 2019 on common rules for the internal market in electricity and amending Directive 2012/27/EU (recast) (Text with EEA relevance)

consumers below-cost pricing as they deem appropriate. In our view, Member States should have the right, in a national crisis situation and within their competences, to set—at their own discretion and on a temporary basis—electricity prices even below cost.

3.1.5 Smart meters

In its revised National Energy and Climate Plan, Hungary has committed to installing 1 million smart meters by 2030, and a pilot project and support programme have been launched to achieve this target. To date, nearly 922,000 smart meters have been installed, and all medium- and high-voltage supply points are equipped with smart meters, i.e. devices capable of remote access that measure and record data at least every 15 minutes.

The installation of smart meters is ongoing, and Hungary is rolling out smart meters at a reasonable pace as technology advances and economies of scale improve. In its reasoned opinion, the Commission raised several objections regarding the transposition of the provisions on smart metering contained in Directive (EU) 2019/944. The Commission indicated that the roll-out of smart metering systems to consumers had been more widespread than required, but was still far below the rates specified for general roll-out.

- Conclusion of intergovernmental agreements on energy with third countries (IGA Decision):³⁴⁵ Obliging Member States to notify the Commission (i) of negotiations they intend to conduct on new or existing international intergovernmental agreements, or on amendments to existing international intergovernmental agreements, and allowing the Commission to participate in those negotiations as an observer (prior notification); and (ii) of the adoption of non-binding instruments for the Commission's assessment, restricts Member States' freedom of contract and makes the negotiation of agreements more difficult, in a manner that is not indispensable for achieving the objectives of EU energy policy as laid down in the Treaties.
- Coordination of energy supply crises (oil, natural gas, electricity)

The coordination of energy supply crises at EU level, whether they involve shortages of oil, natural gas or electricity, is currently based on uniform rules, such as the Regulation on security of gas

³⁴⁵ Decision (EU) 2017/684 of the European Parliament and of the Council (5 April 2017) establishing an information exchange mechanism with regard to intergovernmental agreements and non-binding legal instruments concluded by Member States and third countries in the field of energy and repealing Decision 994/2012/EU

supply,³⁴⁶ the Regulation on electricity risk-preparedness³⁴⁷ and the Directive on oil stocks.³⁴⁸ However, these rules do not always take into account the different energy mixes, infrastructure and market characteristics of Member States, so that common crisis management mechanisms cannot always be applied effectively in a manner tailored to national circumstances. In addition, due to the nature of the EU's decision-making mechanism, the introduction of new regulations and the amendment of existing ones is often delayed, which reduces the responsiveness of the EU and, consequently, of its Member States in the event of, for example, energy crises, security of supply problems or market disruptions.

3.2 Disadvantages reducing competitiveness:

3.2.1 The competitiveness effects of climate policy regulations

EU climate policy measures – such as the EU Emissions Trading System (ETS), its extension (ETS2) and the Carbon Border Adjustment Mechanism (CBAM) – are primarily designed to achieve emission reduction targets, but they also impose a significant cost burden on energy- and emission-intensive industries. The persistently high price of ETS allowances significantly increases the cost of industrial production, particularly in the steel, cement, chemical and fertiliser manufacturing sectors. The extension of the system to the transport and building sectors (ETS2) will put further cost pressure on businesses and households as the price of fossil fuels will rise directly. The CBAM mechanism aims to prevent carbon leakage, but in the short term it will increase export and input costs for EU producers. Taxing imports of emission-intensive products such as steel, aluminium, cement, fertilisers and electricity will make raw material procurement more expensive, while also increasing the administrative burden and compliance costs for domestic manufacturers. Overall, these regulations lead to higher production costs, reduced price competition and lower returns on investment within the European Union. According to numerous international expert analyses, the indirect inflationary effects of carbon pricing and the administrative costs of climate policy could further weaken the international competitiveness of companies. This is particularly sensitive for Hungary, as energy- and export-intensive sectors account for a high proportion of the domestic economy, and the financing of investments necessary for decarbonisation is limited for small and medium-sized enterprises. The increase in quota and compliance costs may result in cost and price disadvantages on the international market, while

³⁴⁶ Regulation (EU) 2017/1938 of the European Parliament and of the Council of 25 October 2017 concerning measures to safeguard security of gas supply and repealing Regulation (EU) No 994/2010

³⁴⁷ Regulation (EU) 2019/941 of the European Parliament and of the Council of 5 June 2019 on risk preparedness in the electricity sector and repealing Directive 2005/89/EC

³⁴⁸ Council Directive 2009/119/EC of 14 September 2009 imposing an obligation on Member States to maintain minimum stocks of crude oil and/or petroleum products

competitors on external markets, such as Asian or American manufacturers, operate with lower regulatory burdens. This could put not only the European but also the Hungarian competitive market at a disadvantage compared to global competitors, while also hampering local production and foreign capital investment.

3.2.2 Extension of the EU Emissions Trading System to buildings and road transport (ETS2)

The latest amendment to the EU ETS Directive³⁴⁹ concerning road transport and buildings, which are not currently covered by the ETS, will create a separate but parallel ETS for fuels used in the sectors concerned from 2028 onwards in order to encourage emission reductions. With the planned introduction of ETS2 in 2027, a new EU-wide 'tax' on fuels and heating energy will effectively be introduced, which will inevitably lead to higher prices for consumers.³⁵⁰ The measure will disproportionately affect lower-income Member States and households, where energy costs account for a larger share of the family budget. The Commission is thus disproportionately interfering in areas (residential heating, road transport) that national governments could regulate more effectively, given their better knowledge of local economic and social conditions. Although part of the ETS2 revenues will be returned to Member States through the Social Climate Fund (SCF) to alleviate the burden on vulnerable households, the size of the fund will not be sufficient to fully compensate for the increased costs.

3.2.3 Setting sectoral and national targets without taking into account the specific characteristics of Member States, combined with restrictions on the technologies that lead to these targets (RED, EED, methane regulation)

Both Directive (EU) 2023/1791 on energy efficiency³⁵¹ and Directive (EU) 2024/1275 on the energy performance of buildings³⁵² pose practical difficulties for those applying the law and from a Member State perspective, due to the excessively detailed nature of their regulatory framework. In addition to setting an overall numerical energy-efficiency target, the legislation lays down

³⁴⁹ Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC (text with EEA relevance)

³⁵⁰ A new development is that, under pressure from Member States, the final text of the proposed amendment to the Climate Act includes a one-year postponement of the introduction of ETS2, which is thus postponed from 1 January 2027 to 1 January 2028.

³⁵¹ Directive (EU) 2023/1791 of the European Parliament and of the Council of 13 September 2023 on energy efficiency and amending Regulation (EU) 2023/955 (recast) (Text with EEA relevance)

³⁵² Directive (EU) 2024/1275 of the European Parliament and of the Council of 24 April 2024 on the energy performance of buildings (recast) (Text with EEA relevance)

specific sub-targets—for example, by reference to the use of buildings—and, in many cases, highly detailed provisions that are reminiscent of technical standards.

Although we are talking about a directive, the regulation leaves Member States minimal room for manoeuvre in terms of national transposition due to its detailed rules and prohibitive provisions (one symbolic element of this is the ban on subsidies for natural gas-fired boilers). The directive therefore breaks with the tradition of setting the regulatory objective and leaving the practical means of achieving it to the Member States, and instead also specifies the regulatory instruments.

In the case of renewable energy (Directive (EU) 2018/2001 on the promotion of the use of energy from renewable sources and its subsequent amendments³⁵³), the concerns raised in relation to energy efficiency also apply. The directive specifies which technologies are considered renewable and which are not, largely regardless of their GHG emission values. Also in this case, Member States have limited scope to establish transposition rules tailored to their specific needs. The expectations placed on Member States are not based on individual assessments, but on scenarios and analyses established through EU-wide estimates and generalisations, and the legislative, measurement and resource allocation systems are also aligned with these.

Although in some cases certain Member States with conditions that differ from the majority are exempt from implementing certain provisions (for example, Cyprus and Malta only have to meet a fraction of the Member States' energy saving obligations under the Energy Efficiency Directive), the exceptions only cover the most obvious cases. This solution cannot be considered advantageous for Hungary or for other smaller Member States, or those without a coastline, or those with a climate that differs from the majority, or those with different natural conditions.

The implementation of Regulation (EU) 2024/1787 on the reduction of methane emissions from the energy sector and amending Regulation (EU) 2019/942 will entail high compliance costs for both natural gas producers and mining authorities. This is due to the strict administrative obligations and the short lead time available for reducing methane emissions. It would have been more appropriate to set a maximum level for methane emissions at EU level and leave it to the Member States to regulate how this is achieved.

³⁵³ Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources (recast) (Text with EEA relevance); Directive as last amended by Directive (EU) 2023/2413 of October 2023

3.2.4 Introduction of trade restrictions/bans on Russian natural gas and crude oil imports (REPowerEU Regulation)

In the REPowerEU Plan,³⁵⁴ the Commission set the goal of phasing out Russian natural gas imports by the end of 2027. Given that the share of Russian natural gas has not decreased at the pace expected by the Commission and some Member States, on 17 June 2025 the Commission presented a proposal for a regulation,³⁵⁵ which was adopted after intensive negotiations, with Hungary voting against. Regulation (EU) 2026/261 of the European Parliament and of the Council of 26 January 2026 on the gradual phasing out of imports of Russian natural gas and on preparing for the gradual phasing out of imports of oil, on more effective monitoring of potential energy dependencies, and amending Regulation (EU) 2017/1938, seriously infringes Hungary's fundamental interests, energy sovereignty and security. The regulation restricts the countries from which energy can be sourced, thereby increasing the cost of our total energy imports, and would also oblige Hungarian companies to amend their existing energy procurement contracts, risking significant compensation payments, while providing no form of solidarity in the face of the expected consequences. From the point of view of Hungarian national interests, it is particularly disadvantageous that the possibility of freely choosing the energy mix is being narrowed. This restriction has a number of negative consequences in terms of domestic energy security, competitiveness and continuity of supply. On the one hand, there is a risk that Hungary would have to give up energy cooperation agreements that have been in place for decades, are stable, geopolitically advantageous, and technically well-established. On the other hand, Hungary may lose access to cheaper Russian natural gas and crude oil delivered to its border, with well-known technical and quality parameters, based on long-term contracts. In the future, this could be replaced by alternative sources that are more complex from a logistical point of view, usually involve higher prices or additional investments, and have greater transport and terminal infrastructure requirements, especially in the case of LNG. The development of new supply routes – such as alternative routes from South-Eastern Europe, access to LNG terminals and the expansion of related gas processing and storage systems – will require significant investment on the part of the domestic energy system. These include, among other things, the conversion of the Százhalombatta refinery, the construction of new compressor stations, and addressing regulatory and capacity booking challenges on the system operator side. All this not only places an additional burden on

³⁵⁴ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a roadmap for phasing out Russian energy imports (COM(2025) 440 final)

³⁵⁵ Draft Regulation on the phasing out of Russian natural gas imports, the more effective monitoring of potential energy dependencies and the amendment of Regulation (EU) 2017/1938 (COM/2025/828 final)

the national budget and energy companies in terms of costs, but also reduces security of supply in the short term, especially in a crisis situation. As a result of the weakening of national control over the energy mix, Hungary's ability to adapt to future market, technical or security challenges is also reduced. Overall, the Regulation poses serious energy security and economic difficulties for Hungary, contrary to the Commission's rhetoric of strengthening energy security and energy sovereignty. We filed an action for annulment of the Regulation on 2 February 2026.

3.2.5 Making it more difficult to finance nuclear energy investments

The EU Taxonomy Regulation³⁵⁶ established a uniform classification system for sustainable economic activities, which helps to guide green investments. On 2 February 2022, the Commission adopted the Complementary Climate Delegated Act,³⁵⁷ which, subject to strict conditions (high-level nuclear safety and radiation protection rules), included nuclear energy in the taxonomy, thereby treating nuclear energy as a sustainable source. However, the regulation makes access to resources subject to such strict requirements (e.g. commissioning of deep geological repositories by 2050) that they cannot be met in most Member States.

3.2.6 Delays to the Paks II project

On 13 March 2014, the Commission initiated a preliminary investigation into potential state aid for the construction of the Paks II Nuclear Power Plant (hereinafter: Paks II). The Commission closed the investigation by Decision (EU) 2017/2112 of 6 March 2017³⁵⁸. In its decision, the Commission called on Hungary to undertake to ensure the full legal and structural separation of Paks II, its legal successors and subsidiaries, and to maintain, manage and operate them independently of the MVM Group and all its business activities, legal successors and subsidiaries, as well as other state-controlled companies engaged in energy production, wholesale or retail trade, and to maintain, manage and operate them independently of them. The artificial competition law separation between MVM Paks Atomerőmű Zrt. and Paks II is a cause for concern because the two power plants are not market competitors in the traditional sense, but rather complementary facilities serving the stability of the domestic energy mix, whose parallel operation aims to strengthen security of supply. This legal separation also restricts the existing operational

³⁵⁶ Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088 (Text with EEA relevance)

³⁵⁷ Commission Delegated Regulation (EU) 2022/1214 of 9 March 2022 amending Delegated Regulation (EU) 2021/2139 as regards certain economic activities in the energy sector and Delegated Regulation (EU) 2021/2178 as regards specific disclosures for those economic activities (Text with EEA relevance)

³⁵⁸ Commission Decision (EU) 2017/2112 of 6 March 2017 on measure/aid scheme/State aid SA.38454 – 2015/C (ex 2015/N) which Hungary is planning to implement in order to support the development of two new nuclear reactors at the Paks II nuclear power plant (notification made under document C (2017) 1486) (Only the English text is authentic) EEA text

cooperation between the existing Paks Nuclear Power Plant and Paks II. In its investigation, the Commission neglected the most important aspect (nuclear safety). The problem goes beyond the specific nuclear project, as it clearly illustrates the EU's efforts to gradually extend its competences to areas falling within the sovereignty of Member States through internal market rules. On 11 September 2025, the Court of Justice of the European Union annulled the decision.

3.2.7 Restrictions on the purchase of Russian nuclear fuel

The REPowerEU Roadmap³⁵⁹ provides for a gradual phase-out of Russian nuclear fuel sources for Member States. They intend to gradually make it more difficult to import Russian enriched uranium through trade measures and, according to the communication, will restrict new fuel procurement contracts with Russian suppliers and plan to introduce customs duties. Although the European Commission announced in June 2025 that measures affecting the nuclear sector would be postponed, it is clear that the long-term policy direction is to phase out Russian nuclear technology completely, beyond raw materials and processed products. While fuel for the Paks Nuclear Power Plant can be secured from alternative sources (Framatome-TVEL joint venture, Westinghouse), no alternative fuel is available for the Budapest Research Reactor. However, the planned provisions are expected to cover not only fresh nuclear fuel but also services. The draft legislation has not yet been published.

4. Summary

On the one hand, the joint exercise of EU competences provides indispensable advantages, but on the other hand, it imposes serious constraints and burdens on the country. EU membership is essential for Hungary in the field of energy policy from the point of view of physical security of supply, especially in crisis situations. EU energy policy is now beginning to lose its independent policy status and is instead becoming a servant of other political expectations. Obvious examples of this are (1) the unjustified emphasis on renewable energy, for example at the expense of a secure and continuous energy supply, (2) the definition at legislative level of which technologies do not have a harmful impact on GHG emissions, or (3) which suppliers Hungary may or may not import energy carriers from, thereby pushing economic competitiveness criteria into the background.

This chapter was prepared on the basis of a background study by The Institute for Energy Strategy.

³⁵⁹ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions Roadmap towards ending Russian energy imports (COM/2025/440 final/2)

References

- Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 'European Grids Package' – COM(2025) 1005 final; Proposal
- Directive of the European Parliament and of the Council amending Proposal for a Directive of the European Parliament and of the Council amending Directives (EU) 2018/2001, (EU) 2019/944, (EU) 2024/1788 as regards acceleration of permit-granting procedures – COM (2025) 1007;
- Proposal for a Regulation of the European Parliament and of the Council on guidelines for trans-European energy infrastructure, amending Regulations (EU) 2019/942, amending Regulations (EU) 2019/943 and (EU) 2024/1789 and repealing Regulation (EU) 2022/869 – COM(2025) 1006 final
- Regulation (EU) 2018/1999 of the European Parliament and of the Council of 11 December 2018 on the Governance of the Energy Union and Climate Action and repealing Regulations (EC) No 663/2009 and (EC) No 715/2009 of the European Parliament and of the Council, Directives 94/22/EC, 98/70/EC, 2009/31/EC, 2009/73/EC, 2010/31/EU, 2012/27/EU and 2013/30/EU of the European Parliament and of the Council, amending Council Directives 2009/119/EC and (EU) 2015/652 and repealing Regulation (EU) No 525/2013 of the European Parliament and of the Council (Text with EEA relevance).
- Regulation (EU) 2024/1106 of the European Parliament and of the Council of 11 April 2024 amending Regulations (EU) No 1227/2011 and (EU) 2019/942 as regards improving the Union's protection against market manipulation on wholesale energy markets (Text with EEA relevance)
- Regulation (EU) 2019/941 of the European Parliament and of the Council of 5 June 2019 on security of electricity supply and repealing Directive 2005/89/EC
- Regulation (EU) 2022/869 of the European Parliament and of the Council of 30 May 2022 on guidelines for trans-European energy infrastructure, amending Regulations (EC) No 715/2009, (EU) 2019/942 and (EU) 2019/943, and amending Directives 2009/73/EC and (EU) 2019/944 and repealing Regulation (EU) No 347/2013
- Regulation (EU) 2021/1153 of the European Parliament and of the Council of 7 July 2021 establishing the European Network Financing Instrument and repealing Regulations (EU) No 1316/2013 and (EU) No 283/2014 (Text with EEA relevance)

- Directive (EU) 2024/1711 of the European Parliament and of the Council of 13 June 2024 amending Directives (EU) 2018/2001 and (EU) 2019/944 as regards improving the Union's electricity market design (Text with EEA relevance)
- Directive (EU) 2019/944 of the European Parliament and of the Council of 5 June 2019 on common rules for the internal market in electricity and amending Directive 2012/27/EU (recast) (Text with EEA relevance)
- Directive (EU) 2024/1711 of the European Parliament and of the Council of 13 June 2024 amending Directives (EU) 2018/2001 and (EU) 2019/944 as regards improving the Union's electricity market design (Text with EEA relevance)
- Directive (EU) 2023/2413 of the European Parliament and of the Council of 18 October 2023 amending Directive (EU) 2018/2001, Regulation (EU) 2018/1999 and Directive 98/70/EC as regards the promotion of energy from renewable sources, and repealing Council Directive (EU) 2015/652
- Directive (EU) 2023/959 of the European Parliament and of the Council of 10 May 2023 amending Directive 2003/87/EC establishing a system for greenhouse gas emission allowance trading within the Union and Decision (EU) 2015/1814 concerning the establishment and operation of a market stability reserve for the Union greenhouse gas emission trading system (Text with EEA relevance)
- Directive (EU) 2023/1791 of the European Parliament and of the Council of 13 September 2023 on energy efficiency and repealing Directive 2012/27/EU
- Infringement proceedings No 2021/0052 concerning the failure to notify the transposition of Directive (EU) 2019/944 of the European Parliament and of the Council on common rules for the internal market in electricity and amending Directive 2012/27/EU
- Decision (EU) 2017/684 of the European Parliament and of the Council (5 April 2017) establishing an information exchange mechanism with regard to intergovernmental agreements and non-binding legal instruments concluded by Member States and third countries in the field of energy and repealing Decision 994/2012/EU
- Regulation (EU) 2017/1938 of the European Parliament and of the Council of 25 October 2017 concerning measures to safeguard security of gas supply and repealing Regulation (EU) No 994/2010
- Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC (text with EEA relevance)

- Directive (EU) 2024/1275 of the European Parliament and of the Council of 24 April 2024 on the energy performance of buildings (recast) (Text with EEA relevance)
- Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources (recast) (Text with EEA relevance); Directive as last amended by Directive (EU) 2023/2413 of October 2023
- Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a roadmap for phasing out Russian energy imports (COM(2025) 440 final)
- Draft Regulation on the phasing out of Russian natural gas imports, the more effective monitoring of potential energy dependencies and the amendment of Regulation (EU) 2017/1938 (COM/2025/828 final)
- Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088(Text with EEA relevance)
- Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions Roadmap towards ending Russian energy imports (COM/2025/440 final/2)
- Council Regulation (Euratom) No 1493/93 of 8 June 1993 on shipments of radioactive substances between Member States
- Council Directive 2009/71/Euratom of 25 June 2009 establishing a Community framework for the nuclear safety of nuclear installations
- Council Directive 2009/119/EC of 14 September 2009 imposing an obligation on Member States to maintain minimum stocks of crude oil and/or petroleum products
- Council Directive 2011/70/Euratom of 19 July 2011 establishing a Community framework for the responsible and safe management of spent fuel and radioactive waste
- Council Directive 2013/59/Euratom of 5 December 2013 laying down basic safety standards for protection against the dangers arising from exposure to ionising radiation, and repealing Directives 89/618/Euratom, 90/641/Euratom, 96/29/Euratom, 97/43/Euratom and 2003/122/Euratom
- Council Directive 2014/87/Euratom of 8 July 2014 amending Directive 2009/71/Euratom establishing a Community framework for the nuclear safety of nuclear installations
- Commission Decision (EU) 2017/2112 of 6 March 2017 on measure/aid scheme/State aid SA.38454 – 2015/C (ex 2015/N) which Hungary is planning to implement in order to support the development of two new nuclear reactors at the Paks II nuclear power plant

(notification made under document C (2017) 1486) (Only the English text is authentic)
EEA text

- Commission Delegated Regulation (EU) 2022/1214 of 9 March 2022 amending Delegated Regulation (EU) 2021/2139 as regards certain economic activities in the energy sector and Delegated Regulation (EU) 2021/2178 as regards specific disclosures for those economic activities (Text with EEA relevance)
 - Council Regulation (EU) 2022/879 of 3 June 2022 amending Regulation (EU) No 833/2014 concerning restrictive measures in response to Russia's actions destabilising the situation in Ukraine
 - Council Regulation (EU) 2022/1369 of 5 August 2022 on coordinated gas demand reduction measures
 - Council Regulation (EU) 2022/1854 of 6 October 2022 on emergency intervention to address high energy prices
- Commission Regulation (Euratom) 2025/974 of 26 May 2025 on the application of Euratom safeguards

MIGRATION

MCC Migration Research Institute

European Union Institutions Overstepping Competences in Migration and Refugee Policy

1. Introduction

The history of large integration organizations has always been defined by a struggle for competence between the central entity and the Member States. Even international studies that apply a strong institutionalist and liberal approach in examining the integration process start from the premise that individual organizations face various stages of integration which, explicitly or implicitly, also represent stages of development – that is, desirable goals to be achieved. This is also reflected in the English terminology used to describe them (“levels,” “progressions,” “hierarchy”), which clearly indicates qualitative – and development-centered – differences.

At the same time, it is telling that five of the six categories of integration (1. preferential trade area; 2. free trade area; 3. customs union; 4. internal market; 5. economic union; 6. political union) are in fact commercial and economic in nature. The political – and all other – categories only appear in connection with the final, sixth element.³⁶⁰

The sixth stage is a federal union which transfers significant competences – generally in foreign policy, security and defense, fiscal policy, foreign economic relations, macroeconomic management in its entirety, and a significant part of many other areas – to the federal government, while preserving some autonomy for the constituent units. The examples of the United States or Germany are clear illustrations of this stage.³⁶¹

In its current form, the European Union stands at a peculiar stage “5 and a half”: it has essentially achieved economic union, and an increasing number of elements point toward a political union. At the same time, it is not yet possible to say whether this outcome will materialize, as efforts in this direction are markedly countered by the perspective of “a Europe of nations”, along with resistance from Member States.

It is no coincidence that the literature barely touches on the sixth stage of integration: the phenomenon is quite unique in modern history. Earlier examples, such as the German or Italian unification efforts, could rely on significant historical, linguistic, and cultural antecedents to help

³⁶⁰ Rittberger, 1973

³⁶¹ Blahó – Prandler, 2011

along integration. However, the European Union is unique because it brings together countries with different languages, cultures, and histories, thus lacking the common foundations that characterized the political unions of old. There is a reason why many researchers prefer the perspective of regionalism, geography, and geopolitics, rather than integration and institutionalism, in their approach to making sense of integration in Europe and elsewhere.

It is also important to emphasize that, whichever approach we take, the idea of integration/regionalism as a driving force for political transformation is quite unique and new. The fact that European countries eventually began to think in terms of integrative and regional structures and institutions was largely the result of Europe's unique historical development. The idea of integration proved strong in two other regions: on the African continent, where the pan-African idea became one of the main ideals of the decolonization movement, and in Latin America in the form of pan-Americanism. At the same time, the integrations emerging from these movements are clearly lagging far behind the level of integration achieved by the European Union, and it is questionable whether these initiatives actually want to achieve the outcome suggested by the use of the identical term. In the case of the African Union, for example, it is clear that despite the official establishment of the African Free Trade Area, the pace of economic integration is slow, while weak attempts at political integration are consistently thwarted by strong resistance from Member States at both the continental and the regional level, as in the case of the East African Community (EAC).

Why is it important to emphasize these elements of integration theory and history, seemingly far from the topic of migration? Because the idea that the only solution for the European Union is more integration is mistaken, however many institutions and thinkers may suggest it. Europe and its Member States do not need to “unite” in order to be successful in the international system. In fact, it is worth emphasizing that this was not the goal of the founding fathers: a “United States of Europe” as a possible option emerged much later, as a result of an integration process that went far beyond the ideas of the 1940s and 1950s. It was primarily the product of the postmodern, constructivist, and institutionalist liberal international thinking of the overly optimistic post-Cold War era. Despite its relative novelty, this ideology gained ground quite rapidly in thinking about the European Union and was reflected in a number of key Treaties (Maastricht, Amsterdam, Nice, Lisbon) over a period of fifteen years.

There is no space here to analyze its ideological roots, but it is a fact that “accidental integration” and “accidental federalism” were increasingly encoded as driving forces in EU Treaties and institutions, which in some cases led not only to an overreach/expansion of powers, but also to

significant duplication within the systems. Perhaps the most striking example of this was security and defense policy, which was developed most dynamically over the past three decades even as everyone acknowledged NATO's primacy in this area and most were members of the organization.³⁶² All this despite the fact that it remains unclear what new, additional capabilities and tasks this will entail in relation to existing NATO capabilities, and how unnecessary duplication can be avoided.

The fact that the continuous deepening of integration is encoded in the current structures of the EU is illustrated by the ongoing conflicts between EU institutions and Member States. Many members are unhappy with the relentless expansion of powers, and while they support the operation of certain common affairs and policies, they are sensitive about preserving their sovereignty and do not wish to transfer its most important elements to a supranational entity. This conflict creates constant tension between the parties and leads to flare-ups in political struggle depending on the strength federalist and sovereignist ideas gain. As Mercz points out, "At present, many Member States' constitutional courts are challenging the primacy of EU law, speaking out against 'stealth powers' and coming into conflict with EU bodies."³⁶³ According to the sovereignist view, 'competence creep' involves the EU's gradual, almost imperceptible expansion of its powers through legislation or decisions handed down by the Court of Justice of the European Union at the expense of the powers granted to Member States in the founding Treaties.³⁶⁴ The sovereignist view demands that Member States put an end to these efforts and defend their autonomy. At the same time, according to the pro-integration (federalist/unionist) approach, it is natural that the powers of the Union and its institutions are constantly expanding, bringing new areas under control and leading to the "ever closer union" emphasized in Article 1 of the Treaty on European Union (TEU). In the pro-integration approach, the organization merely "fulfills the tasks set by the Member States when it seeks to make full use of the EU's powers in achieving the objectives of the Treaty, while at the same time curtailing the decision-making powers of the Member States in areas of shared competence."³⁶⁵ In other words, Member States "voluntarily" agree to the continuous erosion of their own powers with accession. Federalists argue that the European Council, the body that brings together all Member States, guarantees that nothing can happen in the Union contrary to the will of the Member States. This approach goes so far as to dispute the very existence of a "competence creep", or interpreting it as a mere extension of competences,³⁶⁶ which takes away

³⁶² Molnár, 2019, pp. 82-86.

³⁶³ Mercz, 2025, p. 92.

³⁶⁴ Blutman L. et al., 2023, p. 1.

³⁶⁵ UO.

³⁶⁶ Garben, 2020, p.435.

the edge of the sovereignist critique that stresses the unilaterality of the process unfolding at the expense of the Member States and without their consent. At the same time, neither approach resolves the contradiction that an “ever closer union” ultimately leads to an increased loss of power for Member States.

This internal tension has been evident in European integration since the signing of the Treaty of Rome and the establishment of the European Union’s predecessor institutions, but the new challenges of the 21st century brought this problem to the fore. The enlargement process, the entry into force of the Treaty of Lisbon, and the dramatically transformed international environment have intensified the struggle for competence, especially since divisions on how to deal with certain issues emerged not only between the EU institutions and Member States, but also among the capitals themselves. This is particularly true of the migration and refugee crisis, which in 2015 prompted polar opposite responses from Member States. This division only partially diminished over the past ten years, and EU institutions exploited it to exceed their role and extend their activities beyond the framework set out in the Treaties, sometimes through “competence creep”, and sometimes quite openly, with the support of Member States.

The analysis by MCC Migration Research Institute explores the question of how, in migration and asylum policy and judicial practice:

1. the EU overstepped competencies in the last ten years;
2. what are the main directions and methods of the expansion of competence;
3. the processes influenced the documents, regulations, concrete political actions, and communication since.

The study relies on public EU documents, scholarly analyses, and statements and articles published in the press for its main sources.

The study will first examine the changes in language use in the EU’s communication on the migration and refugee crisis over the past decades. It will then review the overreach of individual institutions, such as the Commission and the Court of Justice.

2. The transformation of the language of communication on the migration and refugee crisis

It may seem of secondary importance, but the first impression of the attitude towards the migration crisis is made by the way EU bodies communicate about the crisis, how they refer to those arriving, and how they seek to address EU citizens and decision-makers. This sets the frames for the ideas that will be used to solve and manage the situation, and whether EU bodies and Member States are actually trying to address the problem itself.

Since 2015—or, according to other approaches, since 2013³⁶⁷—the migration and refugee crisis has been clearly dominated by a humanitarian interpretative framework. According to this framework, the majority of those reaching the EU’s borders are fleeing persecution and armed conflict to seek safety within the European Union. A recurring theme is that the Union’s borders cannot be closed, we cannot think in terms of a “Fortress Europe,” and that migration is not a problem but a natural process that has existed throughout human history, thus it cannot be stopped, only managed. A textbook example of this view is a speech given in early 2023 by Joseph Borrell, former High Representative for Foreign Affairs and Security Policy. Borrell argued that “Fortress Europe” is not a solution. Migration is as old as humanity. The problem is not to cut migration, but to manage it. To manage it in a humane way, first of all. (...) Europe needs migrants.”³⁶⁸ At a conference in August 2025, Christine Lagarde, President of the European Central Bank, also spoke about how, without foreign workers, the European labor market and growth would be much weaker, and that “migration could, in principle, play a crucial role in easing labor shortages as native populations age”.³⁶⁹ The European Commission itself also talks about “managing” migration and “managing borders” for border protection, emphasizing above all the protection of the fundamental human rights of migrants and increased attention to vulnerable individuals and groups.³⁷⁰

Another element of softening the discourse on migration and asylum is that the European Border and Coast Guard Agency (Frontex) has gradually replaced the term “illegal border crossings” with “irregular border crossings” in its public communications, reinforcing the humanitarian nature of the discourse and downplaying the emphasis on the fact of illegal immigration.³⁷¹ The European Commission has been using the term “irregular border crossings” since 2015.

³⁶⁷ Marsai – Pénczvártó, 2023

³⁶⁸ EEAS, 2023

³⁶⁹ Politico, 2025

³⁷⁰ European Commission, 2024

³⁷¹ Frontex, 2025

The examples also highlight how migrants, migration, refugees, asylum seekers, and asylum issues in general have been conflated. This is important to note because there are significant differences in competence between the EU and its Member States: while the regulatory framework for asylum seekers contains common provisions applicable to all Member States, the regulation of legal immigration—with the exception of a few elements, such as Schengen visas—is a competence of Member States. By using a broad interpretation of the concept of migration, EU bodies are suggesting that they themselves want to determine who enters the EU. The statements by Christine Lagarde and Joseph Borrell are thus worth highlighting, as they refer not only to refugees but to migration in general. This use of terminology is also worth emphasizing in connection with the Pact on *Migration* (emphasis added by the author) and Asylum, which contains ten different sub-areas – here, too, the use of terminology already reflects an overreach of competence detrimental to Member States.

It is also evident on behalf of the Union's institutions that, in official documents and communications, legal and irregular migration are often conflated, as are humanitarian and labor market-driven forms of immigration. The arrival of large numbers of illegal immigrants is not in fact as old as humanity. It is also a highly questionable myth that migration cannot be stopped, only managed: this is fundamentally contradicted by the experience of the coronavirus pandemic, when arrival numbers fell dramatically,³⁷² or the re-election of US President Donald Trump, after which not only did arrival numbers decrease, but illegal immigrants began to return home, resulting in the voluntary return of 1.6 million people since January 20, 2025.³⁷³ All this clearly indicates that the general narrative of masses fleeing for their lives is untenable.

The communication of EU bodies that overemphasizes the labor market benefits of immigration is also highly questionable from a professional point of view. This approach is flawed for two reasons. On the one hand, we are witnessing a serious conflation of issues: statistics and recent studies show a significant difference between the labor market performance of intra-EU migrants and that of immigrants from outside the EU: while the former reaches and often exceeds the employment rates of the host country, in the latter case we see a 20% lag, particularly for those who arrived in recent years.³⁷⁴ For example, Christine Lagarde's statement that foreign workers contribute 6% to Germany's GDP³⁷⁵ is true in itself. However, the President of the European Central Bank does not mention that in Germany, the employment rate of newly arrived non-European immigrants lags 27% behind that of the local population, while in 2023 the federal

³⁷² European Council, 2025

³⁷³ DHS, 2025.

³⁷⁴ European Commission, 2025a

³⁷⁵ Politico, 2025

government alone spent €29.7 billion on asylum and integration programs – not including the German Länder (provinces).³⁷⁶ Lagarde also fails to mention that, according to statistics from the end of 2024, more than 20% of the German population was foreign³⁷⁷ – meaning that one-fifth of the population produced 6% of Germany's GDP, which raises serious issues of productivity, competitiveness, and added value. We can also mention the analysis by Jan van de Beek and colleagues, according to which immigration – both legal and illegal – cost the Netherlands a total of €400 billion in net expenditure between 1995 and 2019.³⁷⁸

The explanation for this phenomenon is relatively simple: the majority of immigrants entering the labor market appear at the bottom of the employment ladder in low-value-added jobs that generate little tax revenue for the state. At the same time, precisely because of their low social status, a significant proportion of them receive some form of state aid (housing, financial assistance, etc.). The hope that new arrivals will be able to fill the gaps in the European labor market, typically in jobs requiring high qualifications, is therefore not being fulfilled. This is well illustrated by the example of Germany: while the country has accepted a record number of regular and irregular immigrants over the past twelve years (3.55 million people in the latter category alone are currently residing in the country),³⁷⁹ it has not been able to significantly reduce the labor shortage: 45% of jobs requiring high qualifications remain unfilled.³⁸⁰ This clearly shows the biggest distortion in EU communication: migrants are coming (legally and illegally), but not the ones the labor market needs.

This is also explained by the fact that the EU, many Member States, and business leaders made another huge mistake: they have conflated humanitarian and market considerations. Most recently, in connection with the wave of refugees from Ukraine, it was suggested that this would be the solution to the EU's demographic and employment challenges.³⁸¹ However, the EU asylum system was not designed to alleviate labor market problems in Member States. This is all the more true because the latter can only be solved through targeted recruitment, in the form of so-called selected migration. The asylum system, on the other hand, typically attracts non-selected immigrants who – as Jan van de Beek points out in his article³⁸² –, find work at an extremely low rate due to a lack of language and skills, and most of them end up stuck in the social welfare system.

³⁷⁶ Mandiner, 2025

³⁷⁷ Destatis Statistisches Bundesamt, 2025

³⁷⁸ Van De Beek, et al., 2025

³⁷⁹ Infomigrants, 2025a

³⁸⁰ Infomigrants, 2025b

³⁸¹ Visit Ukraine, 2025

³⁸² Van de Beek et al., 2025

It is worth briefly addressing the myth of “Fortress Europe” mentioned by Borrell. Every year, around 700 million external border crossings are recorded at the EU’s external borders, the vast majority of whom are tourists.³⁸³ 5.3 million people immigrated and settled permanently in the EU in 2022, and 4.3 million in 2023, arriving for the purposes of employment, study, family reunification, and asylum.³⁸⁴ This figure is four to five times higher than what is usually stated in official communications from EU bodies (one million people) about how many immigrants Europe needs to maintain a balance in demographic and labor market processes.³⁸⁵ In this context, therefore, the reference to “Fortress Europe” appears to be an ideological remark lacking any basis in policy, statistics, or facts.

Last but not least, it is worth noting that, despite the prevailing humanitarian narrative, the majority of those arriving in Europe irregularly do not enjoy any international protection and are therefore illegal immigrants. This is demonstrated by the fact that, according to recent statistics, only 33.8% of first-time applicants receive any form of protection.³⁸⁶ The main driving force is not persecution or war, but the hope of a better life which is not a legal category. That is why statements such as “Europe is turning its back on refugees”³⁸⁷ when Member States tighten border controls seem more like ideological communication than a description of the facts. According to the statistics, Member States are saying no not to refugees, but to illegal immigration.

All these examples clearly show that EU institutions and decision-makers abandon the evidence-based policy approach expected of them, adopting instead a fundamentally ideological, desire-driven approach in language and communication that conflates migration and refugee issues, overemphasizes or simply invents their positive benefits, which is also reflected in the decisions of EU institutions.

3. The framework – the creation of a common European asylum system

The foundations of the Common European Asylum System (hereinafter: CEAS) were laid at the Tampere Summit held on October 15-16, 1999, by EU Member States Austria, Belgium, Denmark, the United Kingdom, Finland, France, Greece, the Netherlands, Ireland, Luxembourg, Germany,

³⁸³ ETC, 2025

³⁸⁴ European Commission, 2025b.

³⁸⁵ EU Observer 2024.

³⁸⁶ European Commission 2025c.

³⁸⁷ Amnesty International 2017.

Italy, Portugal, Spain, and Sweden. The Member States agreed to develop a common EU asylum and migration policy, under which they would establish partnerships with countries of origin; create a separate system for processing asylum applications valid throughout the EU; and ensure fair treatment of third-country nationals. During the summit, the European Council emphasized the need for more effective management of migration flows at all stages.³⁸⁸ The legal basis for the Common European Asylum System is provided by the Treaty of Amsterdam, which was adopted on October 2, 1999, and entered into force on May 1, 1999. Under the treaty, asylum matters fell within the competence of the EU and, within that, in the category of shared competence with the Member States.^{389 390} The aim of the common asylum policy was to ensure that within the EU where the free movement of persons has been secured by the abolition of internal borders, uniform minimum standards guarantee the assessment of those entitled to international protection and the sharing of responsibility between Member States.

Articles 78 and 79 of the Treaty on the Functioning of the European Union (TFEU) empowered the bloc to establish common asylum rules, while respecting the principles of subsidiarity and proportionality. While asylum harmonization is based explicitly on Article 78, Article 79 provides a legal basis for harmonization in the areas of legal and illegal migration.³⁹¹ Under Article 78, the common asylum policy may cover the following areas:

- a uniform status of asylum for nationals of third countries;
- a uniform status of subsidiary protection;
- common temporary protection in the event of a massive inflow;
- common procedural rules for granting and withdrawing asylum and subsidiary protection;
- criteria and mechanisms for determining which Member State is responsible for considering an asylum application, thereby establishing the legal basis for the Dublin system;
- minimum standards concerning the conditions for the reception of applicants;

³⁸⁸ European Parliament (1999)

³⁸⁹ Shared competence means that both the EU and the Member States can make and adopt binding legal acts. Member States can only exercise their competence if the EU does not exercise its competence or waives its competence. In: Eur-Lex 2022a.

³⁹⁰ Eur-Lex 1997.

³⁹¹ Eur-Lex 2012, pp. 30–31.

- a framework for partnership and cooperation with third countries for the management of inflows of persons applying for asylum or temporary or subsidiary protection.³⁹²
- Under the emergency clause, in the event of a mass inflow, the Council of the European Union may, on a proposal from the European Commission and after consulting the European Parliament, adopt provisional measures for the benefit of the Member State or Member States concerned.³⁹³

Under Article 79, the European Union may adopt measures in the following areas:

- conditions of entry and residence, as well as standards for long-term visas and residence permits issued by Member States;
- the definition of the rights of third-country nationals residing legally, including the conditions governing their movement and residence in other Member States;
- combating illegal or unauthorized immigration and residence, including common rules on removal and repatriation;
- combating trafficking in persons, particularly in the case of women and children;
- readmission agreements with third countries on behalf of the European Union;
- in order to promote integration, the European Union may adopt incentive and support measures to assist Member States' integration policies, excluding harmonising legislation;
- Member States retain the right to determine the volume of admissions for employment purposes.³⁹⁴

Between 2000 and 2005, the EU focused on establishing common minimum standards with the aim of harmonizing asylum practices in Member States. During this period, the regulations adopted were mainly concerning governing procedures for assessing asylum applications, conditions for the reception of asylum seekers, conditions for recognition as a refugee, and certain aspects of legal residence. These included the Eurodac Regulation (2000),³⁹⁵ the Temporary Protection Directive (2001),³⁹⁶ the Dublin II Regulation (2003),³⁹⁷ the Reception Conditions Directive (2003),³⁹⁸ the Qualification Directive (2004),³⁹⁹ and the Asylum Procedures Directive

³⁹² Eur-Lex n.d.

³⁹³ Radjenovic (2020)

³⁹⁴ Ibid.

³⁹⁵ Eur-Lex 2010.

³⁹⁶ Eur-Lex 2001.

³⁹⁷ Eur-Lex 2011a.

³⁹⁸ Eur-Lex 2003. p. 1.

³⁹⁹ Eur-Lex 2004.

(2005).⁴⁰⁰ The first-generation legislative instruments established a common minimum framework, but with the exception of the Dublin Regulation and the Eurodac Regulation, they were issued in the form of directives. Directives allow Member States a certain degree of leeway in their national adoption, thus preserving some of their sovereignty. The regulations and directives between 2000 and 2005 created a common basis, but in practice, national asylum systems differed significantly from one another.

The second period began in parallel with the first and lasted between 2004 and 2013. In November 2004, the Member States adopted the Hague Program, a continuation of the Tampere objectives that set out further steps for the development of a common asylum policy.⁴⁰¹ A year later, in 2005, the transitional period authorized by the Treaty of Amsterdam expired, and decision-making in asylum legislation shifted from unanimity to qualified majority voting, with the European Parliament gaining codecision powers. The Treaty of Lisbon, signed in 2007 and entered into force in 2009, further strengthened the institutional role of the EU and the principle of solidarity, the latter being enshrined in Article 80 of the TFEU, according to which the implementation of asylum and immigration policies must be characterized by responsibility and burden sharing among Member States.

The next phase of the CEAS took place between 2011 and 2013, during which time previous directives and the Dublin system were reviewed with the aim of establishing more uniform and higher standards. This resulted in the adoption of the Dublin III Regulation which relaxed the rules on determining responsibility and strengthened legal guarantees for family reunification and asylum seekers. At that time, the EU renewed the Reception Conditions Directive, the Qualification Directive, and the Asylum Procedures Directive adopted in the early 2000s. Although the CEAS was established on paper, the solidarity mechanism between Member States continued to operate on a voluntary basis and was often limited to financial support.

The 2015 migration and refugee crisis was one of the biggest challenges for the EU. More than a million asylum seekers and migrants arrived in the continent, mainly via the Mediterranean Sea. By then, the shortcomings of the CEAS had already become apparent in practice: while the frontline countries faced disproportional migration pressure, the countries of northern and western Europe became the destination countries for secondary migration. The EU saw the solution in relocation: for example, the temporary transfer of asylum seekers to other member states, in order to alleviate the burden on frontline countries (see the section of the study on the Commission),

⁴⁰⁰ Eur-Lex 2005. p. 1.

⁴⁰¹ Statewatch 2004.

primarily Italy and Greece. In 2016, the EU also introduced external measures to curb the influx: in the spring, it concluded an agreement with Turkey, in which Ankara agreed to take back migrants and tighten controls on migration to the EU in exchange for financial support and political concessions. The EU measures temporarily reduced the number of arrivals but failed to address the structural problems of the CEAS; it became clear that the entire system needed to be reformed.

The European Commission put forward reform proposals, including the revision of the Dublin system, but the reform packages ultimately came to a stall. The EU's failure stemmed from the fact that Member States were divided on the issues of asylum solidarity and responsibility which the European Commission sought to harmonize in the new Pact on Migration and Asylum launched in 2020. Based on conflicts of interest regarding asylum solidarity and responsibility, Member States can be divided into three main groups.

1. The group of Mediterranean countries: this includes the “MED5”, which are considered frontline states. Spain, Italy, Greece, Cyprus, and Malta are calling for greater EU cooperation and solidarity, as well as greater burden sharing in the management of migration. They consider the Pact on Migration and Asylum to be the “lowest common denominator” that allows for increased cooperation, but they are not entirely satisfied with its content. The five Mediterranean countries believe that greater financial support is needed from the EU institutions and are calling for new agreements to be concluded with countries of origin.⁴⁰²
2. The group of Western European countries: Member States Western European in the geographical sense, they support the introduction of the Pact on Migration and Asylum and, in some cases, call for stricter measures. In November 2025, the immigration ministers of Belgium and the Netherlands wrote a joint letter to Magnus Brunner, European Commissioner for Home Affairs and Migration, asking the European Commission to make full compliance with the Dublin system a prerequisite for assistance under the new solidarity mechanism. Under the proposed system, a separate “*clear action plan*” with measurable indicators would be drawn up for each country, with compliance to be assessed by June 2026. The letter does not specify what indicators should be used, only sets out the requirements for measurability and deadlines. Another part of the proposal is that the European Commission should record non-compliance in the Asylum and Migration Management Regulation (AMMR), which is part of the Pact, that would allow Member States to not activate their solidarity offers to countries failing to fulfill their legal

⁴⁰² Heller 2024.

obligations.⁴⁰³ The German federal government ratified the new pact on September 3, 2025.⁴⁰⁴

3. The group of Central and Eastern European countries: Member States of the Visegrad Group (V4) the Czech Republic, Hungary, Poland, and Slovakia reject the implementation of the pact. Most recently, the newly formed Czech coalition led by Andrej Babiš announced that it would propose a new asylum law instead of the pact, limiting protection to exceptional cases.⁴⁰⁵

4. The European Commission's competence creep in the field of migration and asylum policy – the new Pact on Migration and Asylum

The legal framework of the European Union's asylum system has changed significantly in recent years, and this change is a textbook example of the expansion of the Commission's powers. The previous Common European Asylum System (CEAS) legislation focused on directives enabling implementation by Member States: the directives on asylum procedures, reception conditions and the recognition of refugee status, supplemented by the 2001 Temporary Protection Directive – a total of four directives⁴⁰⁶ – formed the basis, while there were only two directly applicable EU legal acts (the Dublin Regulation and the Eurodac Regulation).⁴⁰⁷ However, by 2024 this legal structure had undergone a radical transformation: of the ten EU legal acts adopted under the new Pact on Migration and Asylum, nine are in the form of regulations and only one remains a directive.⁴⁰⁸ This means that the EU has almost completely replaced the previous directives of the asylum *acquis* (*community acquis*) – which allowed national legislators room for maneuver – with regulations.⁴⁰⁹

This change has resulted in a significant shift in powers. Regulations are directly applicable under EU law and therefore do not require transposition into national law; consequently, Member States have no discretion as regards transposition. Whereas directives allowed Member State parliaments and governments to implement EU standards through their own legislation, albeit bound by the

⁴⁰³ First Chamber of the States General 2025.

⁴⁰⁴ Alipour 2025.

⁴⁰⁵ Zachová 2025.

⁴⁰⁶ EUR-Lex 2011b.

⁴⁰⁷ European Movement Ireland 2022.

⁴⁰⁸ Riehle 2024.

⁴⁰⁹ Neidhardt 2024.

objectives, regulations take effect immediately and uniformly everywhere. This is advantageous from the Commission's point of view: it ensures that all countries comply with the rules, avoiding delayed or incomplete implementation. From the Member States' point of view, however, this harmonization drastically reduces their national room for maneuver. The codification of asylum rules in the form of regulations means that the most important provisions are determined at EU level and must be strictly followed by Member States. No room remains for Member States to apply their own specific characteristics and legal traditions, and the room for maneuver is reduced to a minimum. The Commission has openly argued that regulations will make the system more uniform and effective because they eliminate shortcomings in Member State implementation.⁴¹⁰ At the same time, there is a price to pay: the role of Member State parliaments and governments are reduced, as legislative and certain executive powers are now concentrated in Brussels. This trend—even if the legislation was adopted by a simple majority of the Council of the European Union and the European Parliament, and thus formally with the consent of the majority of Member States—fits into the process by which the EU is gradually transferring powers from the national level to its own jurisdiction. The legitimacy of the changes is formally supported by the fact that they were adopted through a democratic process, but in substance they represent a centralization at the expense of national sovereignty.

It is important to note that in the case of the new asylum package adopted in 2024, the majority of Member States supported the legal changes – with Hungary and Poland voting against it in the Council⁴¹¹ – so the Commission found a majority in favor of expanding its powers. However, this does not change the essence of the matter: the nature of the common rules has changed. While previously Member States were able to operate within a “fixed framework” but could decide on the details themselves within certain limits, now the essential issues are decided at EU level. The elimination of national differences – which is the declared goal of harmonization – also means that there is less room for Member States' political will. In the long term, this process will lead to a gradual erosion of Member State sovereignty: if the areas of national regulation constantly decrease (even in a sensitive area such as asylum), their ability to develop their own asylum policies and assert their national interests in this area will diminish. Overall, therefore, shifting asylum policy to the level of a regulation is one of the spectacular results of the Commission's “creeping” efforts to expand its powers, which is a troubling development from the point of view of Member State sovereignty.

⁴¹⁰ Ibid.

⁴¹¹ European Council 2024.

4.1. The mandatory solidarity mechanism in the new Pact on Migration and Asylum

Another key area in relation to the refugee crisis is the question of solidarity mechanisms in the context of Member State competences and EU intervention. Although Article 80 of the Treaty on the Functioning of the European Union enshrines the principle of solidarity and fair sharing of responsibility among Member States, until 2015 there was no binding legal instrument that would have prescribed the relocation of asylum seekers between Member States on the basis of this principle. This first occurred during the 2015 migration crisis: the EU established an emergency solidarity mechanism, which provided for the temporary relocation of 160,000 asylum seekers from Greece and Italy to other Member States.⁴¹² Two Council decisions were adopted: the first, by consensus and without setting quotas, on the voluntary reception of 40,000 people; the second, by qualified majority, on the mandatory relocation of 120,000 people with specific quotas for each Member State.⁴¹³ The latter was not supported by four Central European countries – the Czech Republic, Hungary, Romania, and Slovakia –, while Finland abstained.⁴¹⁴ Hungary and Slovakia appealed the decision to the Court of Justice of the European Union, but their appeal was rejected in 2017 by the Court which ruled that the quota decision was lawful.⁴¹⁵ Later, in 2020, the Court expressly condemned Poland, Hungary, and the Czech Republic for failing to comply with their obligations under the quota decision.⁴¹⁶ Although the 2015 quota mechanism was a groundbreaking step in the history of the common European asylum policy from both a legal and a political point of view, its practical implementation revealed serious shortcomings. The program, which originally aimed to relocate 160,000 asylum seekers, ultimately resulted in the relocation of only about 35,000 people, meaning less than a quarter of the target was achieved.⁴¹⁷ The ineffectiveness of the quota system was already clear at this point, as without the political will and administrative capacity of the Member States, the EU-level commitment remained purely formal. This was further exacerbated by the fact that no actual retaliation was taken against countries that voted in favor of the decision but later failed to fulfill their commitments. The failure of the mechanism thus clearly demonstrated that enforcing solidarity legally cannot substitute for political consensus, and that such top-down solutions tend to deepen divisions within the European Union rather than strengthen shared responsibility.

⁴¹² Rankin 2020a.

⁴¹³ Bejan 2017.

⁴¹⁴ Ibid.

⁴¹⁵ Court of Justice of the European Union 2020.

⁴¹⁶ Ibid.

⁴¹⁷ Párducz 2023.

The Commission used this precedent to make the mandatory solidarity mechanism permanent under the new Pact on Migration and Asylum proposed in 2020. The two key elements of the Pact – the Asylum and Migration Management Regulation (the new “Dublin IV”) and the Crisis and Force Majeure Regulation – were adopted by a qualified majority in 2024, institutionalizing mandatory burden sharing in the EU.⁴¹⁸ Under the new system, all Member States are required to participate in managing migration pressure to a predetermined extent. An annual EU solidarity number is set (by default, 30,000 people per year are relocated from the countries of first entry), to be distributed among Member States according to quotas.⁴¹⁹ As an alternative, financial contributions (€20,000 per migrant) or the provision of personnel for border management may be offered, but if there are not enough voluntary offers for relocation, the quota-based reception or payment enters into force with binding effect.⁴²⁰ Moreover, according to the rules, the Council may later raise the annual relocation target above the minimum in an implementing act if the situation so warrants, meaning that the mechanism can be tightened further.

One of the main concerns about the mandatory solidarity system is that it has developed into a coercive measure that restricts national sovereignty. The mechanism makes participation in burden sharing mandatory, within a uniform framework, regardless of whether a given Member State would prefer to deal with migration pressure in other ways. According to the Commission’s narrative, it is “*flexible solidarity*” (since it is possible to choose between relocation or financial contributions), but in reality, it creates *mandatory solidarity* that in itself contradicts the concept of solidarity. If there are not enough voluntary applications for relocation, the remainder must be taken on automatically, either in the form of accepting persons or paying a “ransom.” Thus, Member States cannot freely decide whether to accept such a sharing of responsibility – at most, they can choose its form. This is a clear withdrawal of competence, as an important part of immigration policy (the distribution of asylum seekers) is regulated by EU coercion. It is also important to note that the regulation completely ignores other measures taken by Member States to alleviate the migration and refugee crisis, such as strengthening border protection. In the case of Hungary, for example, while Budapest complied with the Schengen Agreement’s requirements for physical border protection and transparent assessment of asylum applications at a cost of €2 billion⁴²¹, the Commission did not consider this to be a solidarity measure, nor did it require other Member States to take solidarity measures that would have significantly reduced Hungary’s costs.

⁴¹⁸ Riehle 2024.

⁴¹⁹ Hierro 2024.

⁴²⁰ Genovese – Jones – Liboreiro 2024.

⁴²¹ Harvest 2025.

The formula-based quota and discrimination raise serious issues. The amount of solidarity contribution allocated to each country is calculated using a formula that takes into account the country's GDP and population in equal proportions (50-50%), which reflects a rather technocratic and bureaucratic approach. This quota system is rigid and has been widely criticized because it does not allow Member States to take into account their own reception capacity or special circumstances. The formula does not consider the burdens arising from different geographical locations – for example, a state may already manage significant migration pressure as a border country or devote considerable resources to border protection. Each country must accept its share based on its economic and demographic weight, regardless of how much pressure it faces from migration. (In terms of numbers: in the case of Hungary, the 1.62% quota means the mandatory acceptance of approximately 485 people per year, or the payment of €9.72 million, or a combination of the two). Many consider this system to be disproportionate and unfair – some even call it *discriminatory*⁴²² – because it ignores the actual burdens and Member States have no way of assessing how much they are able and willing to take on voluntarily.

Further questions of competence arise from the fact that the activation of the crisis and solidarity mechanisms – particularly in the case of crisis quotas – depends to a large extent on the Commission's decision. Under the crisis management regulation, the Commission may determine when a situation qualifies as “crisis” or force majeure in which case the solidarity mechanism should be activated. Several Member States consider this set of criteria to give the Commission too much discretion. There are no pre-defined, objective thresholds (e.g. a specific number of arrivals, asylum seekers per capita, etc.) that would automatically trigger the mechanism – the Commission's own assessment of the situation decides. In doing so, the Commission goes beyond its role as “*guardian of the Treaties*” and becomes a quasi-political decision-maker in assessing crisis situations. Particularly problematic from this point of view is that frontline countries cannot decide independently to declare their own crisis or to invoke the mechanism. For example, even if a Member State is hit by an extraordinary wave of migration, it cannot control the relocation assistance itself – it is dependent on the approval of the Commission and the other Member States. This takes away another piece of national sovereignty, as Member States can no longer independently call for the assistance they need to deal with a crisis if the Commission does not see a political reason for doing so.

Overall, the mandatory solidarity mechanism is a double-edged sword in terms of Member State sovereignty. On the one hand, it expresses the principle of EU solidarity and, at least in theory,

⁴²² Kienast 2022.

can relieve the burden on the countries most affected. On the other hand, it is a centralized, coercive solution that overrides the will of the Member States. Although it gained majority support in the Council (and is therefore politically legitimate), it threatens the sovereignty of states in the long run if it is not accompanied by flexible implementation. The lesson of the quota debate is that, legally, EU institutions can push through such crisis measures despite Member State resistance – the question is what political consequences this will have for the cohesion of the Union and the trust of its citizens.

4.2. The Issue of Mandatory Capacity for Border Procedures

The most controversial point of the new Pact on Migration and Asylum was the introduction of a quota system for procedures carried out at the border, under which Member States must take in a certain number of asylum seekers from frontline countries – primarily Italy and Greece in order to carry out asylum procedures. The number of procedures carried out at the border was set at 7,716 for Hungary: this means that Hungary must accommodate 7,716 migrants until a decision is made at the end of their asylum procedure. This number represents 25.7% of the total EU capacity. The number of applications to be considered between June 12, 2026, and June 12, 2027, was set at 15,432. The obligations imposed on Hungary significantly exceed the quotas set for other Member States, and meeting them will require disproportionate infrastructural, personnel, administrative, and IT capacity development. The European Commission failed to consider the fact that migration flows vary month by month. When setting the quotas, the Commission based its calculations on statistics from January 1, 2021, to December 31, 2023, when migration traffic at Hungary's borders were much higher. However, according to the European Commission's decision, the capacity required to meet the quotas must be maintained even if there is no need for this volume of resources. If Member States fail to comply with the requirements, the European Commission may initiate infringement proceedings before the Court of Justice of the European Union.

The above gave rise to concerns about ensuring the sovereignty of Member States. Meeting the quotas directly limits the Member States' room for maneuver in developing and operating their asylum systems. From this perspective, Hungary has been placed at a significant disadvantage as a result of the disproportionate quotas imposed. The right of Member States to sovereignty is also violated by the growing tendency of issuing EU regulations binding on all governments, while the rules on the reception of asylum seekers were traditionally in the form of directives. The pact provides examples of this: among others, it stipulates the amount of cash benefits necessary to cover the daily needs of asylum seekers.

4.3 European Union Agency for Asylum (EUAA)

Following the 2015 migration and refugee crisis, the EU expanded its competences to oversee Member State asylum systems and policies. To carry out this task, the European Asylum Support Office was transformed into the European Union Agency for Asylum (EUAA) in 2022. Although the EUAA's role, as defined by the EU, is to provide operational and technical assistance to EU authorities in the operation of the CEAS,⁴²³ in practice, the agency performs a role much more like monitoring. The investigation is planned to start in 2029 in the case of Hungary, together with Spain, Belgium, Poland, Cyprus, and Ireland.⁴²⁴ Following the monitoring, the EUAA prepares a report and develops recommendations for the Member State in cooperation with the European Commission. In the final stage, it will monitor whether the Member State in question has taken the necessary steps.⁴²⁵ The agency emphasizes that it cannot initiate infringement proceedings, which remain within the competence of the European Commission,⁴²⁶ however it can indirectly exert substantive influence on that decision.

4.4 Urging the adoption of the pact at the expense of quality

The European Commission's goal was to have the Pact on Migration and Asylum adopted during the 2019–2024 institutional cycle, before the end of the mandates of the current Commission and European Parliament. The new migration regulation was passed by Parliament on April 10, 2024, and approved by the Council of the European Union on May 14, 2024.⁴²⁷ Accordingly, the pact was adopted before the European Parliament elections on June 6-9, 2024, thus avoiding the risk of the new political balance of power overriding the plans of the bodies. The pact entered into force on June 11, 2024, followed by a transition period during which member states must prepare for the implementation of legislative acts due in June 2026.⁴²⁸ However, the tight deadline did not work in the favor of either the European Commission or the European Parliament. On the one hand, the full text of the pact has not been finalized, and since its adoption, the European Commission has put forward several additional proposals which, if approved by the Member States, would be implemented into the already adopted system before the pact is implemented. On the other hand, due to the typical conflicts of interest and political divisions between EU Member States and EU institutions, a consensus was not reached. In addition to Hungary and Poland voting

⁴²³ European Union n.d.

⁴²⁴ EUAA 2025. pp. 8–9.

⁴²⁵ EUAA 2025. p. 11.

⁴²⁶ EUAA 2025. p. 3.

⁴²⁷ European Council 2025b.

⁴²⁸ European Commission 2024.

against it, the latter's Prime Minister Donald Tusk stated on May 14, 2024, following the vote, that Poland would not accept any more migrants.⁴²⁹

In addition to the European Commission, the European Parliament also played a major role in the creation of the pact, using its own reports and resolutions to pressure the Commission to put certain issues on the agenda. These documents are primarily of political significance and often form the basis for future legislative acts.

4.5. The Commission acting within the realm of national competence: the “National Card” case

The Commission's efforts to extend its powers are not limited to the legislative sphere – it is also extending its supervisory and initiating role to areas that have traditionally been the preserve of the Member States. An example of this is the Commission's intervention in 2024 in the case of long-term residence permits (known as national permanent resident cards). In 2023, the Hungarian government extended its National Card residence permit program for foreign workers to citizens of several countries, including Russia and Belarus. Under this program, a simplified procedure – previously available only to Ukrainians and Serbs – allows workers to obtain a two-year (extendable to three years) permit to work in Hungary.⁴³⁰ The political sensitivity of this move was heightened by the war in Ukraine and the fact that the EU suspended its visa facilitation agreement with Russia in 2022, resulting in stricter EU level controls on Russian travelers.⁴³¹

In response to the new regulation, the Commission sent a letter to Hungary in September 2024 requesting detailed information on the program, with particular regard to the screening and security checks applied to Russian and Belarusian applicants.⁴³² European Commissioner for Home Affairs Ylva Johansson publicly expressed her “serious concerns,” saying that the initiative could pose a risk to the entire Schengen area due to potential espionage and sanctions evasion, raising a number of national security issues.⁴³³ Essentially, the Commission questioned whether Hungary had excessively relaxed its entry conditions for citizens of the “hostile” countries concerned.

This case is noteworthy in several respects in terms of the shift in competences. On the one hand, visa and residence permit policy is formally a shared competence – the EU establishes common rules (e.g., EU residence card, EU Visa Code), while Member States retain significant autonomy in national authorization programs. The Hungarian National Card program falls primarily within

⁴²⁹ TVP World 2024.

⁴³⁰ Liboreiro 2024.

⁴³¹ Liboreiro 2024.

⁴³² Ibid.

⁴³³ Ibid.

the competence of the Member States, but it also involves EU obligations, such as ensuring short-term movement within the region, to which public and national security risk assessments must be adapted. On the other hand, the Commission's act was not a formal infringement procedure – as it did not find an explicit breach of EU law – but rather supervisory pressure based on a request for information. The Commission asked two security-focused clarifying questions: why the extension to Russian and Belarusian citizens was justified in the given geopolitical situation; and why there was no different security screening for applicants from the two countries. Commissioner Johansson acknowledged that no formal proceedings had been initiated in the absence of a clear violation of the law, yet the criticisms expressed in several exchanges of letters and at the European Parliament hearing exerted political pressure on Hungary.⁴³⁴ The debate focused primarily on Schengen risk management and enforcement compliance issues, with the Hungarian government arguing that this part of the National Card program falls within the competence of the Member States and that its extension to Russian and Belarusian citizens was in line with EU law.

Thirdly, the question of equal treatment arises. Other Member States also issue residence permits to Russians, and there are far more Russian and Belarusian citizens in some Western European countries (e.g. Germany⁴³⁵, France⁴³⁶, Spain⁴³⁷, and Cyprus⁴³⁸) than in Hungary. However, the Commission did not investigate any of their national programs in a similar manner. From the Hungarian government's point of view, this discrimination can be interpreted as a disproportionately selective institutional practice, as a result of which the Commission subjects politically less favored Member States – in this case Hungary – to increased monitoring, thereby attempting to exert actual influence on their internal governmental processes.

Overall, the National Card case showed that the Commission is prepared to go beyond its formal powers and use supervisory tools to intervene in Member State practices if it considers them problematic according to its own (or the majority EU) political-ideological assessment. Although no specific sanctions or proceedings were imposed in the end, the Commission succeeded in keeping the issue on the agenda and implicitly exerted pressure on Hungary to tighten the program. This is an example of “soft” competence creep: it does not involve amending Treaties or transferring new rights, but rather extending the Commission's interpretative and initiating role. From the point of view of Member State sovereignty, however, it raises the question of where the line should be drawn: to what extent can the EU intervene in an area (the residence of third-country

⁴³⁴ Ibid.

⁴³⁵ Destatis Federal Statistical Office 2024.

⁴³⁶ De La Baume 2022.

⁴³⁷ La Vanguardia 2024.

⁴³⁸ Center for Analysis and Strategies in Europe 2024.

nationals) that governments typically want to keep under national control for reasons of national security? At the same time, under the Schengen rules, a residence permit issued by a Member State allows for short-term (90 or 180 days) movement within the entire area,⁴³⁹ so national programs directly affect the public order and security of other Member States. The EU can therefore demand minimum requirements and enforcement checks without formally withdrawing Member State competences.⁴⁴⁰ Moreover, with this action, the Commission also suggested that Hungary is unable – or, worse, unwilling – to subject Russian and Belarusian applicants to adequate national security screening. The same issue did not arise in relation to other countries that are also on EU sanctions lists. This again confirms that the Commission acted on political and ideological, rather than policy grounds.

4.6. EU agreements with third countries: bypassing the Council and lack of information

The external dimension of migration – the cooperation with countries of origin and transit – is another area where the Commission is seeking to strengthen its leading role, often to the detriment of Member State governments. According to Article 218 of the TFEU, the Commission is authorized to initiate negotiations on international agreements based on a mandate from the Council. In practice, however, in recent years the Commission interpreted this mandate very broadly and proved reticent in sharing information with Member States on the progress of negotiations. This trend culminated in the case of the “migration pact” concluded with Tunisia in 2023.

The EU-Tunisia cooperation agreement (MoU) was signed on July 16, 2023, by the parties, with the participation of Ursula von der Leyen, President of the Commission, and two Member State leaders, the Prime Ministers of Italy and the Netherlands.⁴⁴¹ The agreement is a non-binding political declaration announcing a comprehensive partnership that includes, among other things, economic support for Tunisia and cooperation in curbing illegal migration.⁴⁴² However, it is important to note that the EU’s founding Treaties state that the Commission must seek the approval of the Council (the Member States) before signing even non-binding agreements.⁴⁴³ In the Tunisia case, however, according to reports from Member State diplomats, the Commission did not wait

⁴³⁹ Migration and Home Affairs 2025a.

⁴⁴⁰ Eur-Lex 2019.

⁴⁴¹ European Parliament 2023.

⁴⁴² Statewatch 2024.

⁴⁴³ Ibid.

for the Council's formal approval and effectively presented the Member States with a *fait accompli* before signing the agreement.⁴⁴⁴ In connection with the preparation and signing of the agreement, several governments expressed concern about the transparency and unilateral nature of the Commission's procedure⁴⁴⁵, and the lack of transparency was later criticized by the European Ombudsman.⁴⁴⁶ The Commission neglected to provide the Council with detailed information on the exact content, financial implications, and implementation plans of the memorandum.

It appears that the Commission used the Tunisian agreement to allay the concerns of the Italian government and to build support for the pact in the Council, that is, to break up the minority blocking it. In her letter of June 29, 2023, Ursula von der Leyen already referred to the Tunisian initiative as a "blueprint" for similar partnerships, which in practice can be considered agreements based on the principle of "cash for migrant control."⁴⁴⁷ On December 20, 2023, Italian Interior Minister Matteo Piantedosi described the pact as an "victory for Italy,"⁴⁴⁸ indicating that the Commission had succeeded in winning the support of the Italian government.

The Tunisian agreement is not the only example. Since then, the EU has entered into similar strategic partnerships with several North African and Middle Eastern countries in a less than transparent manner. On March 17, 2024, a comprehensive partnership declaration was signed with Egypt⁴⁴⁹, on January 29, 2025, with Jordan⁴⁵⁰, and in May 2024, a significant financial support package was approved for Lebanon to strengthen migration cooperation.⁴⁵¹ In addition, on March 7, 2024, a specific migration partnership agreement was concluded with Mauritania.⁴⁵² These agreements are all similar: they are non-binding "Team Europe" type memoranda of understanding, which in principle require the approval of the Council (COREPER), but in practice the Commission has allowed Member States minimal say in shaping their content. In other words, the Tunisian case set a particularly unfortunate precedent, as the Commission signed the memorandum of understanding before the Council had given its formal approval. The move undermined the institutional balance, and accountability now becomes questionable.

The main criticism from Member States is that the Commission is sidelining the Council (the national governments themselves) from the process. As such partnerships usually involve

⁴⁴⁴ Ibid.

⁴⁴⁵ Andrade – Frasca 2024.

⁴⁴⁶ European Ombudsman 2024.

⁴⁴⁷ Fox-Vasques 2023.

⁴⁴⁸ ANSA 2023.

⁴⁴⁹ European Commission 2024b.

⁴⁵⁰ European Commission 2025d.

⁴⁵¹ European Council on Refugees and Exiles 2024.

⁴⁵² European Commission 2024a.

significant financial commitments, Member States want to monitor where EU funds are going and under what conditions cooperation is taking place. However, as evidence suggests the Commission fails to inform the Council of this in a timely and detailed manner. COREPER has repeatedly criticized the Commission in closed meetings for its lack of information and has called for democratic control. In its opinion of March 2024, the European Parliament’s Legal Service went so far as to indicate that if the Commission does not seek the Council’s prior approval for the signing of such a non-binding agreement, it could violate the division of powers laid down in the Treaty.⁴⁵³

All this suggests that the Commission is extending its influence in migration policy not only through internal legislation but also in the field of external relations, often at the expense of democratic oversight. From an institutional point of view, this indicates a systemic problem: the balance between Member States and EU institutions is being undermined, as the Commission is effectively concluding agreements with third countries on its own authority, with ex post approval, which again indicates that it is overstepping its role as “*guardian of the Treaties*.” From a political point of view, the interests of Member States are not guaranteed: national governments have their hands tied if they subsequently disagree with the details of an agreement because the Commission has already committed itself on behalf of the EU.

In summary, we can observe competence creep in the Commission’s migration negotiations with third countries. While complying with the formal framework (Article 218 TFEU) – requesting authorization from the Council to negotiate – in practice, it takes the substantive decisions alone, presenting Member States with a *fait accompli*. This practice undermines the role of the Council (and indirectly that of Member State democracies) and raises questions about the EU’s democratic accountability in migration policy.

4.7 Proposal for a Return regulation: another area at risk

In early 2025, the European Commission presented its proposal for a new EU Return Regulation to replace the 2008 Return Directive.⁴⁵⁴ The aim of the draft is to standardize and streamline the procedures for the removal of illegal third-country nationals at EU level.⁴⁵⁵ Although this may seem like a technical issue at first glance, the proposal contains several elements that once again point towards a reduction in Member States competences and has been met with a mixed reception.

⁴⁵³ Statewatch 2024.

⁴⁵⁴ European Council on Refugees and Exiles 2025.

⁴⁵⁵ Ibid.

The EU hopes that this will increase the return rate, which is currently only 20%, and that a uniform, binding framework replacing the 27 national systems will prevent misuse. However, the establishment and maintenance of reception centers would remain within the competence of the Member States even though the involvement of partner countries is fundamentally a matter of financial incentives. The other part of the package of proposals aims to increase voluntary returns: forced returns would still be mandatory if a person residing illegally in the EU does not cooperate with the authorities or poses a security risk. Member States would have to determine within a short period of time whether the migrant concerned poses a risk – if so, their return would be mandatory.⁴⁵⁶ However, a number of concerns have been raised about the proposal. The primary question is, what happens to rejected asylum seekers who cannot be transported from reception centers to their home countries? And how long can they be held in the centers before the Member States that rejected them are required to take them back?

One of the most controversial elements is that the Commission’s proposal would make it mandatory for Member States to maintain and finance “voluntary return and reintegration programs.” These are programs that provide financial or other support to illegal migrants in case of voluntary return, helping reintegration into their home countries. Hungary and several other countries fear that making such programs mandatory could have a “pull effect”: if rejected asylum seekers can count on financial assistance to return home, it could even encourage them to leave (“if I don’t get asylum, I’ll still get money if I go home”).⁴⁵⁷ They consider it particularly problematic that the proposal would not exclude those who pose a threat to public order or national security or who committed a criminal offense. Currently, the existence and conditions of such programs are entirely within the competence of the Member States—some countries operate such programs with the assistance of the IOM (the UN International Organization for Migration), while others reject them for policy reasons. Nevertheless, the Commission would make it an EU obligation for every country to maintain at least one program, thereby bringing another area of national policy-making under the EU framework.

Discussions on the proposal began in the Council’s working groups in the spring of 2025, and the establishment of such a voluntary return program was already recommended to Hungary in connection with its 2024 Schengen evaluation. This shows that EU pressure is strong: even if the regulation is not yet final, other means are used to try to get Member States to contribute to the goal. From a sovereignty perspective, this is concerning because the enforcement of expulsions and decisions on human policy relating to migrants have so far been the responsibility of the

⁴⁵⁶ European Commission 2025e.

⁴⁵⁷ Council of the European Union 2020.

Member States, including whether to provide reintegration support. The Commission argues that this approach is more effective in the long term because voluntary return is cheaper and more sustainable than forced deportation. At the same time, some Member States believe that this decision should remain in national hands.⁴⁵⁸

Article 7 of the draft deserves special attention because it touches on a sensitive issue: the extent to which the reasons for expulsion must be communicated to foreigners awaiting deportation. Paragraph 3 would state that the right to detailed reasons may be restricted if full reasons would jeopardize public order, public safety, national security, or the prevention of crime. At the same time, the person concerned must still be informed of the substance of the reasons underlying the decision in order to ensure effective legal remedy. In other words, if someone is expelled for reasons of national security, the authorities may refuse to provide detailed reasons, but they must still share some information with the person concerned. Several Member States, including Hungary⁴⁵⁹, consider this a dangerous compromise because, due to the nature of national security matters, it is often undesirable for the person concerned to have any information at all (as this could reveal sensitive sources and methods). The wording of the proposed article could therefore affect the scope of action of national security services, which is one of the fundamental attributes of sovereignty.

To sum up the problems with the draft, it can be said that in its current form, it could be another “pull” factor: mandatory voluntary return programs could easily become part of the “push-pull” dynamics of migration. Member States fear that if the EU guarantees a minimum support even to rejected applicants (return assistance, financial assistance to start over at home), it will reduce the risk of illegal migration in the eyes of those involved, as it practically guarantees the partial reimbursement of the amount paid to smugglers, thereby increasing the number of people attempting to migrate. This would be contrary to security and deterrence objectives and would further complicate the management of illegal migration.

The draft would also significantly reduce national competences to combat illegal migration. Under Article 79 of the TFEU, the Return Directive (2008/115/EC) already lays down minimum standards for return procedures (e.g. order of removal, legal remedies, time limits on detention – as a general rule, up to 6 months, extendable to 18 months under specific conditions).⁴⁶⁰ Elevating this to a regulation, on March 11, 2025, the European Commission initiated the creation of a directly applicable, common EU return system and the introduction of a European Return Order,

⁴⁵⁸ Dumbrava – Radjenovic 2024.

⁴⁵⁹ EUR-Lex 2022b.

⁴⁶⁰ Eur-Lex 2008.

with mutual recognition of Member State decisions and more uniform procedural rules.⁴⁶¹ The Commission itself acknowledges that, for example, the proposal would drastically limit the minimum time available for voluntary departure and broaden the scope of possible cases of detention (raising the upper limit to 24 months).⁴⁶² Some of these changes could make deportation more effective, but they would also impose a uniform framework on Member States' practices in an area where flexibility was possible until now.

Financial dependence and conditionality could be particularly problematic. Currently, the Commission is withholding EU funds from certain Member States (including Hungary) on the grounds that the fundamental rights enshrined in the Charter are not being upheld in return practices.⁴⁶³ In Hungary's case, the disbursement of part of the Asylum, Migration and Integration Fund (AMIF) was suspended at the beginning of 2024 on the grounds that there was no adequate mechanism for monitoring violations in the procedures, thus failing to meet the horizontal condition of the Charter.⁴⁶⁴ This means that the costs of Hungarian return programs are currently borne largely by the national budget, because the EU will not reimburse them until the Commission considers the conditions met. If, in the future, the regulation obliges the country to maintain such programs but the EU funds necessary for their financing continue to be withheld, this will result in a double burden: a simultaneous reduction in competences and a financial penalty.

4.8 Reassessment of “safe third countries”

Two months after the first supplementary package, in May 2025, the European Commission presented a new proposal to amend the conditions for applying the concept of “safe third countries.” Under the proposal, Member States would be able to determine which countries they consider safe and could carry out removals to safe third countries where the asylum seeker merely transited, or even to countries they never visited. Unaccompanied minors would be exempt from the regulation, for them the condition of having a connection with the third country would remain. However, the proposal emphasizes that only those countries can be considered safe that are also deemed safe under EU law. The latter includes, among other things, protection against refoulement, serious harm on grounds of race, nationality, social group or political opinion, and a real risk to the right to life and liberty. The European Commission would verify whether agreements or conventions concluded by Member States comply with the conditions laid down in

⁴⁶¹ Migration and Home Affairs 2025b.

⁴⁶² European Council on Refugees and Exiles 2025.

⁴⁶³ Baccini 2024.

⁴⁶⁴ Ibid.

EU law.⁴⁶⁵ This supplementary package partly runs counter to Member States' demands, as it does not allow for the deportation of numerous criminals or persons posing a threat to national security. Twenty Schengen countries – Belgium, Bulgaria, the Czech Republic, Finland, Greece, Ireland, Lithuania, Malta, Norway, Slovakia, Austria, Cyprus, Estonia, Germany, Hungary, Italy, Luxembourg, the Netherlands, Poland, and Sweden – sent a joint letter on October 16, 2025, to Magnus Brunner, the European Union Commissioner for home affairs and migration. The signatory governments asked the EU to raise the resumption of deportations to Afghanistan to the EU level. The Member States pointed out that in 2024, 22,870 Afghan citizens were expelled, but only 435 returned home. The letter also urges the deportation of those who pose a security risk.⁴⁶⁶ So far, Germany has been the most active in negotiations with the Taliban, who have been ruling Afghanistan since August 2021, resulting in two shipments of Afghan migrants to Kabul with the help of Qatar. On October 20, 2025, Austria also resumed the deportation of Afghans: a man in his thirties was transported via Istanbul to Kabul where he arrived the next day. The man had been sentenced to four years in prison by an Austrian court on charges of aggravated assault and rape, and was deported after serving his sentence.⁴⁶⁷ However, there is little chance that the EU will take up the issue of deporting Afghans, as it refuses to negotiate with the Taliban and does not consider the country a safe country of origin.

4.9. Conclusions regarding the European Commission

The examples above make it clear that the European Commission has responded to the migration crises of the past decade with an expansion of its competences. Whether it is the replacement of asylum directives with regulations, the introduction of a mandatory distribution mechanism, supervisory intervention in matters falling within the competence of Member States, or the marginalization of the Council in agreements with third countries, the same trend can be observed everywhere: deeper integration at the expense of Member State sovereignty. This process often takes place through a series of small, creeping steps, and at other times amid open political battles (as in the case of quota decisions). The end result, however, is the same: common policy becomes more “communitarian,” and the scope for alternative national approaches narrows.

It is important to emphasize that not all changes are negative. Certain reforms and solidarity were indeed needed in European migration policy. The question is how to reconcile these with the diversity of the EU and the legitimate demands of the Member States. At present, we are seeing a

⁴⁶⁵ Eur-Lex 2025.

⁴⁶⁶ Euractiv 2025.

⁴⁶⁷ Haneke 2025.

significant increase in the power of the Commission (and EU institutions in general) in this area, while the influence of Member States has weakened. If this imbalance persists, it may become politically unsustainable: dissatisfaction may grow in several Member States, Eurosceptic voices may become stronger, and the enforceability of common policies may deteriorate. At the same time, it is questionable whether the measures will actually help to reduce migration pressure: the picture in this area is mixed, to say the least.

What can be done? It is crucial for Member States to make use of the tools they still have at their disposal: to build coalitions in the Council and the European Council to protect their interests, and to hold the Commission strictly accountable for compliance with its Treaty obligations (such as the proper involvement of the Council). The principle of subsidiarity – whereby the EU should only act when Member States cannot act effectively – must be brought back to the fore. In addition, legal remedies are available: if the Commission or another EU body exceeds its powers, Member States can appeal to the Court of Justice (even if this has had mixed results so far). It is also important to enforce transparency on the part of the Commission – for example, in agreements with third countries, the Council and Parliament must insist on regular, detailed information.

Ultimately, the question is how the EU can strike a healthy balance between joint action and national sovereignty in a complex area such as migration. The trend so far has been towards centralization, but there is also strong resistance from Member States. The coming period will determine whether the “creeping expansion of competences” will continue or whether Member States will be able to put the brakes on it with a more thoughtful, consensus-focused approach. In any case, it is certain that the development of migration policy will be a litmus test for the future structure of the EU: the practice that is now emerging could set a precedent for other policy areas in terms of deepening or even correcting integration. The real solution may lie in the EU recognizing the specific characteristics of its Member States and building genuine flexibility into common rules—otherwise, harmonization could easily turn into disharmony under political realities.

5. The European Union’s double standards

Since the 2015 migration and refugee crisis, the EU has been accused of double standards on migration and refugee issues on numerous occasions. Some Member States believe that EU institutions and leaders do not treat all countries equally when they apply solutions that deviate

from the framework of the common migration policy. The following summary shows specific cases where the EU's double standards can be demonstrated.

5.1 Border fences and border protection

During the 2015 migration and refugee crisis, Hungary built a temporary fence on its southern border with Serbia for border control purposes to prevent illegal border crossings. This move was harshly criticized by EU leaders. After construction began, the European Commission stated that it did not support the erection of fences. A spokesperson for the Commission emphasized that as long as the government did not use EU funds, did not violate EU or international law, and respected the rights of asylum seekers, it was the responsibility of Member States to protect their borders.⁴⁶⁸ Two years later, in 2017, Hungarian Prime Minister Viktor Orbán wrote a letter to the former president of the European Commission. The head of government asked Jean-Claude Juncker for the EU to cover half of the costs of protecting the southern border, approximately €440 million.⁴⁶⁹ Despite Viktor Orbán arguing that by closing its borders and training and deploying approximately 3,000 border guards, Hungary was protecting not only itself but the whole of Europe from irregular migrants, the European Commission rejected the request.⁴⁷⁰ In December 2020, the Court of Justice of the European Union ruled that Hungary's practice violated EU law and called on the country to end the violation. In the summer of 2023, the EU imposed a €200 million fine on Hungary and threatened to impose a daily fine of €1 million.⁴⁷¹ On September 11, 2025, György Bakondi, the Prime Minister's Chief Advisor on Internal Security, reported that Hungary had prevented more than 1.1 million illegal immigrants from entering Europe over the past ten years.⁴⁷²

In the early years of the migration and refugee crisis, the EU rejected the idea of fences and physical border barriers. In a spectacular turnaround, in March 2020, EU leaders openly supported Greece's border protection efforts during the migration incident on the Turkish-Greek border. Turkish President Recep Tayyip Erdoğan announced that, despite the agreement concluded with the EU in 2016, he would allow refugees to continue their journey from Turkey because the country could no longer cope with the mass arrival and care of Syrian refugees. Following his announcement, thousands of migrants set off for the Greek border, prompting the Greek government to order increased border protection.⁴⁷³ Unlike in the case of Hungary, the EU framed

⁴⁶⁸ Sander 2015

⁴⁶⁹ France24 2017.

⁴⁷⁰ Nielsen 2017.

⁴⁷¹ Deutsche Welle 2024.

⁴⁷² MTI 2025.

⁴⁷³ Al Jazeera 2020.

the border closure as legitimate defense against a hybrid threat. President of the European Commission Ursula von der Leyen thanked Athens for protecting Europe's borders as a "shield" and announced that the EU would provide Greece with €700 million in EU funds, including €350 million in immediately available funds earmarked for upgrading border infrastructure.⁴⁷⁴ The Greek example indicates that the EU has begun to reinterpret the rules, and in certain cases—if a third country uses migration as a weapon—it considers acceptable the exceptional tightening of restrictions. The same holds true even for the practice of pushbacks, which also elicited fierce criticism in the case of Hungary.

Since 2021, Poland and the Baltic states have also been facing increased migration pressure from neighboring Belarus: as part of its hybrid warfare strategy, Minsk began supporting the influx of migrants, mainly from the Middle East and North Africa, following the deterioration of relations with the European Union. The increased migration pressure has particularly affected Poland, but data from the European Border and Coast Guard Agency (Frontex) show that the Polish border has not been under as much pressure in recent years as the Hungarian-Serbian border. In 2022, the agency recorded 145,600 irregular border crossings on the Western Balkan migration route, which includes Hungary, representing a 136% increase compared to 2021 data. In contrast, only 6,127 irregular border crossings were registered from Belarus, representing a 25% decline compared to the previous year's figures.⁴⁷⁵ The trends for 2023 were similar: although traffic on the Western Balkan route decreased by 31% to 99,068, it still significantly exceeded traffic from Belarus, where 12% fewer irregular border crossings were recorded, totaling 5,608.⁴⁷⁶ In response to the migration crisis on the Polish-Belarusian border, Charles Michel, President of the European Council, proposed in autumn of 2021 that, contrary to previous practice, the EU should be able to legally finance border fences. At the time, even Ursula von der Leyen condemned the use of EU funds to finance barbed wire fences.⁴⁷⁷ Nevertheless, the Polish government decided to build a border fence designed to be 186 kilometers long and 5.5 meters high, equipped with motion detectors and thermal cameras.⁴⁷⁸ The border fence was completed in the summer of 2022 at an estimated cost of €353 million, which was later supplemented by approximately €71.8 million spent on the construction of the electric barrier.⁴⁷⁹ Since then, there has been a sharp shift in the position of EU officials. On August 31, 2025, Ursula von der Leyen paid an official visit to the Polish-Belarusian border with Polish Prime Minister Donald Tusk to assure EU support for Member States sharing

⁴⁷⁴ Rankin 2020b.

⁴⁷⁵ Frontex 2023.

⁴⁷⁶ Frontex 2024.

⁴⁷⁷ Bayer 2021.

⁴⁷⁸ Tondo 2022.

⁴⁷⁹ InfoMigrants 2024.

borders with Russia or Belarus.⁴⁸⁰ Ursula von der Leyen said she stood in solidarity with Poland, which she called a frontline country in her speech. She promised that the EU would significantly increase its investment in migration, border management and protection. However, she also emphasized in her statement that only countries with a direct border with Russia or Belarus would be eligible for joint financing in the future. The President of the European Commission pointed out that protecting Europe's borders is a shared responsibility.⁴⁸¹ During this period, the President of the European Commission also visited Latvia, Finland, Estonia, Bulgaria, Lithuania, and Romania to assure their governments of the EU's support.⁴⁸² The EU's double standards were also evident in relation to the Polish border fence: while it described the border fence erected by the Hungarian government as inhumane and unacceptable, it treats the Polish border wall as a symbol of European unity. The difference can be explained in part by the different geopolitical contexts, as the EU views Belarus and Russia as hostile neighbors. Although both Hungary and Poland responded to migration pressure with border fences, the EU treats them differently: it sanctioned the former and assured the latter of its support.

A third example of the EU's double standards on border protection and border fences is Croatia, where civil society organizations have been documenting the violent repulsion of asylum seekers and pushback practices on its border with Bosnia for years. In 2020, several asylum seekers reported being robbed and beaten, and some had red crosses spray-painted on their heads by Croatian police officers. In another case, soldiers captured two groups of migrants near the Slovenian border and handed them over to the Croatian police.⁴⁸³ Despite the abuses at the border, in December 2022, the Council of the European Union approved Croatia's admission to the Schengen area, of which it has been a member since January 1, 2023.⁴⁸⁴ Human rights organizations criticized the EU's move, saying that it was rewarding Croatia for stopping migrants at the EU's external borders. They emphasized that the EU turned a blind eye to even the harshest measures taken to achieve this.⁴⁸⁵ The case also highlighted a regulatory paradox within the EU: while the EU promotes the rule of law and respect for fundamental rights, it chose to ignore the violations at Croatia's borders.

⁴⁸⁰ Notes from Poland 2025a.

⁴⁸¹ Pozirk 2025.

⁴⁸² Notes from Poland 2025a.

⁴⁸³ Tondo 2020.

⁴⁸⁴ Council of the EU 2022.

⁴⁸⁵ Human Rights Watch 2022.

5.2 Migration solidarity and quotas

The EU's response to the 2015 migration and refugee crisis included a mandatory refugee distribution quota system as part of an emergency solidarity mechanism, which would have been used to alleviate migration pressure on frontline countries Italy and Greece. In May 2015, the EU issued a recommendation, based on Article 78 of the TFEU, on the relocation of 40,000 asylum seekers to other Member States. The scheme would have operated on a voluntary basis, without a quota system.⁴⁸⁶ However, in September 2015, EU Member States voted in favor of a mandatory quota-based system for the reception of asylum seekers, under which a total of 120,000 them would have been distributed among the countries.⁴⁸⁷ Romania, the Czech Republic, Slovakia, and Hungary voted against the mandatory quotas, and two years later, in 2017, the Court of Justice of the European Union (CJEU) launched infringement proceedings against Hungary, Poland, and the Czech Republic for refusing to accept migrants. The court accused the three countries of failing to comply with their relocation obligations.⁴⁸⁸ The case eventually went to Court of Justice of the European Union, which ruled in April 2020 that the three countries had failed to comply with their EU legal obligations.⁴⁸⁹ In the meantime, the quota program expired, but other Member States also resorted to tricks during the quota dispute and the EU did not hold them accountable. Western European countries typically took in only a symbolic number of asylum seekers from the frontline countries. By February 5, 2018, Germany had taken in 4,908 people from Italy and 5,371 from Greece. The other Member States registered much lower numbers: Austria took in a total of 29 asylum seekers, Belgium 1,165, France 4,907, the Netherlands 2,694, and Sweden 3,046.⁴⁹⁰

After lengthy negotiations, in 2024 the EU adopted the new Pact on Migration and Asylum presented in 2020, with the solidarity mechanism once again becoming one of its cornerstones.⁴⁹¹ The new system is more flexible in its approach to the reception of asylum seekers: governments can opt out by paying a solidarity contribution of €20,000 for each rejected person to the frontline country concerned or by providing operational support for border management.⁴⁹² The European Commission set a target of 30,000 asylum seekers to be relocated annually, as well as €600 million in financial support for Member States, to be reassessed each year by the Council of the European Union.⁴⁹³ Both Hungary and Poland rejected relocation, but there is a significant difference in the

⁴⁸⁶ European Commission 2015.

⁴⁸⁷ BBC 2015.

⁴⁸⁸ BBC 2017.

⁴⁸⁹ Sandford 2020.

⁴⁹⁰ Statewatch 2018.

⁴⁹¹ European Council 2025a.

⁴⁹² Blenkinsop 2023.

⁴⁹³ Etias 2025.

EU's assessment of the two countries' situation. Warsaw argued that the migration crisis on its border with Belarus and the large number of Ukrainian refugees⁴⁹⁴ already place too great of a burden on the country.⁴⁹⁵ In October 2025, the Polish government announced that the EU had agreed to exempt Poland from accepting asylum seekers.⁴⁹⁶ The EU's decision indicates that it considers Poland a country under migration pressure and, in connection with the new Pact on Migration and Asylum, also takes into account the large number of Ukrainian refugees it has taken in. In the case of Hungary, however, no similar exemption is envisaged, even though Frontex data confirm that the southern border is under greater migration pressure than the Polish-Belarusian border, and that there are more human trafficking networks operating on the Western Balkan route, including in the region on the Serbian side of the border. So while the EU is flexible in its application of the principle of solidarity in the case of Warsaw, it insists that all Member States must share the burden of the refugee crisis in the case of Budapest. Although no other Member States⁴⁹⁷ have been granted exemptions so far, the Polish example clearly shows that the EU is willing to make exceptions and disregard the application of uniform principles on the basis of political considerations.

6. Competence creep in the case law of the Court of Justice of the European Union

Founded in 1952 and based in Luxembourg, the Court of Justice of the European Union (hereinafter: CJEU, Court) is the judicial body of the European Union and the European Atomic Energy Community (Euratom). It has two judicial forums: the Court of Justice and the General Court. Their most important tasks are to review the legality of the Union's legal acts and to ensure the uniform interpretation and application of Union law.⁴⁹⁸

With the expansion of EU integration processes, the number of case types falling within the jurisdiction of the CJEU has gradually increased. However, at least according to the relevant

⁴⁹⁴ According to data from the United Nations High Commissioner for Refugees (UNHCR) on September 9, 2025, Poland had the highest number of registered Ukrainian refugees, with 1,006,900. In: UNHCR 2025.

⁴⁹⁵ Sanderson 2025.

⁴⁹⁶ Notes from Poland 2025b.

⁴⁹⁷ So far, only Hungary and Poland have consistently rejected the implementation of the new Pact on Migration and Asylum, but after the meeting of EU asylum and interior ministers in Luxembourg on October 14, 2025, several ministers indicated that they were unwilling to accept more asylum seekers. Belgian Minister of Immigration, Anneleen Van Bossuyt, stated that her country was disproportionately affected by secondary migration, i.e. too many migrants arrived from other EU member states. She said that Belgium would be willing to pay the frontline countries instead of accepting asylum seekers. In: MIGRATION RESEARCH INSTITUTE 2025.

⁴⁹⁸ Curia.europa.eu 2025.

legislation, its jurisdiction does not extend to overriding the application of legislation falling within the exclusive national jurisdiction of Member States. Articles 4 and 5 of the Treaty on European Union, in particular, state clearly that any competences not conferred on the Union by the Treaties remain with the Member States.

Nevertheless, the CJEU is now not only the guardian of EU law in Luxembourg, its decisions often disregard Member State legislation without any authorization to do so. This “competence creep” is particularly noticeable in asylum and immigration matters where the CJEU, although formally only interpreting the law, is in fact extending the scope of EU law. These decisions often go beyond the specific case, as the European Commission and the European Parliament later build new EU rules based on these precedents.

Examples of proceedings against Hungary and other Member States in the field of migration and asylum testify to this phenomenon, some of which we describe in detail below.

6.1. Legal cases concerning Hungary

6.1.1 The case of “classified information”

On September 22, 2022, a judgment was handed down in Luxembourg in a case that is exemplary in terms of how the CJEU can gradually extend EU law.⁴⁹⁹ Case C-159/21 examined Hungary’s asylum procedures, specifically how refugee or subsidiary protection (in this case, beneficiary of subsidiary protection) status can be revoked on the grounds of national security.

In this specific case, in 2002, a Hungarian court imposed a prison sentence on a third-country national, referred to as G.M., for drug abuse. While serving his sentence, G.M. applied for asylum in Hungary in 2005. Following this application, he was granted “accepted” status, but lost it in 2010. After submitting another application for asylum, G.M. was recognized as a refugee by the Budapest-Capital Regional Court in its judgment of June 29, 2012. However, in a decision dated July 15, 2019, the National Directorate-General for Aliens Policing revoked G.M.’s refugee status, denied him subsidiary protection status, and applied the principle of non-refoulement to him. That decision was based on an unsubstantiated statement issued by the Constitution Protection Office and the Counter-Terrorism Center (hereinafter: the competent authorities), in which those two authorities concluded that G.M.’s presence posed a threat to national security. After exhausting all legal remedies in Hungary, G.M. brought proceedings before the CJEU.⁵⁰⁰

⁴⁹⁹ Curia.europa.eu 2022.

⁵⁰⁰ Ibid.

The essence of the Hungarian practice was that the acting authority often relied on statements by specialized authorities – such as the opinion of the national security services – which did not contain any justification and which neither the applicant nor his lawyer could access. In its defense, Hungary argued that the courts were able to review these decisions on the basis of other evidence, thereby ensuring the right to a fair trial and effective legal remedy.

However, Luxembourg saw things differently. The CJEU ruled that the protection of national security interests alone cannot override the guarantees provided by EU law.⁵⁰¹ If a decision is made against someone on the basis of classified information, that person must at least be given the opportunity to know the substance of the decision and to respond to it in a meaningful way, otherwise the defense becomes a mere formality. In other words, if the decision-making authority of a given nation state accepts the opinion of the competent authority without justification, this is contrary to EU law.⁵⁰²

The ruling had far-reaching implications in Hungary. Based on the logic of the decision, all Member States must ensure that national security interests do not override the fundamental principles protected by EU law in asylum procedures.⁵⁰³ This is an excellent example of how the CJEU can achieve real legal development and the withdrawal of competences, apparently through interpretation only.

This judgment clearly shows the “fine-tuning” of the EU legal system: without formal legislative changes, through judicial interpretation and with very tangible legal policy consequences. This is how legal interpretation becomes a transfer of powers in Luxembourg: the CJEU is gradually transforming EU asylum rules, often without anyone saying that this is actually an expansion of its powers.

In principle, in the field of asylum and migration policy, the CJEU has broadened the application of EU law in favor of the former of the two major “schools” of thought, namely the human rights approach, as opposed to the public security approach. However, this contradicts the changing trends, as it is becoming increasingly apparent that, instead of law enforcement and legislation often cloaked in human rights arguments, most Member States are tightening asylum and migration rules in their national legislation. Terrorist acts committed by migrants and organized crime circles typically consisting of gangs recruited on ethnic grounds are causing fear among the

⁵⁰¹ EUAA 2022.

⁵⁰² Eur-Lex 2013. Directive 2013/32/EU, Article 23

⁵⁰³ Eur-Lex 2011b. Directive 2011/95/EU, Articles 14-17

local population – often including the majority of legally residing, law-abiding immigrants –, and are pushing Member State legislators towards stricter regulations focused on public safety.⁵⁰⁴

6.1.2 National security issues and judgments affecting family members of EU citizens outside the EU

On April 25, 2024, the Court of Justice of the European Union issued a joint decision in two cases (case numbers: C-420/22 and C-528/22) that also involved national security considerations.⁵⁰⁵

The Hungarian authorities sought to refuse residence to two third-country nationals living in Hungary (a Turkish national with the initials N.W. and a Nigerian national with the initials P.Q.) on grounds of national security. The Szeged Regional Court, which was hearing the case, referred the matter to the Court of Justice of the European Union for a preliminary ruling. According to the CJEU's judgment, Member States cannot disregard the rights derived from EU law, even if there are legally regulated national security arguments at Member State level.⁵⁰⁶

The CJEU also stated that a Member State cannot automatically withdraw the residence permit of a third-country family member of an EU citizen if a Member State's special service has determined, without providing any justification, that the family member's presence in the country poses a risk to national security. According to the CJEU, it must also be examined whether the relationship between the EU citizen and the family member is such that it would effectively force the EU citizen to leave the EU if the family member were not allowed to remain.

Furthermore, the judgment emphasizes that if the information on which the decision is based is classified and the person concerned or their legal representative is not given at least the essential reasons for the decision, then the Member State's rules are incompatible with Article 20 of the Treaty on the Functioning of the European Union (rights arising from EU citizenship) and Article 47 of the Charter of Fundamental Rights of the European Union (right to legal remedy).⁵⁰⁷

Although the CJEU did not claim that the entire competence for national security would be transferred to the Union – the decision clearly states that the protection of national security is the exclusive competence of the Member States (based on Article 4(2) TEU)⁵⁰⁸ – its judgment did in fact override the regulations falling within the competence of Member States. The judgment is not

⁵⁰⁴ Government of Hungary 2025.

⁵⁰⁵ Curia.europa.eu 2024.

⁵⁰⁶ TFEU Article 20; Charter of Fundamental Rights of the European Union Article 47; cf. Judgments C-420/22 and C-528/22, paragraphs 32-39 (comparison of national security classification and procedural rights).

⁵⁰⁷ Ibid. paragraphs 40–45; the CJEU ruled that national rules that do not allow access to the substance of classified information are contrary to EU law.

⁵⁰⁸ Pech, L. – Kochenov, D 2021.

about the EU taking over the area of national security, but about the fact that Member States must enforce the rights of EU citizens and their family members within the framework of EU law, even if the decision is made on the basis of national security.

The “creeping withdrawal of competence” in these two cases is evident in that the Court of Justice of the European Union seemingly only interpreted procedural guarantees, but in fact imposed an obligation on Member States that also affects national security decision-making, which falls within the exclusive competence of Member States. The Court does not create a new legal basis, but rather, through its interpretation, establishes requirements that broaden the scope of EU law and narrow the room for maneuver for Member States. This is because what formally remained within the competence of the Member States has been superseded in substance by EU restrictions. National security is clearly an exclusive competence of the Member States under Article 4(2) of the Treaty on European Union, yet in its judgment, the CJEU interpreted Article 47 of the Charter of Fundamental Rights (the right to a fair trial) and Article 20 of the Treaty on the Functioning of the European Union (the rights of EU citizenship) as limiting the procedural freedom of Member States in matters of national security. In other words, although national security classification and the classification of information are, in principle, a matter for Member States, the Court ruled that the “essence” must be communicated to the person concerned even if the information is classified. In practice, this constitutes interference in national security procedures without the authorization of EU law.

The Court did not examine the substance of the national security decision, but it extended the EU interpretation of the right to legal remedy to this area. However, this meant that EU fundamental rights appeared as a kind of “Trojan horse” in the area of Member State sovereignty. Formally, the decision concerns procedural safeguards, but in fact it determines how national authorities and courts should treat national security classifications. Thus, Member States can no longer invoke secrecy without restriction, as the disclosure of the substance of the reasoning has become an EU requirement. In the absence of EU legislation on the matter, the CJEU limits the powers of Member States through its interpretation of the law. The sovereignty of Member States remains formally intact, but in practice, the CJEU’s interpretation of the law has determined how national security considerations should be weighed and when the substance of classified information should be disclosed to the person concerned. This type of “legal shadow extension” is one of the most characteristic ways in which EU competences have been expanded: there has been no change in EU legislation, yet the Union’s actual influence has grown.

6.1.3 Excessive penalties compared to the Commission's request

In its judgment C-123/22, published on 13 June 2024, the Court of Justice of the European Union ordered Hungary to pay a lump sum of €200 million and €1 million for each day of delay (essentially a penalty) for violating EU immigration policy.

The background to the decision is that in December 2020, the CJEU (in its judgment in case C-808/18) found that Hungary failed to comply with EU law in areas such as access to international protection procedures, staying in transit zones, or returning illegally staying third-country nationals. As the European Commission did not consider that Hungary had fully implemented this earlier judgment (although Hungary had closed the transit zones), it brought a new infringement action, which resulted in the new, more severe fine. In its judgment, the CJEU pointed out that Hungary had deliberately withdrawn from the EU's common policy and the application of EU rules, thereby violating the principle of loyal cooperation, jeopardizing the unity of EU law, and creating a situation that was significant from the point of view of asylum seekers and the public interest.⁵⁰⁹

The Hungarian government called the ruling “outrageous, unfair, and unacceptable,” claiming that it “contradicts EU law” and is incompatible with the Hungarian constitution and the country's migration policy.⁵¹⁰ The European Commission originally sought only a €7 million fine and a daily penalty payment of HUF 6 million, but the CJEU imposed a much higher penalty, which, in our view, can also be interpreted as an example of competence creep.

In its action, the Commission requested that the CJEU order Hungary to pay a lump sum of €5,468.45 per day, but at least €1,044,000. It took the above-mentioned judgment of 17 December 2020 as the starting date. It also requested the Court to order Hungary to pay a daily penalty of €16 393.16 for the period from the date of delivery of the present judgment until the date of compliance by Hungary with the judgment in *Commission v Hungary* 2020.⁵¹¹

Hungary argued, among other things, that the Commission incorrectly assessed the seriousness of the infringement in question, as it did not take into account the closure of the transit zones in Röske and Tompa, the new Hungarian asylum regulations, the increasing pressure of illegal migration, and the consequences of Russian aggression against Ukraine.⁵¹²

⁵⁰⁹ Curia.europa.eu 2024.

⁵¹⁰ Legal Forum 2024.

⁵¹¹ Curia.europa.eu 2024.

⁵¹² Ibid.

In its judgment, the CJEU referred to its broad discretion and the need for the fine to be proportionate to the infringement committed as reasons for imposing a fine that was significantly higher than that requested by the Commission. In this regard, the Court cited its judgment of December 14, 2023, in Case C-109/22 as an example, in which Romania was found guilty of failing to close 31 landfills, which should have been done on the basis of a 2018 judgment. However, the judgment against Romania pales in comparison to that imposed on Hungary with a lump sum of €1.5 million and a daily penalty of €600.⁵¹³

6.1.4 The review of national registration of gender on an EU level

Case C-247/23, concluded with the CJEU judgment of 13 March 2025, “Deldits case” (from 1 January 2023, in cases involving sensitive personal data, the CJEU assigns a fictitious name to the case, generated by computer⁵¹⁴), Iranian citizen with the initials V.P. had been granted refugee status and lived in Hungary.

In the asylum register, the authority recorded V.P.’s gender as female, despite the fact that medical expert opinions confirmed that V.P. was of male gender identity.⁵¹⁵ V.P. therefore requested the authority to change the gender recorded in the register from female to male, in other words requested a correction of the data relating to their gender. The authority rejected the request on the grounds that Hungarian law does not provide for a procedure for the legal recognition of gender identity without sex reassignment surgery.⁵¹⁶

After V.P. challenged the authority’s decision in court, the Hungarian court hearing the case referred questions to the Court of Justice of the European Union for a preliminary ruling on the interpretation of the European Union’s General Data Protection Regulation (hereinafter: GDPR), Article 5(1)(d) (“principle of accuracy”), Article 16 (“right to rectification”) and Article 23 (“restrictions”) of the GDPR: must the information regarding gender identity in the official register be amended if it does not reflect the person’s self-identification?

In its judgment, the CJEU ruled that the individual concerned had the right to have personal data (such as gender identity) rectified if it is inaccurate according to Article 5(1)(d) of the GDPR. This is data that the registry keeps for the purpose of identifying the person – so it must be assessed on the basis of “lived identity” (gender identity), not just the sex assigned at birth.⁵¹⁷

⁵¹³ Curia.europa.eu 2023.

⁵¹⁴ Curia.europa.eu 2023.

⁵¹⁵ GDPR Hub 2025.

⁵¹⁶ GDPR Hub 2025.

⁵¹⁷ Ibid.

The CJEU emphasized that even though Hungarian law does not allow for a change in a person's gender data without gender reassignment surgery, this does not exempt the Member State from its obligation to act in accordance with EU data protection law and fundamental rights.⁵¹⁸

The competence creep is evident here in that the CJEU interprets existing EU legislation (Article 16 of the GDPR) and data protection principles (accuracy, right to rectification) in a way that goes against the application of law within the competence of the Member States.

6.2 Legal cases affecting other Member States

6.2.1 Removal of competence over matters concerning third-country national family members

In recent years, the Court of Justice of the European Union has handed down several judgments concerning the right of residence of family members who are not EU citizens, through which EU law has gradually extended its jurisdiction to immigration matters that traditionally fall within the national jurisdiction of Member States.

Article 21 of the Treaty on the Functioning of the European Union guarantees all EU citizens the right to move and reside freely within the territory of the Union.⁵¹⁹ This right was originally of an economic nature: it served to facilitate the functioning of the internal market and the mobility of workers, entrepreneurs and students. However, in several judgments, the Court of Justice of the European Union began to interpret this freedom as a part of personal rights and family law, and as a result, extended the rights arising from free movement to family members.

Directive 2004/38/EC on free movement regulates in detail the conditions under which an EU citizen may live in another Member State, and the scope of the Directive also extends to family members living with them.⁵²⁰ However, according to the logic of the regulation, this right does not automatically apply to third-country family members who are relatives of an EU citizen living in their own country, thus have not exercised their right to free movement.

This is where the Court's broad interpretation of the law comes in, which is a typical example of "competence creep." In several decisions, the Court stated that the rights of EU citizens cannot be purely theoretical or illusory.⁵²¹ Therefore, if a Member State's decision—for example, refusing a residence permit to a third-country spouse—violates the right to family life or would deprive an

⁵¹⁸ Callewaert, Johan 2025.

⁵¹⁹ Treaty on the Functioning of the European Union (TFEU), Article 21 – Freedom of movement and residence

⁵²⁰ Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States

⁵²¹ C-34/09 Ruiz Zambrano; C-370/90 Surinder Singh; C-165/16 Lounes; C-673/16 Coman and Others

EU citizen of the effective exercise of their rights arising from their citizenship, EU law may override the national legal restriction.

On the basis of such judgments, EU citizens can also invoke their rights under EU law as returnees if they previously exercised their right to free movement in another Member State. This resulted in EU law taking effect even when returning to the territory of a Member State, and non-EU family members are also entitled to a derived right of residence, even if this was originally excluded by the national law of the Member State.⁵²²

A deeper shift in legal doctrine can also be seen behind this process. Article 20 TFEU states that “*citizenship of the Union shall be additional to and not replace national citizenship,*” meaning that EU law functions as a secondary layer to the legal order of the Member States.⁵²³ Nevertheless, the practice of the Court of Justice shows that, by referring to EU citizenship, the CJEU gives priority to rights arising from EU law over national law if a Member State’s decision would jeopardize the “essential rights” of EU citizens. EU law thus interferes with the sovereign decision-making powers of Member States in the areas of family life and residence rights, without any formal Treaty amendment having taken place.

Overall, therefore, the Court of Justice of the European Union is gradually extending the scope of EU law to areas that have traditionally been part of national competence by interpreting the principles of free movement and EU citizenship broadly. In doing so, the Court is creating, either explicitly or implicitly, a new legal basis for the protection of the right of residence of non-EU family members at EU level, which clearly illustrates the phenomenon of ‘creeping withdrawal of competence’ in EU case law.

6.2.2 Refusal of expulsion on account of a minor who is a citizen of the Union

These decisions include the Ruiz Zambrano case (Case C-34/09), in which the CJEU ruled that if the third-country national parents of a child who is an EU citizen were to be expelled, the child would effectively lose the possibility of residing in the territory of the Union, which is contrary to the rights guaranteed by Articles 20 and 21 TFEU.⁵²⁴

In doing so, the Court has gradually expanded the personal and material scope of the right to free movement. This process is another good example of the mechanism of “competence creep”: the

⁵²² Charter of Fundamental Rights of the European Union, in particular Articles 7 and 45 – respect for family life and the right to freedom of movement and residence

⁵²³ Article 20 TFEU – Citizenship of the Union and the rights deriving therefrom; the complementary nature of Union citizenship

⁵²⁴ C-34/09 Ruiz Zambrano v Office national de gl’emploi 2011.

CJEU does not create new law, merely “interprets” existing law – yet through its interpretation, it actually creates new content and a new pool of beneficiaries.

With this interpretation, the CJEU has once again shifted the boundary of jurisdiction from the Member States to EU legislation without any specific authorization to do so. Freedom of movement is thus no longer merely an economic freedom, but has also taken on a human rights dimension in which family life, EU citizenship and legal certainty have become increasingly important components of the EU legal order.

6.2.3 Extension of the Free Movement Directive on humanitarian grounds, overriding national security rules

Perhaps one of the most significant examples of the CJEU’s creeping law-making practice is Case C-133/15 Chavez-Vilchez and Others,⁵²⁵ which originated in the Netherlands and concerned the interpretation of the right of residence under Article 20 TFEU. In the main proceedings, several mothers, all third-country nationals, claimed social assistance and family benefits in the Netherlands. While their children were Dutch nationals, the mothers were not, nor did they have a valid residence permit (either their visas had expired or they never had valid documents entitling them to reside legally in the Netherlands), so the authorities rejected their applications for social assistance and family benefits. As a result, it was suggested that single mothers raising children should be allowed to remain in the country, even if this was contrary to national regulations, as this was a prerequisite for receiving social support and benefits. The question was whether this decision would create a situation that would effectively force the children to leave the European Union with their mother, thereby depriving them of their EU citizenship rights.

In its judgment, the Court emphasized that Article 7 of the Charter of Fundamental Rights which guarantees the right to respect for family life, and Article 24 which protects the “best interests” of the child, must be taken into account when assessing such situations. The CJEU considered that if a Member State refuses to grant a residence permit to a third-country national parent living with a child who is an EU citizen, this could result in the effective nullification of the child’s EU citizenship.⁵²⁶

The novelty of the judgment lies in the fact that the Court applied the provisions of Directive 2004/38/EC on free movement by analogy. In other words, even if the situation does not formally fall within the scope of the directive – since the EU citizen lives in their own Member State – the Court considers that the fundamental principles and protective logic of the directive may also apply

⁵²⁵ Curia.europa.eu 2017.

⁵²⁶ Article 20 TFEU – Citizenship of the Union and the rights conferred by it

in such cases. With this ruling, the CJEU once again demonstrated that it is transforming the concept of EU citizenship into an increasingly broad instrument of protection. The “Chavez-Vilchez doctrine” has thus not only strengthened the rights of children but also represents a further expansion of EU law towards a human rights perspective.

The decision shows that, for the CJEU, freedom of movement and EU citizenship are not merely economic categories, but also legal and moral principles. The analogous application of the directive sends the message that the protective logic of EU law also applies when there is no formal legal basis for its direct application. This type of competence creep forces Member States- without any legal authorization- to abandon their own immigration and social rules on the basis of human rights and social arguments.

6.2.4 Withdrawal of competence in relation to individuals holding dual citizenship

In its judgment in Case C-165/16 (Lounes case), the CJEU ruled that if a person has dual citizenship and has exercised their right of free movement and residence as an EU citizen in a Member State other than their country of original nationality, they may invoke the rights deriving from EU citizenship vis-à-vis one of the two Member States.⁵²⁷

According to the Lounes judgment, this is specifically the case when an EU citizen, by virtue of his or her dual citizenship, has settled in one Member State and then initiates proceedings in another: in such a case, the directive cannot be applied exclusively, but a direct right of reference arises from the rights deriving from EU citizenship.⁵²⁸ According to the facts of the case, García Ormazábal, a Spanish citizen, moved to the United Kingdom in 1996 to study and later to work. (Throughout the entire period covered by the case, the United Kingdom was still a Member State of the EU). In 2009, she acquired British citizenship while retaining her Spanish citizenship. Toufik Lounes, an Algerian national, entered the United Kingdom on 20 January 2010 on a visitor’s visa and remained in the country illegally after the visa expired.

The couple married in 2014, and Lounes applied for a residence permit on April 15, 2014, as a family member of an EEA (European Economic Area) citizen, but he was rejected on May 22 because the UK authorities considered that Ms. García Ormazábal was no longer an “EEA national” within the meaning of the relevant legislation.⁵²⁹ British national law established rules for EEA Member States which include non-EU Member States such as Norway, Iceland, and Liechtenstein, but the United Kingdom did not fall under the definition of an EEA state. The

⁵²⁷ Curia.europa.eu 2017.

⁵²⁸ Ibid.

⁵²⁹ Ibid.

question referred was: given that Ms García Ormazábal moved to the United Kingdom from another EU Member State, exercised her right to free movement, and then became a British citizen while retaining her Spanish citizenship, thus marrying a third-country national as a dual national, did Mr. Lounes, as a family member, have a right of residence under the Directive or the TFEU? According to the British authorities, P. N. G. Ormazabal no longer qualifies as an ‘EEA national’ within the meaning of the former regulation, since she acquired British citizenship on 12 August 2009, even though she retained her Spanish citizenship. Consequently, she is not entitled to the rights in the United Kingdom that would entitle her spouse, as a family member of an EEA national, to a residence permit.

The case raised questions about the interpretation of Directive 2004/38/EC (the “Free Movement Directive”), in particular, when and on what legal basis an EU citizen who already resides in the host country and has acquired citizenship there, and their family member (a third-country national) are entitled to protection. The Court ruled that, based on the personal scope of the directive, it does not apply to cases where an EU citizen lives outside their own Member State and later acquires the citizenship of that Member State while retaining their original citizenship. In other words, under the directive, family members do not automatically obtain a right of residence under such circumstances.

At the same time, the Court ruled that EU citizens have the right to freedom of movement and residence (Article 21 TFEU), which includes the protection of family life. This means that if an EU citizen, after becoming a national of a Member State, were to lose their rights to family life in said Member State, would be contrary to the fundamental principles of EU law.

The Court therefore concluded that, although the directive is not directly applicable to the family member concerned, by virtue of the EU citizen’s status, after exercising his or her rights of freedom and settling in that country, a derived right of residence may be established for the family member under Article 21 TFEU, under conditions that offer at least the same level of protection as the directive.⁵³⁰

This decision essentially means that EU citizenship is not just a “secondary” status but can also confer family law rights. This is yet another example of the creeping extension of EU competences.

⁵³⁰ The Aire Centre 2019.

6.2.5 The difference in the legal recognition of same-sex marriage under Member State law and EU law

Case C-673/16 Coman concerns the recognition by a Member State of the marriage of a same-sex couple, Relu Adrian Coman, a Romanian-American dual national, and Robert Clabourn Hamilton, an American national. The couple married in 2010 in Brussels where Coman was residing and working as an EU citizen. In 2012, Coman wanted to return to Romania with Hamilton and applied for a residence permit for his spouse as a family member of an EU citizen. However, the Romanian authorities rejected the application because Romanian law does not recognize same-sex marriage and therefore did not consider Hamilton to be his spouse.⁵³¹ Coman and Hamilton brought the case before the Romanian Constitutional Court, which referred a question to the Court of Justice of the European Union for a preliminary ruling, asking it to interpret the concept of “spouse” under Directive 2004/38/EC and Article 21 TFEU.⁵³²

The CJEU ruled that the concept of “spouse of a Union citizen” cannot be limited solely to opposite-sex couples. According to the Court, the term “spouse” in the directive cannot be neutralized under national law, so even if a Member State does not recognize same-sex marriage, it is still required to accept the spouse as a family member if the couple was legally married in another Member State.⁵³³

The Court therefore ruled that EU law takes precedence over national family law if its application would impede free movement. Romania was therefore not required to introduce same-sex marriage, but it is obliged to recognize its legal effects in terms of the right of residence.⁵³⁴

The Coman judgment is a classic example of the Court of Justice of the European Union extending EU competences not formally, but through interpretation. On the surface, it only decides on the interpretation of Article 21 TFEU (the right to free movement), but in reality it interferes with national family law – an area that has traditionally been the exclusive competence of the Member States. The Court, referring to freedom of movement, recognizes legal effects (recognition of same-sex marriage for residence purposes) that are not provided for in the EU Treaties. The interpretation of Article 21 TFEU and Directive 2004/38/EC has thus created a new competence in the field of family law. Relying on Articles 7 (family life) and 21 (prohibition of discrimination) of the Charter of Fundamental Rights, the Court applies the fundamental rights standard of EU law to national rules. This step constitutes *de facto* constitutional control over the powers of the

⁵³¹ Curia.europa.eu 2018.

⁵³² Preliminary ruling procedure: Romanian Constitutional Court (Decizia Coman, 2016).

⁵³³ Curia.europa.eu 2018.

⁵³⁴ Ibid.

Member States. Although the CJEU does not state that the EU has the power to harmonize marriage law, the consequence of its judgment is that Member States cannot apply their own law independently of EU standards. Following the Coman ruling, all Member States are obliged to recognize the right of residence of same-sex spouses, regardless of national family law rules. Thus, the CJEU has extended the scope of EU law to the territory of a sovereign Member State in the name of legal uniformity.

The Coman case highlights that the CJEU increasingly interprets freedom of movement as a filter for fundamental rights: any national restriction is only lawful if it is in line with the Charter of Fundamental Rights. This approach strengthens both individual rights protection and integration, while gradually narrowing the scope for Member States to legislate independently. For this reason, the Coman judgment can be considered one of the clearest examples of “competence creep” in contemporary EU legal development.

7. Conclusion

The struggle over competences is inevitable in integration organizations. By their very nature, all organizational units and Member States seek to maximize their influence within the organization and determine its direction. To this end, they continuously seek to expand their influence and competences by means both explicit and less so.

However, an integration organization ultimately exists not for the institutions, but for the Member States that created it and the citizens represented by those Member States. As we have seen in our analysis, ideas and aspirations for a superstate are increasingly emerging in relation to the European Union, pointing towards a United States of Europe, whether it be the concept of “European citizenship,” which in many cases appears to override national citizenship as a legal fiction, or the Commission President’s “State of the Union” speeches, which clearly refer to similar practices in the US.

At the same time, it is clear that there is no political will in the Member States to deepen political union indefinitely and expand common areas continuously. This means that Member States must take decisive and, perhaps more importantly, a more unified action against attempts by EU institutions to expand their powers. This is all the more important because these attempts are not going to stop: due to the internal structures of the Union and the framework of the Treaties, integration has passed the “critical mass” at which similar attempts by the institutions could have been easily thwarted. This is all the more so because the complex legal framework often makes it

difficult to detect the creeping attempts to expand competences. And when a Member State does take notice, that country is often unable to address and prevent it on its own. This can be explained in part by the fact that the Commission's powers have become so extensive that individual Member States often lose out in legal battles against the organization. On the other hand, the examples presented above, such as the issue of European border protection, clearly show that the Commission is increasingly becoming a political and ideological, rather than policy actor. This view is not far from that of the Court of Justice, and in both cases it is clear that they are able to use a wide range of tools to weaken "rebellious" Member States and governments in favor of sovereignty and critical of the expansion of competences. The most effective tool against this seems to be for Member States to work together as allies, rather than alone, to regulate EU institutions and maintain the fragile balance between an "ever closer Union" and Member State sovereignty.

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References

- Al Jazeera (2020): Erdogan vows to keep doors open for refugees heading to Europe. February 29, 2020. Source: <https://www.aljazeera.com/news/2020/2/29/erdogan-vows-to-keep-doors-open-for-refugees-heading-to-europe> (Viewed: October 23, 2025)
- Alipour, Nicj (2025): German cabinet (finally) greenlights EU migration pact implementation. Euractiv, 03.09.2025. Source: <https://www.euractiv.com/news/german-cabinet-finally-greenlights-eu-migration-pact-implementation/> (Viewed: 10.11.2025.)
- Amnesty International (2017): EU turns its back on refugees as death toll rises. 07.06.2017. Source: <https://www.amnesty.hu/az-eu-hatat-fordit-a-menekulteknek-a-halalos-aldozatok-szama-egyre-no/> (Viewed: 17.10.2025.)
- Andrade, Paula García - Frasca, Eleonora (2024): The Memorandum of Understanding between the EU and Tunisia: Issues of procedure and substance on the informalization of migration cooperation. EU Migration Law Blog, January 26, 2024. Source: <https://eumigrationlawblog.eu/the-memorandum-of-understanding-between-the-eu-and-tunisia-issues-of-procedure-and-substance-on-the-informalisation-of-migration-cooperation/> (Viewed: 27.10.2025)
- ANSA (2023): Migration Pact agreement victory for Italy – Piantedosi. 20.12.2023. Source: https://www.ansa.it/english/news/politics/2023/12/20/migration-pact-agreement-victory-for-italy-piantedosi_22d2babb-9871-43a1-9c7e-fa1fa25d3dda.html (Viewed: 10.11.2025)
- Arató, László (2025): Nem tízmilliárd, hanem kétmilliárd euro határvédelmi költség megtérítését kéri a Fidesz. HVG, January 25, 2025. Source: https://hvg.hu/eurologus/20250125_europai_parlament_migracio_hatarvedelem_fidesz_kerites (Viewed: October 26, 2025.)
- Baccini, Federico (2024): What happened to funds to Cyprus, Poland, and Hungary frozen for possible EU Charter violations. EUNews, March 19, 2024. Source: <https://www.eunews.it/en/2024/03/19/eu-funds-cyprus-poland-hungary/> (Accessed: October 22, 2025.)
- Bayer, Lili (2021): Michel opens door to EU funding for border walls, Politico. November 10, 2021. Source: <https://www.politico.eu/article/eu-money-for-border-infrastructure-legally-possible-charles-michel-says/> (Accessed: October 24, 2025.)
- BBC (2015): Migrant crisis: EU ministers approve disputed quota plan. 22.09.2015. Source: <https://www.bbc.com/news/world-europe-34329825> (Viewed: 26.10.2025.)

- BBC (2017): EU to sue Poland, Hungary and Czechs for refusing refugee quotas. 7 December 2017. Source: <https://www.bbc.com/news/world-europe-42270239> (Viewed: 26 October 2025.)
- Bejan, Raluca (2017): A 50/50 Ball: The East versus the EU in the Refugee Relocation Game. Verfassungsblog, July 31, 2017. Source: <https://verfassungsblog.de/a-5050-ball-the-east-versus-the-eu-in-the-refugee-relocation-game/> (Accessed: October 22, 2025.)
- Blahó, András – Prandler, Árpád (2011): Nemzetközi szervezetek és intézmények. Aula, Budapest.
- Blenkinsop, Philip: EU agrees new rules on hosting migrants, seeks to cut numbers. Reuters, December 20, 2023. Source: <https://www.reuters.com/world/europe/eu-agrees-new-rules-hosting-migrants-seeks-cut-numbers-2023-12-20/> (Viewed: October 27, 2025.)
- Blutman, László – Medvegy, Dalma – Schiffner, Imola: Európai Unió: a „lopakodó hatáskörelvonás” jogi összefüggésekben. Európai Jog, 2023/4. pp. 1-11. Source: <https://publicatio.bibl.u-szeged.hu/29108/>
- Callewaert, Johan (2025): The GDPR and the Convention no strangers to each other. 15.04.2025. Source: <https://johan-callewaert.eu/de/the-gdpr-and-the-convention-no-strangers-to-each-other-judgment-of-the-cjeu-in-the-case-of-deldits> (Viewed: 28.10.2025.)
- Center for Analysis and Strategies in Europe (2024): Cyprus’ Case. 01.04.2024. Source: <https://case-center.org/parts/cyprus-case/> (Viewed: 22.10.2025)
- Council of the EU (2022): Schengen area: Council decides to lift border controls with Croatia. December 8, 2022. Source: <https://www.consilium.europa.eu/en/press/press-releases/2022/12/08/schengen-area-council-decides-to-lift-border-controls-with-croatia/pdf/> (Viewed: October 25, 2025)
- Council of the European Union (2020): Working Paper 2552/2020 INIT. 05.03.2020. Source: <https://www.statewatch.org/media/1502/eu-council-deportations-imex-frontex-presentation-2552-20.pdf?> (Viewed: 27.10.2025.)
- Court of Justice of the European Union (2020): By refusing to comply with the temporary mechanism for the relocation of applicants for international protection, Poland, Hungary and the Czech Republic have failed to fulfil their obligations under European Union law. 02.04.2020. Source: <https://curia.europa.eu/jcms/upload/docs/application/pdf/2020-04/cp200040en.pdf> (Viewed: 22.10.2025.)

- Curia.europa.eu (2011): C-34/09 Ruiz Zambrano v Office national de l’emploi (ONEm). 08.03.2011. Source: <https://curia.europa.eu/juris/liste.jsf?num=C-34/09> (Viewed: 28.10.2025.)
- Curia.europa.eu (2017a): C-133/15 Chavez-Vilchez and others. 10.05.2017. Source: <https://curia.europa.eu/juris/liste.jsf?num=C-133/15> (Viewed: 28.10.2025.)
- Curia.europa.eu (2017b): C-165/16 Lounes (Toufik Lounes v Secretary of State for the Home Department. 14 September 2017. Source: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62016CJ0165> (Viewed: 28 October 2025.)
- Curia.europa.eu (2018): C-673/16 Coman and Others v Inspectoratul General pentru Imigrări and Ministerul Afacerilor Interne. 05.06.2018. Source: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62016CJ0673> (Viewed: 28.10.2025.)
- Curia.europa.eu (2022): C-159/21 GM v Országos Idegenrendészeti Főigazgatóság and others, judgment. 22.09.2022. Source: <https://curia.europa.eu/juris/document/document.jsf?text=&docid=266106&pageIndex=0&doclang=HU&mode=lst&dir=&occ=first&part=1&cid=4470220> (Viewed: 27.10.2025)
- Curia.europa.eu (2023a): C 192/23 Landfills: Court imposes financial penalties on Romania for failing to close unauthorized landfills. 14.12.2023. Source: <https://curia.europa.eu/jcms/upload/docs/application/pdf/2023-12/cp230192hu.pdf> (Viewed: 29.10.2025.)
- Curia.europa.eu (2023b): Anonymised references for preliminary rulings lodged from January 1, 2023, to be allocated a fictional name. January 9, 2023. Source: <https://curia.europa.eu/jcms/upload/docs/application/pdf/2023-01/cp230001en.pdf> (Viewed: 27.10.2025.)
- Curia.europa.eu (2024a): Judgment in joined cases C-420/22 and C-528/22. 25 April 2024. Source: <https://curia.europa.eu/juris/liste.jsf?num=C-420/22> (Viewed: 27 October 2025.)
- Curia.europa.eu (2024b): Judgment of the Court in Case C-123/22 Commission v Hungary; Reception of applicants for international protection. 13 June 2024. Source: <https://curia.europa.eu/jcms/upload/docs/application/pdf/2024-06/cp240099hu.pdf> (Viewed: 27 October 2025)
- Curia.europa.eu (2025) Court of Justice of the European Union. 2025. Source: https://curia.europa.eu/jcms/jcms/Jo2_7024/hu/#jurisprudences (Viewed: 27.10.2025)
- De La Baume, Maïa (2022): Russians in Paris fear retaliation for war, others defiant. Politico, 19.03.2022. Source: <https://www.politico.eu/article/paris-russia-ukraine-france->

putin-macron-russians-in-paris-fear-retaliation-for-war-others-defiant/ (Viewed: 22.10.2025.)

- Destatis Federal Statistical Office (2024): Foreigners: Germany, reference date, gender, age, country groupings/nationality. 31.12.2024. Source: <https://www-genesis.destatis.de/datenbank/online/table/12521-0003/table-toolbar> (Viewed: 22.10.2025)
- Destatis Statistisches Bundesamt (2025): Foreign population by place of birth and selected citizenships. Source: <https://www.destatis.de/EN/Themes/Society-Environment/Population/Migration-Integration/Tables/foreigner-place-of-birth.html> (Viewed: 15.10.2025)
- Deutsche Welle (2024): Hungary fined €200 million by ECJ for breaking asylum rules. June 13, 2024. Source: <https://www.dw.com/en/hungary-fined-200-million-by-ecj-for-breaking-asylum-rules/a-69348630> (Viewed: October 23, 2025.)
- DHS (2025): New Milestone: Over 2 Million Illegal Aliens Out of the United States in Less Than 250 Days. September 23, 2025. Source: <https://www.dhs.gov/news/2025/09/23/new-milestone-over-2-million-illegal-aliens-out-united-states-less-250-days> (Viewed: October 15, 2025.)
- Dumbrava, Costica - Radjenovic, Anja (2024): Common approach on return policy. European Parliament, 01.10.2024. Source: [https://www.europarl.europa.eu/RegData/etudes/BRIE/2024/757604/EPRS_BRI\(2024\)757604_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2024/757604/EPRS_BRI(2024)757604_EN.pdf) (Viewed: October 27, 2025)
- EEAS (2023): Special European Council: Press remarks by High Representative Josep Borrell upon arrival. 09.02.2023. Source: https://www.eeas.europa.eu/eeas/special-european-council-press-remarks-high-representative-josep-borrell-upon-arrival_en (Viewed: 14.10.2025.)
- Eerste Kamer der Staten-Generaal (2025): Joint Letter on the European Pact on Migration and Asylum and implementation of the Solidarity Mechanism. November 3, 2025. Source: https://www.eerstekamer.nl/nonav/overig/20251103/be_nl_joint_letter_on_the_european/document (Viewed: November 10, 2025.)
- ETC (2025): Unexpected Upgrade: Europe flips the script on responsible travel. Source: <https://etc-corporate.org/news/unexpected-upgrade-europe-flips-the-script-on-responsible-travel/> (Viewed: 17.10.2025)

- Etias (2025): EU Split Deepens Over Migration Solidarity Plan. 21.10.2025. Source: <https://etias.com/articles/eu-split-deepens-over-migration-solidarity-plan> (Viewed: 28.10.2025.)
- EU Observer (2024): EU needs a million migrants yearly, says EU commission. January 28, 2024. Source: <https://euobserver.com/migration/ar4ef23783> (Accessed: October 17, 2025)
- EUAA (2022): The CJEU ruled on withdrawal of international protection due to danger to national security, specifically on decisions based on a non-reasoned opinion of national security bodies which find that the person constitutes a danger to national security. 22.09.2022. Source: <https://caselaw.euaa.europa.eu/pages/viewcaselaw.aspx?CaseLawID=2755> (Viewed: 27.10.2025.)
- EUAA (2025): The EUAA Monitoring Mechanism explained. January 2025. Source: https://euaa.europa.eu/sites/default/files/publications/2025-01/EUAA_Monitoring_Mechanism_Explained.pdf (Viewed: 29.10.2025)
- Eur-Lex (1997): Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts. November 10, 1997. Source: <https://eur-lex.europa.eu/eli/treaty/ams/sign/eng> (Viewed: October 21, 2025)
- Eur-Lex (2001): Council Directive 2001/55/EC. 7 August 2001. Source: <https://eur-lex.europa.eu/eli/dir/2001/55/oj/hun> (Viewed: 22 October 2025)
- Eur-Lex (2003): Council Directive 2003/9/EC (January 27, 2003) laying down minimum standards for the reception of asylum seekers. 06.02.2003. Source: <https://eur-lex.europa.eu/legal-content/HU/TXT/PDF/?uri=CELEX:32003L0009> (Viewed: 22.10.2025.)
- Eur-Lex (2004): Council Directive 2004/83/EC (April 29, 2004) on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted. 29.04.2004. Source: <https://eur-lex.europa.eu/eli/dir/2004/83/oj> (Viewed: 22.10.2025)
- Eur-Lex (2005): Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status. 13.12.2005. Source: <https://eur-lex.europa.eu/eli/dir/2005/85/oj>

lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:326:0013:0034:EN:PDF
(Viewed: 22.10.2025.)

- Eur-Lex (2008): Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals. 16 December 2008. Source: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:348:0098:0107:en:PDF> (Viewed: 10 November 2025).
- Eur-Lex (2010): Eurodac system. 11.08.2010. Source: <https://eur-lex.europa.eu/HU/legal-content/summary/eurodac-system.html> (Viewed: 22.10.2025)
- Eur-Lex (2011a): Dublin II Regulation. 18.11.2011. Source: <https://eur-lex.europa.eu/EN/legal-content/summary/dublin-ii-regulation.html> (Viewed: 22.10.2025.)
- EUR-Lex (2011b): Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast). 20.12.2011. Source: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32011L0095> (Viewed: 22.10.2025)
- Eur-Lex (2012): Consolidated version of the Treaty on the Functioning of the European Union. 26.10.2012. Source: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:12012E/TXT:en:PDF> (Viewed: 21.10.2025.)
- Eur-Lex (2013): Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection. 29.06.2013. Source: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:180:0060:0095:EN:PDF> (Viewed: 27.10.2025.)
- Eur-Lex (2019): Regulation (EU) 2019/817 of the European Parliament and of the Council of 20 May 2019 on establishing a framework for interoperability between EU information systems in the field of borders and visa and amending Regulations (EC) No 767/2008, (EU) 2016/399, (EU) 2017/2226, (EU) 2018/1240, (EU) 2018/1726 and (EU) 2018/1861 of the European Parliament and of the Council and Council Decisions 2004/512/EC and 2008/633/JHA. 20.05.2019. Source: <https://eur-lex.europa.eu/eli/reg/2019/817/oj/eng> (Viewed: 10.11.2025)

- Eur-Lex (2022a): Division of competences within the European Union. 24 February 2022. Source: <https://eur-lex.europa.eu/EN/legal-content/summary/division-of-competences-within-the-european-union.html> (Viewed: 21 October 2025.)
- EUR-Lex (2022b): Judgment of the Court (First Chamber) of 22 September 2022. GM v Országos Idegenrendészeti Főigazgatóság and Others. Request for a preliminary ruling from the Fővárosi Törvényszék. Reference for a preliminary ruling – Common asylum and immigration policy – Directive 2011/95/EU – Standards for granting refugee status or subsidiary protection status – Withdrawal of the status – Directive 2013/32/EU – Common procedures for granting and withdrawing international protection – Danger to national security – Position taken by a specialist authority – Access to the file. Case C-159/21. 22.09.2022. Source: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:62021CJ0159> (Viewed: 27.10.2025)
- Eur-Lex (2024): Commission Implementing Decision (EU) 2024/2150 of 5 August 2024 laying down rules for the application of Regulation (EU) 2024/1348 of the European Parliament and of the Council, as regards the adequate capacity of Member States and the maximum number of applications to be examined by a Member State in the border procedure per year. 05.08.2025. Source: https://eur-lex.europa.eu/eli/dec_impl/2024/2150/oj/eng (Viewed: 29.10.2025)
- Eur-Lex (2025): Proposal for a regulation of the European Parliament and of the Council amending Regulation (EU) 2024/1348 as regards the application of the ‘safe third country’ concept. May 20, 2025. Source: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52025PC0259> (Viewed: October 28, 2025)
- Eur-Lex (n.d.): Consolidated version of the Treaty on the Functioning of the European Union – Part Three: Union Policies and Internal Actions – Title V: Area of Freedom, Security and Justice.- Chapter 2: Policies on border checks, asylum and immigration - Article 78 (ex Articles 63, points 1 and 2, and 64(2) TEC). n.d. Source: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A12008E078> (Viewed: 10.11.2025)
- Eur-Lex (n.d.): Consolidated version of the Treaty on the Functioning of the European Union – Part Three - Union Policies and Internal Actions – Title V: Area of Freedom, Security and Justice.- Chapter 2: Policies on border checks, asylum and immigration - Article 79 (ex Article 63, points 3 and 4, TEC . n.d. Source: https://eur-lex.europa.eu/eli/treaty/tfeu_2016/art_79/oj/eng (Viewed: 10.11.2025)
- Euractiv (2025): Joint letter from the undersigned ministers on voluntary and forced return to Afghanistan. 16.10.2025. Source:

<https://www.euractiv.com/content/uploads/sites/2/2025/10/AFGHANISTAN-1.pdf>
(Viewed: 28.10.2025)

- European Commission (2024): Setting out a plan to put the Migration and Asylum Pact into practice. 12.06.2024. Source: https://commission.europa.eu/news-and-media/news/setting-out-plan-put-migration-and-asylum-pact-practice-2024-06-12_hu (Viewed: 28.10.2025.)
- European Council (2025a): Migration and Asylum Pact. 04.03.2025. Source: <https://www.consilium.europa.eu/en/policies/eu-migration-asylum-reform-pact/> (Viewed: 28.10.2025)
- European Council (2025b): Council adopts EU Pact on Migration and Asylum. May 14, 2025. Source: <https://www.consilium.europa.eu/en/press/press-releases/2024/05/14/the-council-adopts-the-eu-s-pact-on-migration-and-asylum/> (Viewed: October 28, 2025.)
- European Union (n.d.): European Union Agency for Asylum. n.d. Source: https://european-union.europa.eu/institutions-law-budget/institutions-and-bodies/search-all-eu-institutions-and-bodies/european-union-agency-asylum-euaa_hu (Accessed: 29 October 2025)
- European Commission (2015): Refugee Crisis: European Commission takes decisive action - Questions and answers. 09.09.2015. Source: https://ec.europa.eu/commission/presscorner/detail/en/memo_15_5597 (Viewed: 28.10.2025.)
- European Commission (2024): Managing migration responsibly. July 24, 2024. Source: https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/story-von-der-leyen-commission/managing-migration-responsibly_en (Accessed: October 14, 2025)
- European Commission (2024a): EU-Mauritania Joint Declaration. 08.03.2024. Source: https://home-affairs.ec.europa.eu/eu-mauritania-joint-declaration_en (Viewed: 22.10.2025.)
- European Commission (2024b): Joint Declaration on the Strategic and Comprehensive Partnership between The Arab Republic Of Egypt and the European Union. March 17, 2024. Source: https://enlargement.ec.europa.eu/news/joint-declaration-strategic-and-comprehensive-partnership-between-arab-republic-egypt-and-european-2024-03-17_en (Accessed: October 22, 2025.)
- European Commission (2025a): Employment rate of non-EU nationals (age group 20-64). Source: <https://ec.europa.eu/eurostat/databrowser/view/TESEM090/default/table?lang=en> (15.10.2025)

- European Commission (2025b): Migration to and from the EU. Source: https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Migration_to_and_from_the_EU (Viewed: 17.10.2025)
- European Commission (2025c): Asylum decisions - quarterly statistics. Source: https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Asylum_decisions_-_quarterly_statistics (Viewed: 17.10.2025)
- European Commission (2025d): Statement by President von der Leyen on the signature of the EU-Jordan Strategic and Comprehensive Partnership. 29.01.2025. Source: https://ec.europa.eu/commission/presscorner/detail/en/statement_25_367 (Viewed: 22.10.2025.)
- European Commission (2025e): Commission proposes a new Common European System for Returns. 11 March 2025. Source: https://ec.europa.eu/commission/presscorner/detail/en/ip_25_724 (Accessed: 29 October 2025)
- European Council (2024): The Council adopts the EU's pact on migration and asylum. May 14, 2024. Source: <https://www.consilium.europa.eu/en/press/press-releases/2024/05/14/the-council-adopts-the-eu-s-pact-on-migration-and-asylum/> (Accessed: October 22, 2025.)
- European Council (2025): Irregular arrivals to the EU - 2008-2025. Source: <https://www.consilium.europa.eu/en/infographics/irregular-arrivals-since-2008/> (Viewed: 15.10.2025)
- European Council on Refugees and Exiles (2024): EU External Partners: Member States Push for Outsourcing of Migration Procedures to Third Countries — EU Signs € 1 Billion Migration Deal with Lebanon — Tunisian Authorities Expel Hundreds of Migrants to Border with Algeria — Migrants Released from Detention in Libya. 10.05.2024. Source: <https://ecre.org/eu-external-partners-member-states-push-for-outsourcing-of-migration-procedures-to-third-countries-%E2%80%95-eu-signs-e-1-billion-cash-for-migrants-deal-with-lebanon-%E2%80%95-tunis/> (Viewed: 22.10.2025)
- European Council on Refugees and Exiles (2025): Proposal for an EU Return Regulation. 13.03.2025. Source: <https://ecre.org/proposal-for-an-eu-return-regulation/> (Viewed: 22.10.2025.)
- European Movement Ireland (2022): What is the EU's Common European Asylum System? 01.11.2022. Source: <https://www.europeanmovement.ie/what-is-the-eus-common-european-asylum-system/> (Viewed: 22.10.2025.)

- European Ombudsman (2024): Ombudsman criticises Commission failure to inform public how it assessed human rights risks in EU-Tunisia agreement. 23 October 2024. Source: <https://www.ombudsman.europa.eu/en/news-document/en/194322> (Viewed: 27 October 2025).
- European Parliament (1999): Tampere European Council 15 and 16 October 1999, Presidency Conclusions. 1999. Source: https://www.europarl.europa.eu/summits/tam_en.htm#a (Accessed: 21.10.2025)
- European Parliament (2023): EU-Tunisia Memorandum of Understanding. September 1, 2023. Source: [https://www.europarl.europa.eu/RegData/etudes/ATAG/2023/751467/EPRS_ATA\(2023\)751467_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/ATAG/2023/751467/EPRS_ATA(2023)751467_EN.pdf) (Accessed: October 22, 2025.)
- Fox, Benjamin – Vasques, Eleonora (2023): Tunisia pact a 'blueprint' for new 'cash for migrant' deals, says EU chief. Euractiv, 27.06.2023. Source: <https://www.euractiv.com/news/tunisia-pact-a-blueprint-for-new-cash-for-migrant-deals-says-eu-chief/> (Viewed: 10.11.2025)
- France24 (2017): Hungary asks EU to pay half the cost of anti-migrant border fencing. 01.09.2017. Source: <https://www.france24.com/en/20170901-hungary-wants-europe-funds-pay-border-fence-cut-migrant-flow> (Viewed: 23.10.2025.)
- Frontex (2023): EU's external borders in 2022: Number of irregular border crossings highest since 2016. January 13, 2023. Source: <https://www.frontex.europa.eu/media-centre/news/news-release/eu-s-external-borders-in-2022-number-of-irregular-border-crossings-highest-since-2016-YsAZ29> (Viewed: 24.10.2025.)
- Frontex (2024): Significant rise in irregular border crossings in 2023, highest since 2016. January 26, 2024. Source: <https://www.frontex.europa.eu/media-centre/news/news-release/significant-rise-in-irregular-border-crossings-in-2023-highest-since-2016-C0gGpm> (Viewed: 24.10.2025)
- Frontex (2025): Monitoring and risk analysis. Source: <https://www.frontex.europa.eu/what-we-do/monitoring-and-risk-analysis/migratory-map/> (14.10.2025)
- Garben, Sacha (2020): From sneaking to striding: Combatting competence creep and consolidating the EU legislative process. *European Law Journal* (2020) 429-447. <https://doi.org/10.1111/eulj.12408>.

- GDPR Hub (2025): CJEU - C-247/23 – Deldits. 06.04.2025. Source: https://gdprhub.eu/index.php?mtc=today&title=CJEU_-_C-247%2F23_-_Deldits (Viewed: 28.10.2025.)
- Genovese, Vincenzo - Jones, Mared Gwyn - Liboreiro, Jorge (2024): EU countries not enforcing migration pact could face legal action, says Johansson. Euronews, 11.04.2024. Source: <https://www.euronews.com/my-europe/2024/04/11/eu-countries-not-enforcing-migration-pact-could-face-legal-action-says-johansson> (Viewed: 22.10.2025)
- Haneke, Alexander (2025): Österreich schiebt wieder nach Afghanistan ab. Frankfurter Allgemeine, October 23, 2025. Source: <https://www.faz.net/aktuell/politik/ausland/kooperation-mit-taliban-oesterreich-schiebt-wieder-nach-afghanistan-ab-accg-110742155.html> (Viewed: 28.10.2025)
- Heller, Fernando: Med-5 group slams EU Migration Pact, wants focus on preventing flows. Euractiv, April 22, 2024. Source: <https://www.euractiv.com/news/med-5-group-slams-eu-migration-pact-wants-focus-on-preventing-flows/> (Viewed: 10.11.2025.)
- Hierro, El (2024): Will a new “pact” of ten laws help Europe ease its migrant woes? The Economist, July 30, 2024. Source: <https://www.economist.com/europe/2024/07/30/will-a-new-pact-of-ten-laws-help-europe-ease-its-migrant-woes> (Viewed: 22.10.2025)
- Human Rights Watch (2022): EU admits Croatia to Schengen Without Regard To Abuses at the Border. December 8, 2022. Source: <https://www.hrw.org/news/2022/12/08/eu-admits-croatia-schengen-without-regard-abuses-border> (Accessed October 25, 2025.)
- InfoMigrants (2024): What will be the human cost of Poland's new border defenses? June 17, 2024. Source: <https://www.infomigrants.net/en/post/57790/what-will-be-the-human-cost-of-polands-new-border-defenses> (Accessed October 24, 2025.)
- Infomigrants (2025a): Refugees and asylum seekers in Germany: Five things to know. May 30, 2025. Source: <https://www.infomigrants.net/en/post/64872/refugees-and-asylum-seekers-in-germany-five-things-to-know> (Viewed: Oct. 17, 2025.)
- Infomigrants (2025b): Germany: Stricter asylum rules, deportations and rollback of fast-track citizenship. 10.10.2025. Source: <https://www.infomigrants.net/en/post/67446/germany-stricter-asylum-rules-deportations-and-rollback-of-fasttrack-citizenship> (Viewed: 17.10.2025)
- Jogi Fórum (2024): 200 millió euró bírságot kell fizetnie hazánknak az uniós bevándorlási politika megsértése miatt. 13.06.2024. Source: <https://www.jogiforum.hu/hir/2024/06/13/200-millio-euro-birsagot-kell-fizetnie-hazanknak-az-unios-bevandorlasi-politika-megsertese-miatt-gulyas-gergely-az-itelet->

ellentmond-az-unios-jognak-tulterjeszkedik-az-europai-bizottsag-keresete/ (Viewed: 27.10.2025)

- Kienast, Julia (2022): “Crisis rhetoric” and derogations from the AFSJ: Is EU asylum policy discriminatory or does its implementation reflect the rule of law? Jean Monnet Network on EU Law Enforcement, 01.11.2022. Source: <https://jmn-eulen.nl/wp-content/uploads/sites/575/2022/05/WP-Series-No.-11-22-Crisis-rhetoric-and-derogations-from-the-AFSJ-Is-EU-asylum-policy-discriminatory-or-does-its-implementation-reflect-the-rule-of-law-Kienast.pdf> (Viewed: 27.10.2025)
- La Vanguardia (2024): Spain is the second favorite European destination for Russian emigrants. 09.06.2024. Source: <https://www.lavanguardia.com/mediterranean/20240906/9920481/spain-second-favorite-european-destination-russian-emigration-war-ukraine.html> (Viewed: 22.10.2025.)
- Liboreiro, Jorge (2024): EU and Hungarian officials clash over visa scheme for Russian citizens. Euronews, 04.09.2024. Source: <https://www.euronews.com/my-europe/2024/09/04/eu-and-hungarian-officials-trade-barbs-over-visa-scheme-for-russian-citizens> (Viewed: 22.10.2025.)
- Government of Hungary (2025): Migration policies of nation states are changing across Europe. 11.10.2025. Source: <https://kormany.hu/hirek/valtozik-a-nemzetallamok-migracios-politikaja-europa-szerte> (Viewed: 29.10.2025.)
- Mandiner (2025): Illegális migráció – gazdasági csodavárás helyett gazdasági csődeljárás. August 25, 2025. Source: <https://mandiner.hu/kulfold/2025/08/illegalis-migracio-gazdasagi-csodavaras-helyett-gazdasagi-csodeljaras> (Viewed: October 15, 2025.)
- Marsai Viktor – Pénzváltó Nikolett (eds.) (2023): Sodrásban – Pillanatképek az európai migrációs válságról. MCC Press, Budapest.
- Mercz, Mónika (2025): Az EU jövője a fogalmak hálójában. Jogelméleti Szemle 2025/1. pp. 92-101.
- Migration Research Institute (2025): A tagállamok inkább fizetnének, mintsem hogy migránsokat fogadjanak be. 16.10.2025. Source: https://migraciokutato.hu/wp-content/uploads/2025/10/20251016_MKI_fokuszpont_25_80_h.pdf (Viewed: 28.10.2025.)
- Migration and Home Affairs (2025a): Short-stay calculator. 27.10.2025. Source: https://home-affairs.ec.europa.eu/policies/schengen/border-crossing/short-stay-calculator_en#:~:text=If%20you%20are%20visiting%20any,number%20does%20not%20exceed%2090. (Viewed: 10.11.2025.)

- Migration and Home Affairs (2025b): New Common European System for Returns. 11.03.2025. Source: https://home-affairs.ec.europa.eu/news/new-common-european-system-returns-2025-03-11_en (Viewed: 10.11.2025.)
- Molnár, Anna (2019): Az Európai Unió – a biztonsági közösségtől a kollektív védelemig terjedő folyamat. In: Molnár Anna – Marsai Viktor – Wagner Péter (eds.): Nemzetközi biztonsági szervezetek. Dialóg Campus, Budapest, pp. 81-98.
- MTI (2025): Illegális bevándorlás - Bakondi György: Magyarország az elmúlt 10 évben több mint 1,1 millió illegális bevándorló Európába jutását akadályozta meg. 11.09.2025. Source: <https://mti.hu/hirek/2025/09/11/illegalis-bevandorlas-bakondi-gyorgy-magyarorszag-az-elmult-10-evben-tobb-mint-11> (Viewed: 23.10.2025.)
- Neidhardt, Alberto-Horst (2024): Navigating the New Pact on Migration and Asylum in the Shadow of Non-Europe. European Policy Centre, January 26, 2024. Source: https://archive.epc.eu/content/PDF/2024/Non-Europe_migration_policy_DP_v2.pdf (Viewed: 22.10.2025.)
- Nielsen, Nikolaj (2017): EU rejects Hungary's demand to finance border fence. EU Observer, 01.09.2017. Source: <https://euobserver.com/migration/ar24245d9e> (Viewed: 23.10.2025.)
- Notes from Poland (2025a): EU chief thanks Poland for helping protect Europe from “predator” Putin on visit to Belarus border. August 31, 2025. Source: <https://notesfrompoland.com/2025/08/31/eu-chief-thanks-poland-for-protecting-europe-on-visit-to-belarus-border/> (Viewed: October 24, 2025.)
- Notes from Poland (2025b): Poland says it will be exempted from EU migrant relocations. 11 October 2025. Source: <https://notesfrompoland.com/2025/10/11/poland-says-it-will-be-exempted-from-eu-migrant-relocations/> (Viewed: 27 October 2025.)
- Párducz Árpád (2023): Kötelező vagy választható befogadás? — Az Európai Unió relokációs egyezményei. Migration Research Institute, June 23, 2023. Source: https://migraciokutato.hu/wp-content/uploads/2023/06/20230623_MKI_GYORSELEMZES_2023_14_parducz_arpad_kotelezo_vagy_valaszthato_befogadas_az_europai_unio_relokacios_egyezmenyei.pdf (Viewed: 27.10.2025.)
- Pech, L. – Kochenov, D (2021): Respect for the Rule of Law in the EU and the Member States. ReConnect Working Paper 24.05.2021. Source: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3850308 (Viewed: 27.10.2025.)

- Politico (2025): Europe's economy can't grow without migrants, Lagarde warns. 2025.08.24. Source: <https://www.politico.eu/article/europes-economy-cant-grow-without-migrants-lagarde-warns/> (Viewed: 2025.10.27.)
- Pozirk (2025): Von der Leyen commits to increased funding for EU border protection. August 31, 2025. Source: <https://pozirk.online/en/news/153203/> (Accessed: October 24, 2025)
- Radjenovic, Anja (2020): Emergency measures on migration: Article 78(3) TFEU. 2020. Source: https://www.europarl.europa.eu/RegData/etudes/ATAG/2020/649325/EPRS_ATA%282020%29649325_EN.pdf (Accessed: 10.11.2025)
- Rankin, Jennifer (2020a): EU court rules three member states broke law over refugee quotas. The Guardian, 2020.04.02. Source: <https://www.theguardian.com/law/2020/apr/02/eu-court-rules-three-countries-czech-republic-hungary-poland-broke-law-over-refugee-quotas> (Viewed: 2025.10.22.)
- Rankin, Jennifer (2020b): Migration: EU praises Greece as 'shield' after Turkey opens border. The Guardian, 03.03.2020. Source: <https://www.theguardian.com/world/2020/mar/03/migration-eu-praises-greece-as-shield-after-turkey-opens-border> (Viewed: 23.10.2025.)
- Riehle, Cornelia LL.M. (2024): New Pact on Migration and Asylum. Eucrim, 09.08.2024. Source: <https://eucrim.eu/news/new-pact-on-migration-and-asylum/> (Viewed: 22.10.2025.)
- Rittberger, Volker (1973): The International Organization Level of Integration and Its Relationship to the Nation State. In: Evolution and International Organization. Studies in Government and International Politics, vol. 5. Springer, Dordrecht.
- Sander, Antoine (2015): Hungary builds fence, Commission watches and waits. Politico, July 14, 2015. Source: <https://www.politico.eu/article/hungary-builds-fence-commission-watches-and-waits-serbia-borders-refugees/> (Accessed: October 23, 2025.)
- Sanderson, Sertan: Poland to be exempt from EU solidarity deal, as future of migration pact hangs in balance. InfoMigrants, October 15, 2025. Source: <https://www.infomigrants.net/en/post/67538/poland-to-be-exempt-from-eu-solidarity-deal-as-future-of-migration-pact-hangs-in-balance> (Viewed: 27.10.2025.)
- Sandford, Alasdair (2020): Poland, Hungary and Czech Republic broke EU law by failing to accept refugees, rules ECJ. Euronews, April 2, 2020. Source:

- <https://www.euronews.com/2020/04/02/poland-hungary-and-czech-republic-breached-eu-law-by-failing-to-take-in-refugees-rules-ecj> (Viewed: 26.10.2025)
- Statewatch (2004): The Hague Programme. November 4–5, 2004. Source: <https://www.statewatch.org/media/documents/news/2004/nov/hague-programme-final.pdf> (Accessed: October 29, 2025.)
 - Statewatch (2018): Member States' Support to Emergency Relocation Mechanism. February 5, 2018. Source: <https://www.statewatch.org/media/documents/news/2018/feb/eu-com-sop-relocation-5-2-18.pdf> (Accessed: October 27, 2025.)
 - Statewatch (2024): Parliamentary lawyers: democratic oversight needed for EU-Tunisia migration agreement. 15.03.2024. Source: <https://www.statewatch.org/news/2024/march/parliamentary-lawyers-democratic-oversight-needed-for-eu-tunisia-migration-agreement/> (Viewed: 22.10.2025.)
 - The Aire Centre (2019): Case comment: C-165/16 Toufik Lounes v Secretary of State for the Home Department (2019) Source: <https://www.airecentre.org/News/case-comment-c-16516-toufik-lounes-v-secretary-of-state-for-the-home-department> (Viewed: 28.10.2025)
 - Tondo, Lorenzo (2022): Poland starts building wall through protected forest at Belarus border. The Guardian, January 27, 2022. Source: <https://www.theguardian.com/world/2022/jan/27/poland-starts-building-wall-through-protected-forest-at-belarus-border> (Viewed: October 24, 2025)
 - Tondo, Lorenzo: Crosses on our heads to 'cure' Covid-19: refugees report abuse by Croatian police. The Guardian, May 28, 2020. Source: <https://www.theguardian.com/global-development/2020/may/28/they-made-crosses-on-our-heads-refugees-report-abuse-by-croatian-police> (Accessed: October 25, 2025.)
 - TVP World (2024): Poland will not welcome any migrants under the migration pact, says Tusk. May 14, 2024. Source: <https://tvpworld.com/77522560/poland-will-not-welcome-any-migrants> (Accessed: October 28, 2025)
 - UNHCR (2025): Ukraine Refugee Situation. October 3, 2025. Source: <https://data.unhcr.org/en/situations/ukraine> (Viewed: October 27, 2025)
 - Van de Beek, Jan et al. (2025): Borderless Welfare State. The Consequences of Immigration for Public Financing. University of Amsterdam, Amsterdam. Source: https://demo-demo.nl/wp-content/uploads/2023/06/Borderless_Welfare_State-2.pdf (Viewed: 15.10.2025)

- Visit Ukraine (2025): Why has the migration of Ukrainians been beneficial for EU countries and what has Europe learned from it? Source: https://visitukraine.today/blog/2377/why-has-the-migration-of-ukrainians-been-beneficial-for-eu-countries-and-what-have-europe-learned-from-it?srsltid=AfmBOoolVqnQRCg5q11i5ZQBEB8Zldk_c7l9EtwF1I7uQrRBGwnYAu7 (Viewed: 17 October 2025)
- Zachová, Aneta (2025): Incoming Czech government signals reversal on EU climate and migration policies. Euractiv, 03.11.2025. Source: <https://www.euractiv.com/news/incoming-czech-government-signals-reversal-on-eu-climate-and-migration-policies/> (Viewed: 10.11.2025.)

RULE OF LAW

Central European Academy

Report on trends towards expanding EU competences in relation to the rule of law

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1. EU values

1.1 The emergence of the rule of law in EU law

For a long time, the rule of law appeared only marginally, at the level of mention, in the development of EU law. At the level of the founding Treaties, the Treaty of Rome did not contain any reference to the rule of law, given that its purpose was to create integration dealing with economic issues. It is no coincidence that its objectives and goals also make no reference to the rule of law. A change came with the judgment in Case C-294/83, *Les Verts*. In this judgment, the Court of Justice of the European Communities (now the Court of Justice of the European Union, “CJEU”) emphasised that *‘the EEC is a Community based on the rule of law, inasmuch as neither its Member States nor its institutions can avoid a review of the question whether the measures adopted by them are in conformity with the basic constitutional charter’*.⁵³⁵ At the time, the discourse on the matter was determined by the constitutional nature of the founding Treaties rather than by any reference to the rule of law. It should be noted in advance that the preamble to the Single European Act indirectly referred to the rule of law in the sense of the legal community as used by *Les Verts*.⁵³⁶

The founding Treaties first mention the rule of law as a fundamental principle in the context of the Maastricht reforms, without, however, defining its content. The Maastricht Treaty referred to the fundamental principle of the rule of law in its preamble⁵³⁷ and emphasised the importance of the rule of law in relation to the common foreign and security policy (hereinafter: CFSP) and

⁵³⁵ Judgment of the Court of Justice of 23 April 1986 in Case 294/83 *Les Verts v European Parliament* ECLI:EU:C:1986:166, paragraph 23.

⁵³⁶ Kecsmár, 2020, pp. 32–33.

‘Aware of the responsibility incumbent upon Europe to aim at [...], in particular to display the principles of democracy and compliance with the law and with human rights to which they are attached, so that together they may make their own contribution to the preservation of international peace and security in accordance with the undertaking entered into by them within the framework of the United Nations Charter.’ Single European Act OJ L 169, 29.06.1987, Preamble.

⁵³⁷ ‘Confirming their attachment to the principles of liberty, democracy and respect for human rights and fundamental freedoms and of the rule of law,’ Maastricht Treaty OJ C 191, 29.07.1992, 1–112.

development policy.⁵³⁸ This reference is not accidental. It is well known that, at the end of the Cold War, the countries of Central and Eastern Europe sought to become members of the Union. At the same time, the Member States at that time expressed their concerns about the preparedness of these countries, which led to the adoption of the so-called Copenhagen criteria. As a result of the document, respect for the rule of law was included among the accession criteria, alongside democracy and human rights.⁵³⁹

The Treaty of Amsterdam further strengthened the rule of law at the level of the founding Treaties. It no longer merely referred to it as a fundamental principle underpinning the European Union,⁵⁴⁰ but also established the predecessor to the current procedure under Article 7 of the Treaty on European Union (TEU). With the Amsterdam reforms, the relevant article⁵⁴¹ stipulated that, on the basis of a proposal from one third of the Member States or the European Commission (hereinafter: the Commission) and after obtaining the consent of the European Parliament, the Council, meeting in the composition of Heads of State or Government, after inviting the Government of the Member State concerned to submit its observations, may unanimously determine that the Member State has seriously and persistently breached the fundamental principles on which the Union is based, including the rule of law. Another change was to Article 49, which declared that countries wishing to join the Union must respect these fundamental principles.⁵⁴²

The Lisbon reforms further expanded the scope of the provisions. The most significant change from the perspective of the rule of law is that it is no longer listed as a founding principle of the Union, but has been included among the values of the European Union set out in Article 2 of the Treaty on European Union (hereinafter: TEU).⁵⁴³ Several other provisions also refer to these as EU values. Article 3 TEU sets out the promotion of these values as one of the objectives of the Union. In addition, according to Article 13 TEU, the Union's own institutional framework also aims to uphold these values.⁵⁴⁴ Article 7 TEU, which further details the procedural rules relating

⁵³⁸ Ibid. Article J1, Article 130u(2).

⁵³⁹ 'Membership requires that the candidate country has achieved stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities, the existence of a functioning market economy as well as the capacity to cope with competitive pressure and market forces within the Union.' European Council conclusions, 21–22 June 1993, Copenhagen, SN 180/1/93 REV 1; Budai 2023, p. 31.

⁵⁴⁰ 'The Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States.' Treaty of Amsterdam, OJ C 340, 10.11.1997, Articles 1–1447(1).

⁵⁴¹ Ibid. Article F.1.

⁵⁴² Ibid. Article 49.

⁵⁴³ 'The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.' Treaty on European Union, OJ C 202, 7.6.2016, pp. 1–388, Article 2.

⁵⁴⁴ Ibid. Article 3(1); Budai 2023, p. 31.

to violations of EU values, is worth mentioning in advance.⁵⁴⁵ At the same time, the preamble to the TEU continues to define the rule of law as a principle. Furthermore, the Charter of Fundamental Rights of the European Union (hereinafter: the Charter) also declares that it is based, among other things, on the principle of the rule of law.⁵⁴⁶ In addition, the rule of law is also present in Article 21 TEU among the principles that determine the Union's action at international level in the framework of the CFSP. The same article also refers to the rule of law as something that the Union shall work to consolidate and strengthen in its international cooperation.⁵⁴⁷ However, these provisions still do not define the content of the rule of law at the level of the founding Treaties.

1.2 The indefinable nature of the rule of law as a fundamental value of the Union

Based on the above, it is clear that the Treaties do not define the precise content of the rule of law, but merely refer to it as a fundamental principle and a fundamental value of the Union. While the fundamental nature of the rule of law can be inferred to some extent from the constitutional traditions of the Member States, its identification as a Union value raises questions, given that its character remains unclear to this day, as does the reason why certain fundamental principles had to be “transformed” into values. The presentation of the rule of law as a value also implies a kind of moral content which, going beyond the normative nature of the principles, may serve as the basis for a common identity.⁵⁴⁸ This is supported by the Commission's 2003 communication, referred to below, which states that the European Union is first and foremost a union of values and the rule of law, the achievement of which is the result of a shared history. The Commission also emphasises that these values form the core of the Union's identity and enable all EU citizens to identify with them. In addition, the Commission also stated here that the preservation of these common values must be at the heart of all political considerations and all actions of the Union, and that the Commission will contribute to achieving this goal by insisting on preventive measures, close monitoring of the situation in Member States, cooperation between institutions and with Member States, and public information.⁵⁴⁹ In contrast, Article 21 TEU and the preamble to the Charter refer to the rule of law as a principle, while human dignity, freedom, equality and solidarity

⁵⁴⁵ Ibid. Article 7.

⁵⁴⁶ “Conscious of its spiritual and moral heritage, the Union is founded on the indivisible, universal values of human dignity, freedom, equality and solidarity; it is based on the principles of democracy and the rule of law.” Charter of Fundamental Rights of the European Union, OJ C 202, 7.6.2016, pp. 389–405, Preamble.

⁵⁴⁷ Article 21(1) TEU.

⁵⁴⁸ Schroeder, 2021, pp. 110–112.

⁵⁴⁹ Communication from the Commission to the Council and the European Parliament on Article 7 of the Treaty on European Union - Respect for and promotion of the values on which the Union is based, COM(2003) 606 final (15 October 2003), Conclusions.

are presented as indivisible and universal values. We can therefore conclude that the rule of law appears both as a value and a principle in EU law. At the same time, the wording of Article 2 TEU emphasises the moral content of the principle of the rule of law, which, according to the Commission's undisguised position, also serves as the basis for a common European identity.

The European Union wanted to profit immediately and extensively from the euphoria generated by the success of the 2004 enlargement, and based on the results of the European Convention, the Member States were ready to open discussions on a common European Constitution (hereinafter: Constitutional Treaty).⁵⁵⁰ From the perspective of the present topic, the significance of the Constitutional Treaty lies in the fact that, for the first time in the history of the Union, the so-called homogeneity clause appears, establishing the fundamental values of the Union as a kind of constitutional minimum.⁵⁵¹ The values of the Union also occupy a symbolic, prominent place in the draft Constitutional Treaty, appearing in Article I-2 immediately after the provisions referring to the establishment of the Union.⁵⁵² As a result, the provisions of the rejected Constitutional Treaty already included the rule of law as an EU value, but even on the basis of the preparatory documents, their nature is unclear, particularly given that the relevant documents refer to them both as values and as principles. In any case, it is certain that the identification of the former principles as values was intended to reinforce a kind of constitutional momentum.

It should be noted that in its decisions, the CJEU has only identified certain characteristics of the values set out in Article 2 TEU, including, inter alia, that Member States recognise these values, which they have freely and voluntarily adopted,⁵⁵³ and which are respected by both the Member States, and the Union.⁵⁵⁴ These values '*are an integral part of the very identity of the European Union as a common legal order, values which are given concrete expression in principles containing legally binding obligations for the Member States*'.⁵⁵⁵ It follows from these findings that these values are binding on the Union and the Member States, but it is not clear what exactly the nature of these obligations is and how they can be enforced. It should be noted that Article 2 TEU, i.e. the specific basis for infringement proceedings based on a violation of EU values, was

⁵⁵⁰ Gordos – Ódor, 2004, pp. 149–159.

⁵⁵¹ Delledonne, 2016, p. 86.

⁵⁵² Draft Treaty establishing a Constitution for Europe, Article I-2.

⁵⁵³ Opinion of the CJEU (full court) No. 2/13 on the accession of the European Union to the European Convention for the Protection of Human Rights and Fundamental Freedoms, delivered on 18 December 2014, ECLI:EU:C:2014:2454, paragraph 168.

⁵⁵⁴ Court (full court) Opinion 1/17 on the Comprehensive Economic and Trade Agreement between Canada, of the one part, and the European Union and its Member States, of the other part (CETA), delivered on 30 April 2019, ECLI:EU:C:2019:341, paragraph 110.

⁵⁵⁵ Judgment of the Court of Justice of 6 February 2021 in Case C-156/21 Hungary v Council and Parliament, ECLI:EU:C:2022:97, paragraph 232; Judgment of 6 February 2021 in Case C-157/21 Poland v Council and Parliament, paragraph 264.

first raised in the proceedings before the CJEU concerning the Hungarian child protection law, which only makes it more difficult to determine the exact legal content.⁵⁵⁶

This uncertainty in meaning applies not only to the rule of law as an EU value, but to all the values listed in Article 2 TEU, including the principle of democracy, which, as the Commission has consistently emphasised, is linked to the value of the rule of law, and the rights of persons belonging to minorities. A prime example of such “uncertainty” is the so-called *Minority SafePack* initiative, in which the initiators asked the Union to improve the protection of persons belonging to national and linguistic minorities and strengthen the cultural and linguistic diversity of the Union, which would have included the adoption of legal acts by the EU to improve the protection of persons belonging to national and linguistic minorities and to strengthen the cultural and linguistic diversity of the Union.⁵⁵⁷ However, on 14 January 2021, the Commission rejected the package of proposals and did not initiate legislative proceedings on any of its nine elements, arguing that the existing legislation provides an adequate legal framework. The General Court of the European Union upheld the Commission’s decision,⁵⁵⁸ which was finally confirmed by the Court of Justice on 5 June 2025.⁵⁵⁹ The latter decision treated the examination of the value of minority protection as completely marginal and did not provide any substantive justification for it.⁵⁶⁰ This trend is reflected in the rejection of the European citizens’ initiative submitted by the Szekler National Council, which would have required the Commission to prepare a legislative proposal on cohesion policy that would have ensured equal access for minorities to structural funds, all other EU funds, resources and programmes in such a way as to preserve the cultural diversity of the Union. The Commission rejected it on 3 September 2025, arguing that there was no need for it or that it did not have the competence to do so.⁵⁶¹

This and similar cases show that the form of EU values alone does not provide a basis for predictable law enforcement, thus creating opportunities for arbitrary interpretation based on political motives. Unfortunately, this also clearly shows that EU actors only consider those aspects of values to be important that are in line with their own political agenda.

⁵⁵⁶ Opinion of Advocate General Ćapeta delivered on 5 June 2025 in Case C-769/22, *Commission v Hungary*, ECLI:EU:C:2025:408, paragraph 28.

⁵⁵⁷ See the website of the EU on the European Citizens’ Initiative.

⁵⁵⁸ Judgment of the General Court of 19 November 2022 in Case T-158/21, *Citizens’ Committee of the European Citizens’ Initiative ‘Minority SafePack – one million signatures for diversity in Europe’ v European Commission*, ECLI:EU:T:2022:696.

⁵⁵⁹ Judgment of the Court of Justice of 5 June 2025 in Case C-26/23 P, *Citizens’ Committee of the European Citizens’ Initiative ‘Minority SafePack – one million signatures for diversity in Europe’ v Commission*, ECLI:EU:C:2025:407.

⁵⁶⁰ *Ibid.* paragraph 103.

⁵⁶¹ Communication from the Commission on the European Citizens’ Initiative ‘Cohesion policy for the equality of the regions and sustainability of the regional cultures’ C(2025) 6015 final.

2. Commission communications on the rule of law

2.1 The Commission's 2003 communication on respecting and promoting EU values

The Commission first addressed EU values in a communication in 2003,⁵⁶² which already emphasised that the then Article 7 conferred new competences on the Commission.⁵⁶³ It should be noted that at that time the Commission did not yet refer to EU values, but emphasised the monitoring of fundamental rights at EU level. In any case, it justifies this protection by arguing that if a Member State were to seriously and persistently violate them, it would also radically undermine the foundations of the European Union. The Commission considers that it is essential to have a debate on the protection and promotion of our common values within the meaning of the Treaties, to which it wishes to contribute in a meaningful way.⁵⁶⁴ In view of this, the Commission, without authorisation from the Member States (as the communication does not mention this, nor does it refer to any treaty provision from which this could be inferred), sought to define the conditions for the procedure under the then Article 7 and proposed monitoring mechanisms for the rule of law situation in the Member States. Although it was possible to initiate such a procedure under the rules in force at the time, the Commission was not the only body entitled to do so. Nevertheless, the communication emphasises that it contributes to the protection of EU values by insisting on preventive measures, close monitoring of the situation in Member States, cooperation between institutions and with Member States, and, finally, public information and education.⁵⁶⁵

⁵⁶² Communication from the Commission to the Council and the European Parliament on Article 7 of the Treaty on European Union – Respect for and promotion of the values on which the Union is based, COM(2003) 606 final (15 October 2003).

⁵⁶³ Ibid. 'In this respect, the amended Article 7 confers new powers on the Commission in its monitoring of fundamental rights in the Union and in the identification of potential risks. The Commission intends to exercise its new right in full and with a clear awareness of its responsibility.'

⁵⁶⁴ Ibid. 'In view of these various factors, the Commission believes that a debate on the protection and promotion of our common values within the meaning of the Union Treaty is vital. The Commission wishes to contribute to this debate.'

⁵⁶⁵ Ibid. 'The Commission believes it is contributing to the achievement of that objective by insisting on measures based on prevention, strict monitoring of the situation in the Member States, cooperation between the institutions and with the Member States and, lastly, public information and education.'

2.2 The Commission's 2014 communication on a new EU framework for strengthening the rule of law

Since the early 2010s, there has been a noticeable increase in the attention paid in European political discourse to the rule of law in EU Member States, which has necessarily led to the Union also giving priority to this issue.⁵⁶⁶

In its communication of 11 March 2014,⁵⁶⁷ the Commission proposed the establishment of a new rule of law framework that could prevent the application of the procedure under Article 7 TEU. In this regard, it should be noted that the Commission sought to comply with the so-called Tavares report, in which the EP requested that *'Member States be regularly assessed on their continued compliance with the fundamental values of the Union and the requirements of democracy and the rule of law'*.⁵⁶⁸

The communication emphasises the fundamental importance of the rule of law, describing it as the backbone of constitutional democracy and a principle derived from the constitutional traditions common to the Member States. The new framework set out in the communication involves a three-stage process: first, the Commission will examine and assess, on the basis of indications from the Member State, whether there is indeed a systemic threat to the rule of law, on the basis of which it will send an opinion to the Member State and engage in dialogue with it. In the second stage, if no satisfactory solution is found, the Commission will issue a recommendation, which it will make public and which may include specific references to possible solutions. In the third stage, the Commission monitors the outcome of its recommendations and, if the Member State fails to comply with them, it considers the possibility of applying the procedure under Article 7 TEU. It should be noted that the Commission has initiated proceedings against Poland under this framework.⁵⁶⁹

It states that the content of the principles and rules arising from the rule of law may vary, but the essential content of the rule of law as a common value of the Union (in terms of its formal and substantive content) can be established. In this regard, the communication lists what it considers to be its common and generally accepted essential characteristics, such as legality (including a transparent, accountable and democratic legislative process), legal certainty, the prohibition of

⁵⁶⁶ Nézöpont Institute, 2025, p. 5.

⁵⁶⁷ Commission Communication to the European Parliament and the Council on a new EU framework to strengthen the rule of law, COM/2014/0158 final.

⁵⁶⁸ Report on the situation of fundamental rights: standards and practices in Hungary (based on the European Parliament resolution of 16 February 2012), 24 June 2013 – (2012/2130(INI)).

⁵⁶⁹ See Communication from the Commission to the European Parliament and the Council on a new EU framework to strengthen the rule of law, COM/2014/0158 final; Vörös, 2016, pp. 363–384.

arbitrariness, the right to a fair trial before independent and impartial courts, respect for human rights, non-discrimination and equality before the law.

The Commission relied on three main sources to define the essential features of the rule of law: the case law of the CJEU, the concepts of the rule of law developed by the European Court of Human Rights (ECtHR) and the Venice Commission under the auspices of the Council of Europe, and the constitutional traditions of the Member States.⁵⁷⁰ It should be noted, however, that the recommendations of the Venice Commission are not binding under international law, and the European Union has not formally acceded to the European Convention on Human Rights, which serves as the basis for the ECtHR's proceedings. This is also important because Article 6(2) of the TEU stipulates that the Union shall accede to the Convention, but this has not yet happened, which also raises questions about the rule of law. Specifically, the question arises as to how far the European Union complies with the requirements of the rule of law, and in particular legal certainty, by failing to fulfil its obligation to accede to the Convention as laid down in the TEU for more than a decade since its entry into force, particularly in view of Opinion 2/13 of the CJEU.⁵⁷¹ In addition, it is worth noting that the Commission acknowledges that neither the constitutions nor the courts of the Member States clearly define the concept of the rule of law.

It should also be emphasised that the communication does not provide any further explanation of the content of these principles under EU law, nor does it claim to provide an exhaustive list. In view of this, it can be concluded that the Commission provides a vague definition of the rule of law, which may potentially be applied arbitrarily.

2.3 The Commission's 2019 communications on further strengthening the rule of law within the EU

In 2019, the Commission published two communications on strengthening the rule of law. In its communication of 3 April 2019, the Commission provided an overview of the tools currently available to address challenges to the rule of law within the Union and launched a debate on how to strengthen this toolbox. In this regard, the communication of 3 April highlighted that, in addition to the Member States, it had also consulted extensively with civil society actors.⁵⁷² This was followed by a communication of 17 July, which added new elements to the concept of the rule of

⁵⁷⁰ Commission Communication to the European Parliament and the Council on a new EU framework to strengthen the rule of law, COM/2014/0158 final, Annex I.

⁵⁷¹ Opinion of the CJEU (full court) No. 2/13 on the accession of the European Union to the European Convention for the Protection of Human Rights and Fundamental Freedoms, delivered on 18 December 2014, ECLI:EU:C:2014:2454.

⁵⁷² Communication from the Commission to the European Parliament, the European Council and the Council on further strengthening the rule of law in the Union, COM(2019) 163 final.

law in addition to the familiar aspects. The communication entitled "Further strengthening the rule of law within the Union" published by the Commission led by Jean-Claude Juncker actually contains an action plan for the future. In this regard, the Commission already refers to systemic problems related to the legislative process, the lack of effective judicial protection by independent and impartial courts, and the issue of the separation of competences. It should be noted that the Commission's relevant communications also refrain from providing a comprehensive and exhaustive definition of the rule of law.⁵⁷³

What is perhaps even more striking is that, compared to the previous, relatively less significant set of tools, it sought to establish a much more comprehensive set of tools that would strengthen both the legal and political arsenal. What is certain is that the Commission decided arbitrarily, without any authorisation or request from the Member States, to establish a so-called rule of law review cycle, the aim of which is to monitor the rule of law in all Member States. The communication lists both existing and newly created instruments for strengthening the rule of law. The first group includes the interinstitutional dialogue on the rule of law, the EU Justice Scoreboard, the country reports published under the European Semester, infringement proceedings and infringement proceedings brought before the CJEU. Putting these existing tools into context is also important because, until now, the Commission has not used them in the context of the rule of law. However, based on the Commission's approach, the newly created tool, the annual rule of law reports, is the most significant. According to the communication, the existing instruments would essentially serve as the basis for the Commission's rule of law report. In addition, the Commission wanted to intensify the dialogue with the other EU institutions, as well as with the Member States and stakeholders in the Member States, during the review cycle. In order to strengthen dialogue with Member States, it decided to set up a network of national contact points for the rule of law, which operates under the leadership of the Commission and has no decision-making or advisory competences.

It should be noted that although the Commission's communication of July 2019 refers to the consultations held, it is not clear from the text itself on what exact EU competence the system proposed by the Commission is based. As a preliminary remark, and also with regard to the later chapters, it should be noted that, given that the Commission's communication envisaged the establishment of a system with such a wide range of instruments, it would have been necessary to provide an ex ante justification for the various instruments, explaining how horizontal EU legal

⁵⁷³ Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions on strengthening the rule of law in the Union, COM(2019) 343 final.

principles relating to EU competences, such as the principles of subsidiarity and proportionality, are reflected in this context.⁵⁷⁴ The second communication merely states that *‘in the meantime, the Commission will continue to play its full part as guardian of the Treaties, taking appropriate and proportionate measures to uphold EU law, and will invest in strengthening the capacity of the EU in this regard’*. Accordingly, the Commission has yet to provide a detailed assessment on this matter.

3. The procedure under Article 7 TEU

3.1 The development of a procedure for enforcing EU values

With the end of the bipolar world order, the countries that had previously belonged to the socialist bloc almost unanimously expressed their desire to join the Communities. In terms of preparing the Union’s institutional framework, the most significant change was that, for the first time in the history of integration, the Amsterdam Treaty elevated a set of instruments to the level of primary law, which serves to sanction violations of these principles. Article F.1, referred to in the previous chapter, gave the Heads of State and Government the power to decide, either on the proposal of one third of the Member States or of the Commission, (with the approval of the EP), in which case the Council could, by a qualified majority, suspend certain rights deriving from the application of the Treaty, including the voting rights of the Government of the Member State concerned in the Council.⁵⁷⁵

Two conclusions can be drawn from the above provisions. On the one hand, Member States wanted to reserve for themselves the right to sanction violations of the principles set out in the TEU.⁵⁷⁶ While the role of “guardian of the Treaties” and enforcement of the EU *acquis* falls primarily to the Commission (and ultimately to the CJEU), Member States have nevertheless decided not to relinquish control over this sensitive and easily politicised issue. The model developed at that time essentially continues to guide the new mechanisms that have been created since then. The decisive reason behind the desire to confine the issue to the traditional intergovernmental and international political arena may have been that, as the Single European Act pointed out, the principles in question derive from the constitutions (fundamental laws) of the Member States, and therefore it

⁵⁷⁴ Nézőpont Institute 2025, p. 22.

⁵⁷⁵ The text of Chapter II draws heavily on Tibor Péter Jakusovszki’s thesis entitled ‘The institutional framework for the enforcement and compliance with EU values – The European Union’s rule of law toolkit’ (2023) – Pázmány Péter Catholic University – Department of European Law.

⁵⁷⁶ Vándor, 2010, pp. 16–17.

was considered preferable not to discuss their implementation at the Community level at this stage of integration. The political motivation behind the inclusion of Article F.1 cannot be separated from the fact that the newly democratised Central and Eastern European countries, which were just embarking on the path of integration, were undoubtedly viewed with a certain degree of mistrust by the founding Member States, which had never doubted the strength of their own democratic traditions. As a result of the Copenhagen criteria, the conclusions of the European Council meeting in Corfu in June 1994 specifically set the task of establishing a member state discussion group (the so-called *Reflection Group*) to examine, in a spirit of democracy and openness, how the Treaty on European Union could be improved. The discussion group also examined the issue of enlargement and, in its final report, drew a clear parallel between the need to establish a sanction mechanism and enlargement, stating that *'the majority opinion within the group is that an article should be inserted into the Treaty providing for sanctions, which could go as far as the suspension of membership rights, for any state that seriously and repeatedly violates fundamental human rights or democratic principles.'* According to the final report, it would even be worth considering the inclusion of an exclusion clause.

It should be emphasised that the immediate political background to the inclusion of Article F.1 was the 1995 (fourth) enlargement round—prior to the 2004 enlargement—which integrated former EFTA Member States traditionally regarded as a success story. In Austria, which formed part of that round, the rise of radical populism in the years preceding the turn of the millennium alerted the Member States to the fact that they were able to exert only political pressure on those Member States which, in their view, did not adhere to the Union's fundamental principles. However, they lacked an appropriate legal instrument for this purpose; accordingly, the amendments introduced by the Treaty of Amsterdam (hereinafter: the Amsterdam Treaty) are also referred to in the literature as “Lex Austria”.⁵⁷⁷

The Treaty of Nice, which entered into force in 2003, can be described in simplified terms as a basic document that mainly “cosmetically” modified the institutional system established by Maastricht, made minor changes, and primarily prepared for the major enlargement of 2004. With regard to the provisions on the enforcement of fundamental principles, the Nice Treaty represented progress in two respects. On the one hand, in response to the challenge posed by Austrians, a coordinated intergovernmental, but not EU-wide, joint action was ultimately taken, in which highly respected European figures, the so-called Three Wise Men, assessed the situation. The procedure, which had previously been purely punitive, was supplemented by a preventive

⁵⁷⁷ Nowak-Far, 2021, p. 316.

mechanism and incorporated into the structure of the Treaty as Article 7. According to the wise men, this would allow for a public and non-confrontational dialogue between the Member States concerned, so that another situation similar to the Austrian case could be dealt with within the European Union from the outset.⁵⁷⁸ This also creates the possibility of analysing the situation in the Member State in question in a report with the involvement of independent persons, thus seeking to make the procedure more flexible. The initiation of the procedure now requires the adoption of a *reasoned proposal*, with the EP also having the right to initiate the procedure, and the decision to initiate the procedure requiring a four-fifths majority rather than unanimity. Following the determination (by unanimity) of a serious and persistent breach of the fundamental principles by a Member State, the adoption of sanctions, including the suspension of voting rights, continues to be subject to the qualified majority decision-making criterion. All of this is in line with the current trends in integration and is intended to facilitate the application of the procedure as a whole.

As noted above, up to this point, at Treaty level we can speak only of fundamental principles and their infringement, and the procedure established so far was designed to ensure compliance with those principles. However, the term “common values” has already appeared in public communications and EU documents. In 1995, the aforementioned discussion group concluded in this regard: *‘The Union is not and does not want to be a super-state. Yet it is far more than a market. It is a unique design based on common values.’*⁵⁷⁹ Furthermore, in 2000, the Wise Men were given a mandate to examine whether Austria was in line with “*common European values*”, and in its 2003 communication on the Article 7 procedure, the Commission stated that the procedure *‘equip[s] the Union institutions with the means of ensuring that all Member States respect the common values’*,⁵⁸⁰ which, in view of the above, increased the uncertainty surrounding the procedure.

This procedural construction also appeared in the Constitutional Treaty. The procedure applicable in the event of a persistent and serious breach of the Union’s fundamental values (former Article 7) was placed by the Member States slightly further away from Article I-2 in the structure of the Constitution, in Title IX, which deals with EU membership, accession and, for the first time, voluntary withdrawal from the Union, where it was renamed *‘Suspension of Union membership rights’*. Although the Constitutional Treaty went down in the history of integration as a failure that

⁵⁷⁸ Duxbury, 2000, pp. 4–5.

⁵⁷⁹ Report of the ‘Three Wise Men’, 1995 (December 5th)

⁵⁸⁰ COM(2003) 606 final.

taught many lessons, these procedural rules (along with the EU values mentioned above) were transferred almost unchanged to Article 7 TEU in the Treaty of Lisbon.⁵⁸¹

At this point, it is necessary to mention which actors in the EU have influence over the actual subject matter of the procedure under Article 7 (TEU). In 2000, in the Austrian case cited several times above, when the FPÖ came to power through a coalition agreement, 14 Member States introduced coordinated sanctions against Austria on the grounds that the inclusion of the FPÖ in the Government ‘*legitimises the extreme right in Europe*’.⁵⁸² However, the member states did not decide on coordinated action solely because of the lack of an institutional system to enforce compliance with fundamental principles; another reason was that there was no obvious connection between the events in Austria and EU law. When the EU began examining the Fundamental Law of Hungary, that came into force after 2010, it also encountered the problem that it was difficult to find a connection between its provisions and EU law that would justify the CJEU examining individual measures. It is quite clear that all EU Member States are universally expected to uphold the rule of law. However, it is worth examining what competences and authorisations the various actors have in relation to examining and maintaining the rule of law from the perspective of the principle of conferral of competences, one of the most important organising principles of the Union, which is directly and indirectly expressed in numerous provisions at the level of the Treaties, since in principle the Union can only act in areas where it has express competence. At the same time, the political nature of the procedure and the behaviour of the various actors have meant that, almost from the outset, the rule of law that is the subject of the procedure could become a pan-European issue at any time, even if there is no obvious connection with EU law.⁵⁸³

The various EU institutions have fundamentally different ideas about the “how”. It is no coincidence that in 2014, all three institutions began to give serious consideration to mechanisms for enforcing the rule of law. In its aforementioned communication,⁵⁸⁴ the Commission outlined a new framework for the protection of the rule of law, which would be centred on itself and, similar to infringement proceedings, would enable it to form an opinion on the situation in each Member State through a multi-stage procedure and make recommendations in this regard. The EP considered creating an independent mechanism,⁵⁸⁵ which would maintain an equal distance from

⁵⁸¹ The only change worth mentioning is that the possibility for independent persons to report within the framework of the preventive mechanism will disappear from the mechanism.

⁵⁸² European Parliament resolution on the result of the legislative elections in Austria and the proposal to form a coalition government between ÖVP (Austrian People’s Party) and FPÖ (Austrian Freedom Party) - B5-0102/2000.

⁵⁸³ Closa – Kochenov, 2016, pp. 174–196.

⁵⁸⁴ COM/2014/0158 final.

⁵⁸⁵ European Parliament resolution of 12 March 2014 on the evaluation of justice in relation to criminal justice and the rule of law, P7_TA(2014)0231, 6–8.

all actors (and thus, due to its creation, would be closest to the EP), but would not simply represent another task for the Commission. The independence of the mechanism would have been reinforced by the creation of a new body (the Copenhagen Commission), whose purpose would probably have been to establish a sister body to the Venice Commission under the control of the EP. The Member States wanted to treat the issue as a matter of internal affairs and were reluctant to involve external institutions, preferring to promote the protection of the rule of law primarily through the establishment of their own internal dialogue. The Council Legal Service quickly tempered the enthusiasm of the other two institutions when it stated in its opinion⁵⁸⁶ that there was no legal basis for a rule of law mechanism beyond Article 7 TEU and confirmed that other external actors or EU bodies, including the Commission and the EP, cannot intervene in the assessment of the rule of law performance of individual Member States if it does not fall within the EU's competence.⁵⁸⁷

Consequently, any new rule of law instrument could only be established as a mechanism between equal parties (the so-called *peer review approach*) and, as such, only between Member States, thus laying the theoretical foundations for the establishment of the Council's rule of law dialogue, which is described in more detail below.⁵⁸⁸

This clearly shows that, despite having the competences set out in the Treaties, the EU institutions are seeking to claim additional rights for themselves.⁵⁸⁹

3.2 Procedure(s) under Article 7 TEU

In the current system, Article 7 TEU takes a particularly cautious approach given the extreme sensitivity of the issue and is divided into several stages, including a preventive warning procedure (procedure under paragraph 1), a mechanism for determining serious and persistent breaches of the values (paragraph 2), and a further mechanism for suspending certain rights as a consequence of the procedure under paragraph 2 (provisions in paragraph 3).

The procedure referred to in Article 7(1) TEU is intended to respond to situations where the political situation in a Member State gives rise to a clear risk of a serious breach of the values referred to in Article 2 TEU. The procedure may be initiated by one third of the Member States, the Commission or the EP. Although the latter two institutions both have the right of initiative, in the further stages of the procedure they tend to act as co-pilots (Commission) or not participate at

⁵⁸⁶ Opinion of the Council Legal Service on the Commission's Communication on a new EU Framework to strengthen the Rule of Law: - compatibility with the Treaties, Brussels, 27 May 2014. 10296/14.

⁵⁸⁷ The European Commission disagreed with the approach of the Council Legal Service and stated that it could activate the rule of law framework at any time and would do so in the future. See Kochenov – Pech, 2015, p. 535.

⁵⁸⁸ Schusterschitz, 2016, pp. 243–254.

⁵⁸⁹ Nézöpont Institute 2025, p. 5.

all (EP). As previously noted, Member States seek to retain the privilege of making the final decisions on this highly sensitive issue themselves. Accordingly, regardless of which institution initiates the procedure, the General Affairs Council of the European Union serves as the forum for further steps in the procedure. Paragraph 1 stipulates that a four-fifths majority in the Council is required to determine whether there is a clear risk of a breach of values, but before doing so, the Council shall hear the Member State in question and may make recommendations to it in accordance with this procedure. The Council reserves the right to verify whether the reasons on which it based its determination are still valid.⁵⁹⁰

The procedure focuses on determining whether there is a clear risk of a serious breach of EU values. Parties wishing to initiate proceedings against a country have a difficult task, as there are not many procedural guidelines available on what constitutes a threat to values, which already makes it difficult to initiate the above-mentioned preventive procedure in all cases, and given that the procedure has never reached the stage where such a threat has been identified, there is no precedent to rely on. On the other hand, the fact that almost 20 years passed between the introduction of the procedure under Article 7, including the version contained in the Amsterdam Treaty, and its first initiation in 2017, another factor played a significant role, namely the unprecedented severity of the sanction procedure set out in Article 7(2) within the EU framework and the surrounding myth of the Union's famous "nuclear option" on the rule of law.

The procedure under Article 7(2) TEU changes the range of institutional actors involved compared to the preventive procedure and also "elevates" the decision taken in the procedure to a "higher forum". One third of the Member States or, on the basis of a reasoned proposal from the Commission, the European Council, i.e. the body comprising the Heads of State or Government, is entitled to take a decision. The role of the EP in the sanctioning procedure is reduced to merely giving its consent to the initiative. Under Article 7(2) TEU, the the European Council may determine that a Member State is in serious and persistent breach of the values referred to in Article 2 TEU. Following this determination, the Council may (optionally) decide to suspend certain rights of the Member State in question arising from the application of the Treaties, including voting rights,⁵⁹¹ or it may revoke or amend the measures taken if the circumstances of the Member State have changed.⁵⁹² It is extremely important to note that the preventive and sanctioning procedures are completely separate, and the existence of a clear risk, which is the objective of the preventive

⁵⁹⁰ Article 7(1) TEU.

⁵⁹¹ Article 7(3) TEU.

⁵⁹² Article 7(4) TEU.

procedure, is not a prerequisite for the determination of serious and persistent breach under Article 7(2).⁵⁹³

Although the TEU does not really define procedural guarantees, Article 7(3) stipulates that, in the event of the suspension of certain rights, the Council shall take into account the possible consequences for the obligations of natural and legal persons, which suggests a certain degree of discretion, individualisation and proportionality in the suspension of rights.⁵⁹⁴ It is particularly important to note that the suspension of rights is not equivalent to exclusion; the Union does not have such a mechanism, and the Member State's Treaty obligations continue to bind the country in all cases.⁵⁹⁵

For many years before its first activation, the myth of the nuclear option hung over the procedure under Article 7 TEU. The very fact that this concept appeared in EU public discourse became an obstacle to initiating the procedure, since, following the analogy of the deterrence doctrines of the nuclear superpowers, the very existence of the weapon is a guarantee that no situation will arise in which its use would become necessary. However, in political debates with reluctant countries, one of the strong arguments for persuasion may be the *ultima ratio* nature of the procedure.⁵⁹⁶ Secondly, it clearly failed to take into account the difference between the various procedures under Article 7 TEU, primarily the preventive measures designed to send a warning signal, and the sanctions, which have serious consequences.⁵⁹⁷ In light of all this, it is not at all surprising that the sanctions procedure has never been activated.

3.3 Serious breach of values and the risk thereof in the procedure under Article 7 TEU

The Commission's 2003 communication mentioned above provides some guidance on how to determine whether there is a clear risk of serious breach of values or a serious and persistent breach of values in a given case. According to this, the risk of serious breach is only a potential situation involving the occurrence of harm, which is characterised by its clarity, thereby excluding possible risks from the procedure. In the case of serious breach, the risk has already materialised. According to the Commission's hypothetical example, the adoption of legislation that would remove certain

⁵⁹³ Besselink, 2017, p. 5.

⁵⁹⁴ Fekete, 2016, pp. 6–9.

⁵⁹⁵ As a theoretical example: if budgetary transfers to a Member State are suspended, under Article 7(3) the sanctioned Member State would still have to contribute to the EU budget.

⁵⁹⁶ Fekete, 2015

⁵⁹⁷ Kochenov, 2017, p. 6.

procedural guarantees in the event of war would constitute a clear risk, while the actual application of that legislation would constitute a serious breach of values.

The procedure under Article 7(1) TEU provides for the possibility of a Member State receiving a warning before the threat materialises. Furthermore, the procedure obliges the institutions to maintain continuous monitoring, as the “clear danger” arises in a recognisable political, economic and social environment, over a period of time of any length, during which *‘the first signs of racist or xenophobic policies, for example, become apparent’*.⁵⁹⁸ In contrast, the definition of “serious breach” requires a number of criteria to be taken into account, such as the purpose and result of the violation. In terms of its purpose, a Member State measure constituting a serious violation may, for example, target specific vulnerable social groups, national, ethnic or religious minorities, or immigrants. In terms of its effect, it may affect any of the values enshrined in the Treaty; although the violation of a single value may justify the initiation of proceedings, the simultaneous violation of several values may serve as evidence of the seriousness of the violation. Furthermore, from the perspective of Article 7(2) TEU, the criterion for the “persistence” of the violation is that it must “continue”.

The above provisions grant extremely broad discretionary competences on the basis of which proceedings under Article 7 may in principle be initiated, and highlight the problem frequently emphasised by Hungary, namely the lack of clearly definable European standards of the rule of law, without which the initiation of proceedings is a matter of purely individual interpretation and thus ultimately a political decision as to whether the necessary conditions are met.

3.4 Procedures initiated under Article 7 TEU

On 20 December 2017 and 12 September 2018, the Commission and the EP adopted reasoned proposals to initiate proceedings under Article 7(1) TEU, first in relation to Poland,⁵⁹⁹ and then in relation to Hungary.

In the proceedings initiated against Poland, the Commission essentially raised two objections. On the one hand, it criticised the lack of independent and lawful constitutional review and, on the other hand, the reforms adopted by the Polish legislature in relation to the judiciary, which, in the Commission’s assessment, raise serious concerns about judicial independence, increasing the

⁵⁹⁸ Ibid. 1.4.2.

⁵⁹⁹ The initiation of the procedure was preceded by approximately two years of dialogue between the Polish authorities and the Commission, based on the rule of law framework set out in Commission Communication COM/2014/0158 final.

systemic threat to the rule of law in the country.⁶⁰⁰ The Commission's detailed and reasoned proposal, which also incorporated the findings of other institutions (such as the Council of Europe, the Venice Commission, the OSCE and the UN), sought both to legitimise the procedure in the eyes of other actors in the international political community thus reinforcing the political, value-based dimension, and – operating on more familiar ground due to its role as guardian of the Treaties – to provide a legal assessment similar to that of infringement proceedings.

The initiation of the proceedings immediately highlighted the problem of measurability in relation to the value of the rule of law. According to von Bogdandy, the reasoned proposal has a “somewhat thin” legal argument as to why there is a clear risk of a serious breach in the Polish case, and it does not explain in detail what is necessary to reach the threshold. In his view, the Polish measures affecting the administration of justice must be examined as a whole, taking into account the general political and social situation in the country, in order to convincingly establish the clear risk of a breach of the values enshrined in Article 2 TEU.⁶⁰¹ On this basis, with regard to the rule of law, conclusions can only be drawn on the basis of a comprehensive assessment of systemic deficiencies; focusing on individual cases does not work, as in most cases it is only the totality of actions and measures that reaches the critical threshold on the basis of which a clear risk can be established.⁶⁰² This line of thinking has two definite drawbacks. In addition to preventing Member States accused of deficits in the rule of law from responding individually and refuting the charges brought against them, for example by comparing them with the legal institutions of other Member States not subject to proceedings, it shifts the focus from the legal debate to the political debate by means of an “overall assessment”. If, as a result, the procedure under Article 7 TEU is subject to further politicisation beyond the initial decision, this time in terms of the assessment of the situation in the Member State, this clearly does not strengthen the rapid, effective and objective protection of values.

In light of the above, the question arises as to how different the procedure is when it is initiated by the Commission, an institution with political ambitions and motivations but fundamentally following a legal approach and responsible for the proper implementation of EU law, and when it is initiated by the EP, a fundamentally political EU institution based on the principle of popular representation. An example of the latter is the procedure initiated against Hungary in September

⁶⁰⁰ Reasoned proposal on the rule of law in Poland pursuant to Article 7(1) of the Treaty on European Union, COM/2017/835 final.

⁶⁰¹ von Bogdandy et al, 2021, pp. 391–392.

⁶⁰² von Bogdandy, 2021, p. 93.

2018, following a procedural practice that can at least be described as controversial,⁶⁰³ based on the rapporteur's report, often referred to as the Sargentini report, with the adoption of a reasoned proposal under Article 7(1) TEU. The EP identified 12 areas of concern, which are as follows: 1) the functioning of the constitutional and electoral system; 2) the independence of the judiciary and other institutions and the rights of judges; 3) corruption and conflicts of interest; 4) privacy and data protection; 5) freedom of expression; 6) academic freedom; 7) freedom of religion; 8) freedom of association; 9) the right to equal treatment; 10) the rights of minorities, including Roma and Jewish persons, and protection against hate speech directed at such minorities; 11) the fundamental rights of migrants, asylum seekers and refugees; 12) economic and social rights.⁶⁰⁴

This document is not intended to assess the truth or accuracy of the statements contained in the Sargentini report,⁶⁰⁵ but it is striking that the report is much less coherent than similar documents compiled by the Commission. The Sargentini report is more of a list of tasks assigned to the Hungarian Government, which only discusses each topic in three or four paragraphs, and is therefore not suitable for presenting in detail the areas considered problematic by the EP and justifying them with appropriately legally substantiated arguments.⁶⁰⁶ The report tends to get lost in the details and does not “focus on the bigger picture”.⁶⁰⁷ The Sargentini report failed to provide a comprehensive picture of the alleged or actual shortcomings of the rule of law in Hungary. What is certain is that documents such as this, which are legally unfounded and in some cases containing obvious distortions, whose content is selected through political cherry-picking, also do not help to make the procedure under Article 7(1) TEU a serious and objective supporter of the protection of the rule of law.

A significant difference between the proceedings initiated against Poland and Hungary is that in the former case, the Commission applied the 2014 rule of law framework, which was intended to prevent the Article 7 procedure, while in the latter case, this step was omitted. This approach may be problematic because, although the informal dialogue between the Commission and the Member State provided for in the rule of law framework is a non-mandatory step prior to the initiation of

⁶⁰³ For a brief summary of the procedural problems related to the adoption of the Sargentini report, see: Gombos, 2022, pp. 16–17. For details, see the Court of Justice's judgment in Case C-650/18, Hungary v Parliament, 3 June 2021, ECLI:EU:C:2021:426, and the Opinion of Advocate General Bobek in Case C-650/18, Hungary v Parliament, 3 December 2020, ECLI:EU:C:2020:985.

⁶⁰⁴ European Parliament resolution of 12 September 2018 on a proposal to determine the existence of a clear risk of a serious breach by Hungary of the values on which the Union is founded, in accordance with Article 7(1) of the Treaty on European Union.

⁶⁰⁵ To refute the claims made in the Sargentini report, see the Hungarian Government's 'Information sheet on the issues raised by the report on 'a proposal calling on the Council to determine, pursuant to Article 7(1) of the Treaty on European Union, the existence of a clear risk of a serious breach by Hungary of the values on which the Union is founded'.

⁶⁰⁶ Csink, 2021, pp. 164–165.

⁶⁰⁷ Bakó, 2021, pp. 59–60.

the procedure under Article 7, it can significantly mitigate the initiation of such a procedure if the dialogue is deemed successful. On this basis, Hungary did not have the opportunity to engage in dialogue with the Commission, which may also raise the issue of a violation of the principle of equal treatment of Member States, as Hungary did not have a meaningful opportunity to respond to the rule of law concerns raised by Parliament. The procedure applied in the initiation of the two Article 7 procedures is therefore not only inconsistent, but also highlights the power struggle between the Commission and the Parliament.⁶⁰⁸

3.5 Procedural characteristics and challenges of the hearings 2017-2023

Article 7(1) TEU merely mentions the requirement to hear Member States, without specifying the standard rules applicable to them, which is why it became necessary to establish further procedural rules.⁶⁰⁹ The first three hearings in the proceedings initiated against Poland under Article 7 TEU were conducted on a *semi-ad hoc* basis,⁶¹⁰ taking into account the standard procedural rules that were still under discussion and had not yet been adopted by the Council. The standard rules of procedure prepared by the General Secretariat of the Council were intended to simplify the procedure and ensure a level playing field for all Member States concerned, regardless of whether the procedure was initiated by a group of Member States, the EP or the Commission.⁶¹¹ Given that the EP, as a new initiator, had requested a more active role in the process, there was a clear need to establish uniform rules of procedure.

Under the standard rules, hearings begin with a summary of up to 20 minutes by the initiator of the procedure, setting out the reasons for the proposal. This is presented by a Member State acting on behalf of one third of the Member States or by the Commission. If the EP has initiated the procedure, the Member State holding the Presidency of the Council shall report to the EP at the first hearing on its discussions on the reasoned proposal. It is therefore certain that if the EP is the initiator, it cannot participate in the hearing at all after its submission. The Council's Legal Service and the representatives of the Member States have further extended the right of defence of the Member State subject to the hearing compared to the original draft by stipulating that it may also express its position in writing and by removing the time limit for the closing statement.

⁶⁰⁸ Hegedüs, 2019, pp. 6–7.

⁶⁰⁹ Farrell - Héritier, 2007, pp. 227–243.

⁶¹⁰ The final standard rules were adopted on 9 July 2019, by which time three hearings had already taken place in Poland on 26 June, 18 September and 11 December 2018.

⁶¹¹ Standard modalities for hearings referred to in Article 7(1) TEU 1st draft, 28 June 2019. 106441/19. Point 5.

According to some assessments, the Council has created favourable conditions for the Member State subject to the procedure by adopting the standard rules.⁶¹² In this regard, it should be noted that the final procedural rules clearly reflect the Council's view that the rule of law is primarily a matter of Member States' domestic policy and competence, over which they are reluctant to relinquish their authority. The procedural rules established do not go beyond the procedural guarantees that can be defined within the limits of reasonableness and faithfully reflect the dynamics characteristic of the Council, which are based fundamentally on the equality of Member States and mutual respect, and are therefore fully compatible with the principle of establishing more favourable rules for the defence. At the same time, it is also true that, given the under-regulation of the modalities, they do not serve the need for the prompt and effective conclusion of individual proceedings from a procedural law perspective.

Between 2017 and 2023, six hearings were held in relation to both Poland and Hungary under the procedure laid down in Article 7(1).⁶¹³ It is entirely up to the Council, or more precisely the Presidency, to use its discretionary power based on political decisions⁶¹⁴ to determine when to schedule a hearing, but the fact that only five hearings have been held in the approximately five years since the first procedure was activated which does not seem to be a very significant result in terms of the number of items on the agenda, even if we take into account that in 2020-2021 the COVID-19 pandemic made it virtually impossible to hold physical Council meetings, which also resulted in the cancellation of previously scheduled hearings.⁶¹⁵

The hearings are not public, i.e. they are held behind closed doors, so it is difficult to assess the effectiveness of the discussions that take place there. The available sources are not comprehensive, but considering the statements and politicians' comments published in the media following the hearings, two conclusions can be drawn. On the one hand, there should be a kind of dialogue between the Member States and the country under review, but experience so far suggests that the hearings are more like an examiner-examinee situation, where, in the absence of a decision, the examinee always has the last word, according to the standard rules,⁶¹⁶ until the next exam. On the other hand, it should be noted that Member States tend not to limit the debate to the points raised in the reasoned proposal, but also eagerly reflect on new domestic political developments in the Member States subject to the procedure, thus effectively deviating from the "original indictment".

⁶¹² Priebus, 2022, p. 1000.

⁶¹³ At least this many times, the two Article 7 procedures have been on the agenda in the form of a *state of play*, the purpose of which is for the Commission (or the Presidency) to provide Member States with up-to-date information on the state of the rule of law and developments in the country subject to the procedure.

⁶¹⁴ Crego – Manko - van Ballegooij, 2020, p. 43.

⁶¹⁵ Priebus 2022, p. 1002.

⁶¹⁶ Standard modalities for hearings referred to in Article 7(1) TEU, 9 July 2019. 10641/2/19 REV 2, point 15.

An example of this was in the case of Poland, when during its hearing on 22 June 2021, it also had to respond to questions from Member States on LGBT rights and media freedom,⁶¹⁷ or when, during its hearing on 22 February 2022, serious emphasis was placed on the Polish Constitutional Court's judgment which challenged the primacy of EU law.⁶¹⁸ With regard to Hungary, although the Sargentini report provides a broader basis for questioning the country, the hearing on 22 June 2021 nevertheless focused on the law adopted on 15 June 2021⁶¹⁹ or the hearing on 23 May 2022, the debate focused on the Hungarian parliamentary elections held in April of that year.

It follows from all this that the procedure under Article 7 TEU, although still operating under the motto of compliance with the rule of law, it is completely subject to the political mood prevailing in the Council as to whether a new hearing will be placed on the agenda, as well as to domestic political developments in the Member State subject to the procedure on the one hand, and the specific concerns of other Member States on the other, in terms of what the main topic of the hearing will be. Considering that the Council has no legal obligation to determine when to establish a clear risk of a serious breach of the values (or to establish it at all)⁶²⁰ this adds another nail in the coffin of procedural efficiency, which in theory could reduce the procedure under Article 7(1) to a monitoring mechanism that is constantly ongoing, indefinitely prolonged and constantly reflecting on current events in the Member States, and thus practically empty in terms of protecting values.

3.6 Changes in 2024 in the application of the procedure under Article 7 TEU

In the case of Poland, the turning point in the proceedings initiated against the country under Article 7(1) TEU came with Donald Tusk's formation of a government in December 2023.⁶²¹ On 6 May 2024, the Commission notified the Council of its intention to withdraw its reasoned proposal to initiate proceedings against Poland under Article 7(1) TEU, which in practice means the closure of the proceedings.⁶²² The Commission also published its assessment of the current situation in Poland as the basis for its decision, according to which there is no longer a clear risk of a serious breach by Poland of the values referred to in Article 2.

⁶¹⁷ Euractiv, 2021 (June 23th)

⁶¹⁸ Rule of Law in Poland - Article 7(1) TEU Reasoned Proposal - Report on the hearing held by the Council on 22 February 2022, 15 March 2022. 6600/22.

⁶¹⁹ Values of the Union – Hungary – Article 7(1) TEU Reasoned Proposal – Report on the hearing held by the Council on 22 June 2021, 9 July 2021. 10247/21.

⁶²⁰ Crego, Mańko and Ballegooij 2020, p. 43.

⁶²¹ For further political implications, see Nézőpont Institute 2025, p. 33.

⁶²² The European Commission, 2024 (May 6th)

At this point, the Commission made a political decision that clearly supports the Tusk Government. In its decision and press release, it emphasises that the new Polish Government has acknowledged the violation of the rule of law and promised to restore it. As a "guarantee" of this, on 20 February 2024, the Polish Government presented a comprehensive but non-detailed action plan,⁶²³ which it had previously agreed with the Commission and which the Polish Government has begun to implement.

With regard to the implementation of the commitments made in the action plan concerning the Polish Constitutional Tribunal, the Supreme Court, the National Council of the Judiciary, ordinary courts, the public prosecutor's office and a number of regulatory areas, it can be said that, until the decision was taken, the Tusk cabinet had adopted only one legal act, which had also entered into force (a decree of the Minister of Justice). The other commitments that have already been implemented are the result of the previous Morawiecki cabinet, including, among others, the amendment to the law of June 2022, which was given primary consideration in the Commission's decisions granting access to the RRF and cohesion funds, which, as in Hungary, had been completely suspended in Poland until the action plan was presented.

The vast majority of the commitments set out in the action plan were merely political promises, which are the subject of ongoing or planned legislation before parliament or political acts that are not legally binding.

In this regard, it should be noted that the Commission does not consider even the pre-agreed legislation that has entered into force in Hungary to be sufficient to make a positive decision in the conditionality procedure affecting our country in relation to the rule of law in Hungary, but rather wishes to evaluate the practical application of these measures and even the experience gained during their application – in the Polish case, a mere political promise and the presentation of an action plan were sufficient, on the part of a politician close to the Commission mainstream, not only to terminate the procedure under Article 7 TEU, but also to obtain development funds that had previously been completely blocked.

The timing of the two decisions is also worth mentioning, as the Commission decided on 29 February 2024, prior to the Polish local elections on 7 April 2024, to unblock the development funds allocated to Poland that had been blocked due to the independence of the judiciary, and then, before the European Parliament elections in June 2024, supported the friendly Tusk cabinet by closing the procedure under Article 7 TEU.

⁶²³ See the website of the Polish Government

The situation is further aggravated by the constitutional and public law crisis unfolding in Poland in 2024-2025, which is largely due to the difficulties of cohabitation between the Tusk-style Civic Platform Government, which enjoys the support of the Commission, and the conservative Law and Justice party president, who holds the position of President of the Republic and then re-elected in the 2025 presidential election, has led to difficulties in cohabitation. It is not enough that Poland, on the basis of mere political promises, has received the previously blocked funds and been released from the procedure under Article 7 of the TEU; the measures aimed at “restoring the rule of law” contained in the action plan are still pending. According to press reports, Adam Bodnar, the Minister of Justice responsible for overseeing the reforms, left the Government in July 2025 on the basis of this deficiency.

At the same time, tensions continued to rise in Hungary over the Article 7 procedure. The EP is keeping constant pressure on EU actors to keep the issue on the agenda. It was only in 2024, at the same time as its own election campaign, that the EP adopted five resolutions⁶²⁴ that directly or indirectly affect the rule of law in Hungary, and in none of these did it fail to mention the need to keep the procedure under Article 7 TEU on the Council’s agenda or, even better, to move it forward.

In its resolutions, the EP generally pays considerable attention to the value of the rule of law and the tools available to the EU institutions to enforce and protect it. In this regard, the EP pays particular attention to Hungary and the ongoing rule of law-related procedures against our country (such as the procedure under Article 7 TEU, the findings of the Commission’s annual rule of law report on Hungary, the rule of law conditionality procedure, the horizontal enabling conditions under the so-called Common Provisions Regulation, and the acceptability of Hungary’s Recovery and Resilience Plan and the fulfilment of the milestones set out therein, see the aforementioned instruments below).

Based on the overall picture emerging from the resolutions, the EP is unilaterally critical of the Hungarian Government and the state of the rule of law in Hungary. Its findings – which it regularly repeats in successive resolutions, often creating new grounds for reference for itself – concern the independence of the judiciary, ongoing or pending infringement proceedings concerning the Hungarian Government’s migration-related measures, the alleged inadequacy of the follow-up to

⁶²⁴ EP resolution of 18 January 2024 on the situation of fundamental rights in the European Union – Annual Report covering the period 2022 to 2023, P9_TA(2024)0050; EP resolution of 18 January 2024 on the situation in Hungary and frozen EU funds, P9_TA(2024)0053; EP resolution of 28 February 2024 on the report on the Commission’s 2023 Rule of Law Report, P9_TA(2024)0108; EP resolution of 24 April 2024 on the ongoing hearings in accordance with Article 7(1) TEU on the rule of law in Hungary and their budgetary implications, P9_TA(2024)0367. A similar position is taken in the European Parliament resolution of 18 June 2025 on the Commission’s 2024 Rule of Law Report, P10_TA(2025)0129.

the judgments handed down in these proceedings, and its perceptions of issues relating to the enforcement of LGBT rights. In view of the above, the EP, in line with its position, calls for stricter treatment and more severe sanctions in all ongoing rule of law proceedings against Hungary. In its various resolutions, it seizes every opportunity available to it, for example rejecting the adoption of the Hungarian Recovery and Resilience Plan, calling for the launch of a conditionality procedure, or threatening to initiate legal proceedings where appropriate – to encourage the Commission and the Council to take the strictest possible action against Hungary, regardless of the measures taken by Hungary and the progress made. It is clear from the resolutions that the European Parliament deliberately conflates the various relevant procedures, despite the fact that the Union, and specifically the Commission, takes the view that they are sharply distinct from one another and serve different functions. Furthermore, the resolutions do not reflect Hungary's official position, which is supported by statements and evidence and has been publicly presented; their findings are based almost exclusively on EU documents and the opinions of certain non-governmental organisations.

Despite the EP's limited role in enforcing the rule of law at EU level, the institution continuously exerts pressure on individual institutional actors, in particular on the Commission. Moreover, despite the fact that only the Commission has exclusive competence and professional and organisational background to assess compliance with the rules laid down in the Regulation on common provisions,⁶²⁵ the European Parliament questions the Commission's compliance with the horizontal enabling condition relating to the independence of the judiciary in Hungary (see below for more details). All this leads to the conclusion that the decision of the European Parliament's Legal Affairs Committee of 11 March 2024, which seeks to challenge the Commission's decision containing the above-mentioned decision by means of an annulment procedure, primarily reflects political considerations and is a means of exerting further pressure.

Successive Council presidencies have responded to this pressure. On 25 June 2024, Hungary's seventh hearing took place under the Belgian Presidency, and on 27 May 2025, our country's eighth hearing took place under the Polish Presidency. It should be noted here that the Hungarian Presidency, which lasted from July 2024 to the end of December 2024, was already under strong political pressure during the preparatory phase to put the proceedings against us on the agenda. Although Hungary did not originally plan to put it on the agenda, in order to act in full accordance

⁶²⁵ Regulation (EU) 2021/1060 of the European Parliament and of the Council of 24 June 2021 laying down common provisions for the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund, the Just Transition Fund and the European Maritime, Fisheries and Aquaculture Fund, and financial rules for those and the Asylum, Migration and Integration Fund, the Internal Security Fund and the instrument for financial support for border management and visa policy.

with the principle of loyal cooperation and the honourable mediating role of the Presidency, the procedure under Article 7 TEU was also put on the agenda during our Presidency in the form of a situation assessment.

The hearings have long since ceased to have anything to do with the report originally defined by Judith Sargentini, which initiated the procedure. It is telling in itself that in the procedure launched two EP cycles ago, the rapporteurs have to be replaced from time to time, as green-left MEPs regularly drop out of the EP. The Dutch Sargentini was succeeded as rapporteur by the French Gwendoline Delbos-Corfield in the 2019-2024 cycle. Under her leadership, the EP – in the absence of any legal obligation, but in order to exert political pressure – adopted its so-called interim report (the so-called Delbos-Corfield report) on the proceedings against Hungary on 15 September 2022,⁶²⁶ which, following the themes of the Sargentini report, lists in a “Christmas tree” approach the concerns raised against Hungary in EU documents (including the Commission’s rule of law reports, country-specific recommendations addressed to Hungary in the European Semester, and infringement proceedings) and in the documents of international and non-international organisations (including the judgments of the European Court of Human Rights in relation to the Council of Europe, the opinions of the Venice Commission, the recommendations of GRECO; OSCE; Transparency International, etc.).

Currently, in the 2024-2029 EP cycle, another Dutch Green MEP, Tineke Strik, has been elected as rapporteur, who in October 2025 compiled another “interim” report summarising the criticisms regularly levelled against Hungary in the liberal mainstream media.⁶²⁷ The second interim report was adopted by the EP on 25 November 2025. In this document, the EP once again called on the relevant institutions to initiate the procedure under Article 7(2) TEU against Hungary – implicitly with a view to enabling the withdrawal of Hungary’s voting rights (veto rights).

Of course, this constant pressure and the demand that hearings continue to function as a kind of reporting forum rather than as a forum for real questions, answers, and dialogue, is also having an impact in the Council. During the eighth hearing, held under the Polish Presidency, for example, 20 Member States expressed their dissatisfaction with the Hungarian Pride regulations in an open statement and demanded that the national law on the right of assembly be amended.

⁶²⁶ European Parliament Resolution of 25 November 2025 on a proposal for a Council decision establishing a clear risk of a serious breach by Hungary of the fundamental values of the Union, in accordance with Article 7(1) of the Treaty on European Union (2018/0902R(NLE)).

⁶²⁷ See the European Parliament’s DRAFT INTERIM REPORT on the proposal for a Council decision determining, pursuant to Article 7(1) of the Treaty on European Union, the existence of a clear risk of a serious breach by Hungary of the values on which the Union is founded (C9-0000/2022–2018/0902R(NLE))

Based on the above, it is clear that, although the rule of law nuclear option is more of an air rifle, Hungary will not escape its crosshairs until it gives up its right to determine conservative government measures. The Polish example clearly shows that a change of government is sufficient for EU institutions to abandon their concerns expressed in rule of law proceedings if a politician who enjoys the favour of the Brussels mainstream actually violates the principles of the rule of law. Furthermore, following the plenary sessions of the EP, it is clear that Slovakia, which, like Hungary, represents a sovereignist position, is increasingly coming under the scrutiny of the EP.

4. The Council's rule of law dialogue

Given that the Commission clearly wanted to claim the right to assess the rule of law situation in Member States for itself, in 2014 the Council decided to establish a mechanism based on mutual dialogue between all Member States (without the involvement of other EU institutions) to counterbalance the Commission's efforts to go beyond the Treaties.⁶²⁸

In its conclusions adopted on 16 December 2014,⁶²⁹ the Council established an annual political dialogue covering all Member States, to be conducted within the General Affairs Council, with the aim of promoting and protecting the rule of law within the framework of the Treaties. It was agreed that the dialogue should be based on the principles of objectivity, non-discrimination and equal treatment of all Member States, and that it should take an unbiased, fact-based approach. It was also agreed that this mechanism should not affect the principle of conferral of competences and that the obligation to respect the constitutional traditions of the Member States, as laid down in Article 4(2) of the TEU, should be respected. The Council has therefore established all these principles as the basic principles for the regular conduct of the rule of law dialogue, requiring that they be applied throughout the process, including in the preparation of the annual ministerial exchange of views.

In its conclusions, the Council stipulated that the *soft law* regulation on the dialogue should be reviewed by the end of 2016.

⁶²⁸ The text of Chapter III draws heavily on the manuscript entitled 'Az Európai Unió jogállamisági mechanizmusai' ['The Rule of Law Mechanisms of the European Union'] by Dr. Rita Rácz (the manuscript is expected to be published in the professional journal *Pro Publico Bono – Magyar Közigazgatás* in spring 2026).

⁶²⁹ Conclusions of the Council of the EU and the Member States meeting within the Council on ensuring respect for the rule of law, 17014/14, 16 December 2014

Based on the 2014 Council conclusions, Member States held four thematic debates, each focusing on a specific topic.⁶³⁰

The first review of the mechanism took place in 2019, following the Commission's April 2019 communication entitled 'Further strengthening the rule of law in the EU', which established the annual rule of law review cycle described above, centred on the Commission's annual rule of law report. As a result of the review, while maintaining the original principles, a new approach was decided upon, which, as it was not supported by all Member States (Hungary and Poland mainly opposed it because the Commission's annual report would serve as the sole basis for dialogue), it was published only in the form of Presidency conclusions⁶³¹ (rather than Council conclusions to be adopted by consensus by the Member States).

Since 2020, the Council's non-public dialogue has taken the form of horizontal discussions (once a year, covering all Member States) and country-specific discussions (twice a year, covering the situation in 5-5 Member States, based on the relevant country chapters of the Commission's annual rule of law report) in the General Affairs Council (GAC).

The mechanism was reviewed again in 2023. As Hungary and Poland were unable to support the text resulting from the review, mainly for the reason mentioned above, only Presidency conclusions were adopted again⁶³² (the Polish Government formed shortly afterwards indicated that it supported the text). Nevertheless, the mechanism continues to operate with the participation of all Member States and is still organised around horizontal and country-specific discussions (the number of country-specific discussions has increased from two to three per year, with two in the first half of the year and the third in the second half of the year, while the number of Member States involved on each occasion has fallen from five to four), all of which are based in practice on the Commission's annual rule of law report.

Under this mechanism, the Council does not take any formal decisions, so there are no legal consequences attached to the dialogue.

⁶³⁰ In 2015, the topic was the challenges facing the rule of law and how best to address them, with a focus on the challenges of the digital age (<https://www.consilium.europa.eu/en/meetings/gac/2015/11/17-18/>). In 2016, the focus was on the integration of migrants and their fundamental rights (<https://data.consilium.europa.eu/doc/document/ST-8774-2016-INIT/en/pdf>), in 2017, media pluralism, and in 2018, trust in public institutions (<https://www.consilium.europa.eu/en/meetings/gac/2018/11/12/>) were the focus of the ministerial exchange.

⁶³¹ The Presidency conclusions are available at: <https://www.consilium.europa.eu/media/41394/st14173-en19.pdf>.

⁶³² See the Council's website on a summary of the European Semester mechanism

5. The Commission's annual rule of law report

As mentioned above, the Commission's annual rule of law report is a central element of its 2019 action plan, which takes the form of a communication.⁶³³ The Commission has been publishing its rule of law report annually since 2020, and in 2025 it published its sixth report. Each report consists of a horizontal communication (presenting the main developments in the Member States with a summary assessment and developments at EU level) and a country-specific chapter for each Member State. Since 2024, the Commission has also included certain candidate countries selected by it in the rule of law review cycle and thus in its annual reports.⁶³⁴

Since the first report, the Commission has consistently examined four areas (“pillars”): the judicial system, the anti-corruption framework, media pluralism and media freedom, and other institutional issues related to the system of checks and balances (the latter pillar covers a number of different areas, including the functioning of the constitutional court, the situation of human rights institutions and ombudsmen, the situation of civil society organisations, legislative procedures and their quality, and the implementation of judgments of the European Court of Human Rights). In terms of the scope of the report, it can be noted that the Commission has been continuously expanding the areas examined under the four pillars since 2020, but the most significant change came with the 2025 report, in which the Commission expanded its report to include the “internal market dimension” by placing greater emphasis on issues that are important for the functioning of the internal market within the existing pillars. The Commission also declared that it may examine additional areas within the internal market dimension in the future.⁶³⁵ The Commission has thus effectively laid the groundwork for examining Member State regulations in any EU policy area, even beyond the EU's competences, by referring to the relevance of the internal market, which forms the basis of economic integration.

In its annual reports, the Commission declares that it uses a transparent and objective methodology based on recognised rule of law standards to prepare the report, and that the report ensures fair and equal treatment of all Member States, while taking into account specific national contexts and legal traditions. However, this lofty declaration is not supported by practice, as the Commission has so far failed to provide the “European standards” it refers to in numerous places, or, in the absence of such standards, the methodology on which its investigation is based, as well as proof that it has made any attempt to ensure that the constitutional traditions of the Member States are respected.

⁶³³ COM(2019) 343 final.

⁶³⁴ The text of Chapter IV draws heavily on the manuscript entitled ‘Az Európai Unió jogállamisági mechanizmusai’ [‘The Rule of Law Mechanisms of the European Union’] by Dr. Rita Rácz.

⁶³⁵ Commission Communication: Rule of Law Report 2025, COM(2025) 900 final, 8 July 2025.

Instead, the report allows for biased, politically partial statements to be made, even in areas that fall outside the EU's remit.

The Commission has further exacerbated its abuse of power by issuing country-specific recommendations to Member States from 2022 onwards, clearly without any legal basis or explicit authorisation (between 2022 and 2025, recommendations addressed to each Member State every year, ranging in number from 2 to 9), the implementation of which it has since assessed in its subsequent reports. The Commission classifies its own assessment of the implementation of the recommendations into four categories: no progress, some progress, significant progress, full implementation.

The current President of the Commission, Ursula von der Leyen, declared in her political guidelines published prior to her election in 2024 that she intends to link the recommendations made to Member States in the next financial cycle to access to EU funds,⁶³⁶ even though the recommendations are not binding due to their *soft law* nature. It is an interesting question whether, if the Commission achieves its goal and its recommendations thus have a direct impact on Member States' access to EU funds, it would be possible to challenge any part of the annual rule of law report before the CJEU in annulment proceedings.

The process for adopting the annual report is as follows: at the end of the year preceding the report, the Commission sends Member States and makes available online a questionnaire on the areas covered by the report, focusing on national developments since the previous report, and expects Member States and all interested parties to respond (if they agree, the responses are also made public). Commission officials then hold consultations (online) in each Member State, usually lasting two days, with representatives of the Member State's Government and stakeholders selected by the Commission (Member State authorities, institutions, bodies and civil society organisations). The Commission prepares its own assessment and sends the draft country report to the Member State concerned for fact-checking, during which the Member State may make comments. The Commission decides on its own authority on the finalisation of the report and thus on its entire content.

5.1 Structure of the Commission's Rule of Law Report

Pillar I: Judicial system

The first subchapter of the rule of law reports deals with the situation of the judicial system. In this regard, the Commission's first rule of law report for 2020 justifies the inclusion of this subchapter

⁶³⁶ Ursula von der Leyen (2019): Political Guidelines For The Next European Commission 2024–2029.

as follows: *‘Effective justice systems are essential for upholding the rule of law. Independence, quality and efficiency are the defined parameters of an effective justice system, whatever the model of the national legal system and tradition in which it is anchored. Whilst the organisation of justice in the Member States falls within the competence of the Member States, when they are exercising that competence, Member States must ensure that their national justice systems provide for effective judicial protection. The independence of national courts is fundamental to ensuring such judicial protection. National courts ensure that the rights and obligations provided under EU law are enforced effectively.’*⁶³⁷

The importance of this subchapter is also highlighted by the fact that, starting in 2020, the scope of areas examined in the first pillar of the Rule of Law Report has been gradually expanded, in some cases with the addition of entirely new areas of examination. The scope of the examination of the appointment and selection of judges and prosecutors has been extended to include the position of court president, and from 2022, judicial review has also been examined in this context. The examination of the issue of the transferability of judges has been supplemented by the reform of court maps and extended to the dismissal and retirement system for judges, court presidents and prosecutors. With regard to the examination of independence, the report initially examined only the composition and appointment of members, but then extended to dismissal and the competences of the body responsible for protecting judicial independence (including the Judicial Council). The issue of the accountability of judges and prosecutors was also expanded to include, in addition to the disciplinary system and bodies and ethical rules, the issue of the criminal and civil liability of judges, including judicial review. With regard to the remuneration and benefits of judges and prosecutors, additions have been made in relation to bonuses, and from 2022, special attention was also paid to changes in salaries, taking into account the significant increases or decreases that occurred last year, and the transparency of the system and the requirement for access to information were also examined.

The area of assessing the quality of the administration of justice has also expanded significantly, and from 2021 onwards, training for legal professionals has also been assessed, with an emphasis on the use of digital technologies, in particular electronic communication tools, in the justice system and among court users, including the resilience of these systems during the COVID-19 pandemic. In 2021, the Commission examined the geographical distribution and number of courts, jurisdictions and, from 2022 onwards, the specialisation of courts, with particular regard to courts

⁶³⁷ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – 2020 Rule of Law Report – The state of the rule of law in the European Union COM(2020) 580 final, p. 8.

or chambers dealing with fraud and corruption cases. It is therefore contradictory that the Commission itself emphasises in its communication that the organisation of the judiciary in the Member States is a matter of national competence, yet in its report it examines the judicial systems of the Member States in great detail and, year after year, in an increasingly broad scope, in the case of Hungary even extending to the internal case allocation systems of individual courts.

It should be noted that the Treaties did not provide for aspects of the judicial system relating to the rule of law and the constitutional structure of Member States. In this regard, the adoption of the Charter brought about a change, with Article 47 guaranteeing the right to an effective remedy and to a fair trial by stipulating that *'[e]veryone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article. Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented. Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice'*.⁶³⁸ In view of this, as a result of the Lisbon reforms, Article 19 of the TEU was supplemented with the provision that *'Member States shall provide remedies sufficient to ensure effective legal protection in the fields covered by Union law'*.⁶³⁹ In terms of its wording, this provision also merely required the provision of legal remedies.

This is evidenced by Case C-286/12, *Commission v Hungary*,⁶⁴⁰ which was based on the provision of the Fundamental Law according to which, with the exception of the President of the Curia (Supreme Court of Hungary), all judges could remain in service until they reached the general retirement age. In addition, one of the transitional provisions of the Fundamental Law would have introduced a rule that if a judge reached retirement age before 1 January 2012, their service relationship would end on 30 June 2012. On this basis, the age limit of 62 would also have applied to the position of judge. On 16 July 2013, the Constitutional Court ruled that this provision was unconstitutional. However, in the infringement proceedings, the Commission did not refer to aspects of the rule of law, but based the proceedings on *a violation of Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and*

⁶³⁸ Article 47 of the Charter.

⁶³⁹ Article 19(1), second subparagraph, TEU.

⁶⁴⁰ Judgment of the Court of Justice of 6 November 2012 in Case C-286/12 *Commission v Hungary*, ECLI:EU:C:2012:687.

occupation, which was confirmed by the CJEU in its decision,⁶⁴¹ without, however, pointing to any alleged rule of law implications.⁶⁴²

This was changed by the so-called “Portuguese Judges” case.⁶⁴³ In its judgment, the CJEU noted that the Union is a Union based on the rule of law, in which legal subjects have the right to challenge before the courts the legality of any decision or other national measure relating to the application to them of EU legal acts within the meaning of Article 288 of the Treaty on the Functioning of the European Union (hereinafter: TFEU), and that *‘the very existence of effective judicial review designed to ensure compliance with EU law is of the essence of the rule of law’*. The CJEU linked the requirements laid down in Article 19(1) TEU with the value of the rule of law enshrined in Article 2 TEU, holding that, within the EU legal order, the task of ensuring judicial review is not entrusted solely to the Court of Justice, but also to national courts. It is for the Member States to ensure that their courts meet the requirements of effective judicial protection. The independence of national courts is of particular importance for the proper functioning of the European judicial system.⁶⁴⁴

In its subsequent case law, the CJEU further refined the competences granted to the Union. In this regard, it defined the following possibilities for intervention in its subsequent case law, mainly in relation to the Polish judicial system:

- the requirement of a court established by law;⁶⁴⁵
- the effective application of the principle of separation of competences in relation to the administration of justice;⁶⁴⁶
- ensuring the independence of judges in their decision-making;⁶⁴⁷

⁶⁴¹ Ibid. paragraphs 26–61.

⁶⁴² It should be noted, however, that Advocate General Kokott noted in her Opinion that the sudden retirement of judges raises doubts as to the independence of the courts and thus the quality of justice, and then referred to the aspect of the external independence of the judiciary. However, this was not further elaborated in her opinion. Opinion of Advocate General Kokott delivered on 2 October 2012 in Case C-286/12 Commission v Hungary, ECLI:EU:C:2012:602, paragraphs 54–56. Judgment of the Court of Justice of 27 February 2018 in Case C-64/16 Associação Sindical dos Juízes Portugueses v Tribunal de Contas, ECLI:EU:C:2018:171, paragraph 36.

⁶⁴³ Judgment of the Court of Justice of 27 February 2018 in Case C-64/16, Associação Sindical dos Juízes Portugueses v Tribunal de Contas, ECLI:EU:C:2018:117.

⁶⁴⁴ Ibid. paragraphs 36–43.

⁶⁴⁵ Judgment of the Court of Justice in Case C-83/19, C-127/19, C-195/19, C-291/19, C-355/19 and C-397/19, Asociația ‘Forumul Judecătorilor din România’ (AFJR), judgment of 18 May 2021, ECLI:EU:C:2021:393, paragraphs 195–198; Judgment of the Court of Justice of the European Union in Case C-791/19 Commission v Poland, delivered on 15 July 2021, ECLI:EU:C:2021:596, paragraphs 167–168.

⁶⁴⁶ Judgment of the Court of Justice of 15 July 2021 in Case C-791/19 Commission v Poland, ECLI:EU:C:2021:596, paragraph 72.

⁶⁴⁷ Judgment of the Court of Justice of 7 September 2023 in Case C-216/21, Asociația ‘Forumul Judecătorilor din România’ YN v Consiliul Superior al Magistraturii, ECLI:EU:C:2023:628, paragraphs 78–82.

- issues of judicial remuneration and the financial autonomy of the judiciary;⁶⁴⁸
- the allocation of cases to judges in such a way that it does not undermine judicial independence;⁶⁴⁹
- the appointment of judges and the criteria for appointment, as well as the appointment process and any irregularities related to it;⁶⁵⁰
- the judicial mandate and the guarantee of irremovability;⁶⁵¹
- disciplinary rules applicable to judges;⁶⁵²
- the role of judicial councils in ensuring judicial independence; and⁶⁵³
- ensuring access to legal remedies.⁶⁵⁴

⁶⁴⁸ Judgment of the Court of Justice of 27 February 2018 in Case C-64/16, *Associação Sindical dos Juízes Portugueses v Tribunal de Contas*, ECLI:EU:C:2018:117, paragraphs 11–18 and 46–49; C-49/18 *Vindel* EU:C:2019:106, paragraphs 67, 70–73.

⁶⁴⁹ Judgment of the Court of Justice of 15 July 2021 in Case C-791/19 *Commission v Poland*, ECLI:EU:C:2021:596, paragraphs 164–177.

⁶⁵⁰ C-542/18 *RX-II* and C-543/18 *RX-II Simpson and HG* EU:C:2020:232, paragraph 71; C-132/20 *Getin Noble Bank* EU:C:2022:235, paragraphs 95–97, 125–131; W.Ż. paragraphs 130, 134–152. *Simpson and HG* paragraph 75; C-748/19 to C-754/19 *Prokuratura Rejonowa EU:C:2021:931* paragraphs 78–79; C-896/19 *Repubblica EU:C:2021:311* paragraphs 53–57; Judgment of the Court of Justice of 7 September 2023 in Case C-216/21 *Asociația ‘Forumul Judecătorilor din România’ YN v. Consiliul Superior al Magistraturii*, ECLI:EU:C:2023:628, paragraphs 78–82, 85–86; C-824/18 *A.B. and Others* EU:C:2020:1053 paragraph 122; C-204/21 *Commission v Poland*, paragraphs 69, 73; C-791/19 *Commission v Poland* EU:C:2021:596, paragraphs 88–122 and 129–130.

⁶⁵¹ Judgment of the Court of Justice of 24 June 2019 in Case C-619/18 *Commission v Poland*, ECLI:EU:C:2019:531, paragraphs 75–96; Judgment of the CJEU in Case C-192/18 *Commission v Poland*, 5 November 2019, ECLI:EU:C:2019:924, paragraph 113; Judgment of the CJEU in Case C-487/19 *W. Ż.* of 6 October 2021, ECLI:EU:C:2021:798, paragraphs 112–115.

⁶⁵² Judgment of the Court of Justice of 24 June 2019 in Case C-619/18, *Commission v Poland*, ECLI:EU:C:2019:531, paragraphs 82–97; Judgment of the CJEU in Case C-791/19 *Commission v Poland*, 15 July 2021, ECLI:EU:C:2021:596, paragraphs 88–112, 114, 136–138, paragraphs 164–176, 189–202, 208–213; Judgment of the CJEU in Case C-564/19 *IS*, delivered on 23 November 2021, ECLI:EU:C:2021:949, paragraph 91; Judgments of the CJEU in Cases C-357/19, C-379/19, C-547/19, C-811/19 and C-840/19. *Euro Box Promotions and Others*, judgment of 21 December 2021, ECLI:EU:C:2021:1034, paragraphs 238–243. Judgment of the CJEU in Case C-619/18 *Commission v Poland*, 24 June 2019, ECLI:EU:C:2019:531, paragraphs 82–97; Judgment of the CJEU in Case C-216/18 *PPU. LM*, 25 July 2018, paragraph 57. Judgment of the CJEU in Case C-487/19 *W. Ż.*, 6 October 2021, ECLI:EU:C:2021:798, paragraph 113; Judgment of the CJEU in Case C-817/21 *R. I. v Inspekția Judiciară, N. L.*, 11 May 2023, ECLI:EU:C:2023:391, paragraphs 53–73.

⁶⁵³ Judgment of the Court of Justice of 19 November 2019 in Joined Cases C-585/18, C-624/18 and C-625/18, *A.K. and Others*, ECLI:EU:C:2019:98, paragraphs 137–138 and 143; Judgment of the CJEU in Case C-272/19 *VQ v Land Hessen*, 9 July 2020, ECLI:EU:C:2020:535, paragraph 53; Judgment of the CJEU in Case C-824/18 *A.B. and Others*, 2 March 2021, ECLI:EU:C:2021:153, paragraphs 124–125; Judgment of the CJEU in Case C-896/19 *Repubblica v Il-Prim Ministru*, 20 April 2021, ECLI:EU:C:2021:311, paragraph 66; Judgment of the CJEU in Case C-791/19 *Commission v Poland*, 15 July 2021, ECLI:EU:C:2021:596, paragraphs 103–108.

⁶⁵⁴ Judgment of the Court of Justice of 2 March 2021 in Case C-824/18, *A.B. and Others*, ECLI:EU:C:2021:153, paragraphs 128 and 136; Judgment of the Court of Justice of 19 November 2019 in Joined Cases C-585/18, C-624/18 and C-625/18 *A.K. and Others*, ECLI:EU:C:2019:98, paragraph 145.

In addition, it should be noted that EU law now contains extensive legislation on judicial cooperation between Member States, covering a number of areas, including certain aspects of digitalisation⁶⁵⁵ and EU rules on the legal profession.⁶⁵⁶

However, it should be noted that EU legislation has not been developed in all areas mentioned in the Commission's Rule of Law Report, such as the issue of the case allocation system in courts. In view of this, it needs to be clarified on what basis the Commission can examine the relevant regulations of the Member States and make recommendations. This is particularly surprising given that the Commission's Rule of Law Report even refers to European standards in this regard.⁶⁵⁷ This is also strange in view of the fact that the document refers to so-called European standards, which refer back to the relevant recommendation of the Committee of Ministers of the Council of Europe.⁶⁵⁸ It should be emphasised that the argument does not clarify what can be considered a European standard, nor does it clarify on what basis this can be invoked against Hungary, which leads directly to a recommendation. At best, this is a duplication of a recommendation belonging to another international organisation, which is not binding. However, this is also incomprehensible because there is no justification for the EU's competence in this area, nor is there any justification for the connection with the rule of law under EU law.⁶⁵⁹ In this regard, it should be emphasised that, since the rule of law applies not only to Member States but also to EU institutions, the practice of the CJEU may also be relevant to the application of such a case allocation system. However, the CJEU does not have such a case allocation system, and its relevant practice is not available to the public.⁶⁶⁰

In addition to the above, it should be emphasised that the Commission's Rule of Law Report deals with the autonomy, independence and organisational issues of the public prosecutor's offices of the Member States, in respect of which the Treaties do not confer any competences on the Union. On the basis of the second subparagraph of Article 19(1) TEU, referred to above, and taking into account the extensive case law of the CJEU, such competence exists in relation to the situation of courts and judges, since their central role may influence the relevant proceedings before the CJEU and, consequently, the European judicial system. However, this does not apply to the issue of the

⁶⁵⁵ Regulation (EU) 2023/2844 of the European Parliament and of the Council of 13 December 2023 on the digitisation of judicial cooperation and access to justice in cross-border civil, commercial and criminal matters, and amending certain legal acts in the area of judicial cooperation.

⁶⁵⁶ For example, Directive 2005/36/EC of 7 September 2005 on the mutual recognition of professional qualifications.

⁶⁵⁷ Commission's 2023 Rule of Law Report, Country Chapter on Hungary, Brussels, 5 July 2023, SWD(2023) 817 final, p. 2.

⁶⁵⁸ Recommendation CM/Rec(2010)12 of the Committee of Ministers of the Council of Europe, point 24.

⁶⁵⁹ The latter observation is also important because the Council of Europe instrument referred to mentions the rule of law only once and does not deal with it otherwise.

⁶⁶⁰ See Hermansen, 2020, pp. 1215–1235.

independence of prosecutors and public prosecutors' offices, which remains the exclusive competence of the Member States. Given that the Commission's Rule of Law Report does not refer to EU legal sources, the Commission's investigation in this area cannot be justified in any way.

Pillar II: Combating corruption

The second pillar of the Commission's Rule of Law Report deals with the fight against corruption. The Commission justified its inclusion in its own rule of law reports by stating that *'[t]he fight against corruption is essential for maintaining the rule of law. Corruption undermines the functioning of the state and of public authorities at all levels and is a key enabler of organised crime. Effective anti-corruption frameworks, transparency and integrity in the exercise of state power can strengthen legal systems and trust in public authorities. Fighting corruption needs to be based on evidence about its prevalence and form in a given country, the conditions that enable corruption and the legal, institutional and other incentives that can be used to prevent, detect and sanction corruption.'*⁶⁶¹

The first 2020 Rule of Law Report requested a list of competent authorities responsible for preventing, detecting, investigating and prosecuting corruption in relation to the fight against corruption. This list was expanded in 2022 to include not only cooperation between domestic authorities in this area, but also cooperation with foreign authorities, European Anti-Fraud Office (OLAF) and the European Public Prosecutor's Office (EPPO), as well as an examination of the human, financial, legal and practical resources allocated to these areas. The scope of the areas examined was further expanded from 2022 to 2025 to include the presentation of guarantees for the functional independence of the authorities responsible for preventing and detecting corruption, and the Commission also examined the status of the implementation of the anti-corruption framework strategy. In relation to the prevention of corruption, the issues of asset declaration rules, lobbying, the revolving door phenomenon and the general transparency of public sector decision-making were supplemented from 2022 onwards by the mapping of conflict of interest rules, codes of conduct and ethics training. The scope of areas exposed to the risk of corruption (public procurement, healthcare) has also been expanded from 2022, with the addition of a requirement to list risks or cases of corruption related to the disbursement of EU funds. In addition, planned measures to monitor and prevent corruption and conflicts of interest in these areas were monitored, as were measures to prevent corruption committed by organised criminal groups from 2023 onwards. Measures to prevent corruption were expanded in 2021 to include criteria relating to the

⁶⁶¹ COM(2020) 580 final, p. 12.

general transparency of public sector decision-making, and in 2022 to include public access to information, including any obstacles to the classification of information, transparency authorities and framework rules on lobbying, its transparency, rules on asset declarations, gifts and the transparency of political party financing. In the area of criminal measures, the presentation of the penalties provided for by law was supplemented from 2022 with a report on the criminalisation of foreign bribery. Initially, the analysis of data relating to the investigation of corruption offences, the bringing of charges, final judgments and the application of sanctions was supplemented from 2021 by a transparency review of high-level corruption cases, including the monitoring of the use of EU funds. From 2022, this area was supplemented with specific examples, such as the examination of political immunity regulations, procedural rules, limitation periods and cross-border cooperation. The Commission has thus significantly expanded the issues covered by the Rule of Law Report in relation to the chapter on the investigation of corruption.

It should be noted in advance that the Union also has a certain degree of competence in relation to the issues raised in the Commission's rule of law reports, such as the protection of whistleblowers,⁶⁶² and the area of public procurement.⁶⁶³ Given that public procurement is a shared competence under EU law,⁶⁶⁴ it should be noted that EU public procurement rules apply mainly in cases where the value thresholds set out in the relevant EU rules are exceeded. Otherwise, the national rules laid down by Member State law apply.⁶⁶⁵ However, the Commission has recently been examining Member States' public procurement systems without regard to the clear limits of application under EU law, apparently without having any authority to do so.

From the perspective of this topic, the issue of corruption is most significant in the area of criminal judicial cooperation. There is legislation on this in EU law. Examples include Council Framework Decision 2003/568/JHA of 22 July 2003 on *combating corruption in the private sector*,⁶⁶⁶ the Convention on *the fight against corruption involving officials of the European Communities or officials of Member States of the European Union*, signed on 26 May 1997,⁶⁶⁷ and Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on *the fight against fraud*

⁶⁶² Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons reporting on suspected breaches of Union law.

⁶⁶³ See, inter alia, Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC, OJ L 94, 28.3.2014, pp. 65–242.

⁶⁶⁴ This is based on Article 4(2)(a) TFEU.

⁶⁶⁵ See, for example, Article 4 of Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC. In addition, the Public Procurement Authority also lists the rules currently in force on its website.

⁶⁶⁶ Council Framework Decision 2003/568/JHA of 22 July 2003 on combating corruption in the private sector, OJ L 192, 31.7.2003, pp. 54–56.

⁶⁶⁷ Promulgated by Act CXV of 2005 on the promulgation of the Convention on the fight against corruption involving officials of the European Communities and officials of Member States of the European Union, dated 26 May 1997.

*to the Union's financial interest by means of criminal law.*⁶⁶⁸ It should be noted that these are to be replaced by the Commission's proposal for a directive on the fight against corruption, which aims to establish minimum rules on criminal offences and sanctions in the field of corruption as well as further measures to prevent corruption and make the fight against corruption more effective.⁶⁶⁹ In this regard, Article 83(2) TFEU, which also provides the basis for criminal law cooperation in the field of corruption, only confers competences on the Union to adopt minimum rules, which rightly raises questions about future EU-level legislation.⁶⁷⁰ Furthermore, the other legal basis referred to (Article 82(1)(d) TFEU) only provides a basis for measures to facilitate cooperation between the judicial or equivalent authorities of the Member States in criminal proceedings and in the enforcement of decisions, such as the adoption of common rules on jurisdiction in criminal matters.⁶⁷¹ It should be noted, however, that even the proposed directive does not confer on the Union such broad competences as to define the concept of high-level corruption or lay down rules on it, the content of national anti-corruption strategies and their detailed rules (not least because not all Member States have such strategies to date), not to mention the fact that the relevant legislation does not seek to ensure that EU institutions are subject to similar rules as Member States.⁶⁷² In view of the Commission's annual reports on the rule of law, which have significant implications for fundamental rights, the approach set out in Article 51 of the Charter regarding the application of fundamental rights is unfortunately not being implemented in this way.

It should be noted that the Commission's Rule of Law Report refers to the situation of Member States that have joined the EPPO, thus indirectly addressing the issue of accession to it. It should be emphasised that Hungary has not joined the EPPO and there is no obligation under EU law to do so. Furthermore, as follows from Article 20(5) TEU, legal acts adopted under enhanced cooperation are binding only on participating Member States and not on non-participating Member States, so giving preference to such cooperation from the point of view of the rule of law is a covert circumvention of the rules on enhanced cooperation. Hungary reserves its right under Article 20(1) TEU to join at any time, but the Treaties do not allow the Commission to circumvent the sovereign decision of any state on the basis of the value of the rule of law.

⁶⁶⁸ Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law, OJ L 198, 28.7.2017, pp. 29–41.

⁶⁶⁹ Proposal for a Directive of the European Parliament And Of The Council on combating corruption, replacing Council Framework Decision 2003/568/JHA and the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union and amending Directive (EU) 2017/1371 of the European Parliament and of the Council

⁶⁷⁰ Article 83(2) TFEU.

⁶⁷¹ Article 82(1)(d) TFEU and the Commission's legislative proposal referred to above.

⁶⁷² Nézöpont Institute 2025, p. 25.

The Commission's rule of law reports also examine the issue of political parties and campaign financing in individual Member States. In this regard, it can also be said that the Treaties do not grant the Union any competences in this area. It should be noted that the Commission's recommendation on this matter⁶⁷³ refers only to the EU values set out in Article 2 TEU and Article 10 TEU, presumably with a view to paving the way for a future increase in competences. However, it is clear that, apart from the above-mentioned EU competences, the Commission's rule of law assessment in this area also goes well beyond the EU's competences and is capable of arbitrarily judging other matters that fall within the exclusive competence of the Member States.

Pillar III: Media pluralism and media freedom

The Commission's Rule of Law Report also addresses media pluralism and media freedom. The Commission justifies the inclusion of this subchapter in its 2020 Rule of Law Report by stating that *'[a]ll Member States have legal frameworks in place to protect media freedom and pluralism and EU citizens broadly enjoy high standards of media freedom and pluralism. Freedom of expression, media freedom and pluralism and the right of access to information are generally enshrined in the Constitution or in secondary law. Media pluralism and media freedom are key enablers for the rule of law, democratic accountability and the fight against corruption. The murders of journalists who were investigating high-level corruption and organised crime allegations have been a wake-up call reminding Member States of the obligation to guarantee an enabling environment for journalists, protect their safety and pro-actively promote media freedom and media pluralism'*.⁶⁷⁴ In this regard, *'[t]he monitoring in the first rule of law report focuses on some fundamental elements of media freedom and pluralism with a particular bearing on the rule of law'*.⁶⁷⁵

In this pillar of the Rule of Law Report, a gradual expansion can also be observed in the issues examined by the Commission compared to the 2020 report. In its examination of media regulatory authorities and bodies, the Commission has also taken a specific interest in the functioning of media councils or other self-regulatory and supervisory bodies since 2021. In order to ensure transparency in state advertising and media ownership, the issue of safeguards against state interference has been expanded since 2022. Particular attention was paid to safeguards ensuring the editorial independence of the media and specific safeguards ensuring the independence of

⁶⁷³ Commission Recommendation (EU) 2023/2829 of 12 December 2023 on the inclusive and resilient electoral processes in the Union and enhancing the European nature and efficient conduct of the elections to the European Parliament.

⁶⁷⁴ COM(2020) 580 final, p. 17.

⁶⁷⁵ Ibid.

public service media governing bodies, such as regulations on appointments and dismissals. Furthermore, from 2021, the report has been expanded to include a requirement for public access to information on media ownership. The 2024 questionnaire already included, in addition to the indication of rules and practices guaranteeing the independence and safety of journalists and protecting them from interference by public authorities, the sharing of government responses to any reports submitted to the Council of Europe's platform for the protection and safety of journalists. In addition, from 2021 and then from 2022, the list was further expanded to include lawsuits and judgments against journalists (including defamation cases) and measures taken to protect against abuse (if any), which were also examined by the Commission.

It should be highlighted that Community legislation on the media dates back to the 1980s, but it should also be noted that this process mainly concerns the internal market and competition law. In view of this, Directive 89/552/EEC of the European Parliament and of the Council of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services was adopted,⁶⁷⁶ and, much later, Directive 2010/13/EU of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services.⁶⁷⁷ In view of the above, the Union's competence extends to the cross-border provision of services, but the above-mentioned directives do not contain any reference to the rule of law.

Since the 1990s, the EP and the Commission have attempted to broaden the issue of media pluralism and media freedom. In this regard, the EP has repeatedly drawn attention to the situation of the market and ownership issues in its resolutions,⁶⁷⁸ as has the Commission in its relevant Green Paper. The Green Paper contained several recommendations for promoting media pluralism and considered excessive concentration to be a cause for concern.⁶⁷⁹ The document also proposed the adoption of EU-level legislation on this issue in order to protect the single market. However, these did not result in EU legislation. Nevertheless, in the 2000s, both the EP and the Commission paid increasing attention to the fundamental rights and rule of law aspects of the media market.⁶⁸⁰

⁶⁷⁶ Directive 89/552/EEC of the European Parliament and of the Council of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive), OJ L 298, 17/10/1989 p. 0023 – 0030.

⁶⁷⁷ Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive), OJ L 95, 15.4.2010, pp. 1–24.

⁶⁷⁸ See Resolution on media concentration and diversity of opinions, A3-0153/92/corr. PE 747.930.

⁶⁷⁹ Communication on Pluralism and Media Concentration in the Internal Market – an Assessment of the Need for Community Action, COM (94) 353 final.

⁶⁸⁰ The European Media Freedom Act: media freedom, freedom of expression and pluralism Policy Department for Citizens' Rights and Constitutional Affairs Directorate-General for Internal Policies, PE 747.930

A working document published by the Commission in 2007 proposed a holistic definition of media pluralism, which sought to place greater emphasis on political, cultural and technological aspects in addition to media ownership and market considerations. Meanwhile, the EP sought to keep the issue of media freedom on the political agenda. Its resolution on the Hungarian media law,⁶⁸¹ and the murders of journalists Daphne Caruana Galizia, Ján Kuciak and Martina Kušnírová gave occasion to do so.⁶⁸² All this shows that there is a clear desire on the part of the EU institutions to expand their competences, for which a flexible interpretation of the rule of law also serves as a tool.

It should be noted that the EU recently adopted Regulation (EU) 2024/1083 of *the European Parliament and of the Council* of 11 April 2024 *establishing a common framework for media services in the internal market and amending Directive 2010/13/EU* (European Media Freedom Act (EMFA)).⁶⁸³ It should be noted that, according to the official justification for the regulation, it is intended to protect media pluralism and independence in the Member States of the Union.⁶⁸⁴

Among other things, the Regulation requires Member States to respect the effective editorial freedom of media service providers and establishes the obligation of Member States to ensure effective protection for journalists and media service providers in the exercise of their professional activities, and, except in certain specific cases, prohibits Member States from imposing coercive measures to obtain information about journalists' sources or confidential communications. The regulation ensures the independent functioning of public service media, including by providing adequate, sustainable and predictable financial resources and promoting transparency in the appointment of the head of public service media or members of the board of directors. The regulation guarantees transparency of media ownership for all media service providers through the publication of targeted information requirements and the mandatory establishment of national media ownership databases, and requires Member States to assess the impact of major media market concentrations on media pluralism and editorial independence using media pluralism tests. The regulation also lays down rules for so-called giant platform providers and sets requirements for the distribution of public advertising to media service providers and online platforms in order to ensure transparency and non-discrimination. The regulation establishes an independent European Board of Media Services, which will, among other things, issue opinions on the impact

⁶⁸¹ EP resolution of 10 March 2011 on the Hungarian media law, 2011/2510(RSP).

⁶⁸² See Protection of investigative journalists in Europe: the case of Slovak journalist Ján Kuciak and Martina Kušnírová, 2018/2628(RSP).

⁶⁸³ Regulation (EU) 2024/1083 of the European Parliament and of the Council of 11 April 2024 establishing a common framework for media services in the internal market and amending Directive 2010/13/EU (European Media Freedom Act).

⁶⁸⁴ Nézőpont Institute 2025, p. 22.

of media market concentration on the functioning of the internal market for media services, and on regulatory or administrative measures that are likely to have a significant impact on the functioning of media service providers in the internal market.

In connection with the adoption of the EMFA, it should be noted that Denmark, France, Germany and their parliaments objected to the proposal itself on the grounds of subsidiarity.⁶⁸⁵ Hungary, on the other hand, launched proceedings on 10 July 2024, requesting the annulment of the adopted regulation.⁶⁸⁶ The EU legislator adopted the regulation on the basis of Article 114 TFEU, the so-called internal market harmonisation legal basis (which is notorious in EU legislation for seeking to extend EU competences to the extreme),⁶⁸⁷ which, however, does not provide an adequate legal basis for the regulation. In addition to the inadequacy of the internal market harmonisation legal basis, the Government also refers to the division of competences, subsidiarity and proportionality, as well as legal certainty and clarity, and, in the event that the Court does not annul the entire regulation, the action seeks, in the alternative, the partial annulment of certain provisions of the regulation

On this basis, it is clear that the relevant subchapter of the rule of law report also takes a position on areas where no EU legislation has been adopted, or at least where the legal situation is expressly disputed before the CJEU. In light of the above, it should be noted that although the Commission and the EP have become particularly active in matters relating to the media, the Treaties still do not list this among the EU's competences. Given that the founding Treaties make no mention of this, areas not covered by EU legislation fall within the exclusive competence of the Member States.

Pillar IV: Checks and balances

The fourth pillar of the Rule of Law Report deals with institutional checks and balances, which, in the Commission's view, are a fundamental building block of the rule of law. In its explanatory memorandum, the Commission explains that *'[i]nstitutional checks and balances are at the core of the rule of law. They guarantee the functioning, cooperation and mutual control of State organs so that power is exercised by one state authority with the scrutiny of others. In addition to an effective justice systems, checks and balances rely on a transparent, accountable, democratic and*

⁶⁸⁵ Ibid.

⁶⁸⁶ Action brought on 10 July 2024 – Hungary v European Parliament and Council of the European Union (Case C-486/24) (C/2024/5088)

⁶⁸⁷ 'Save where otherwise provided in the Treaties, the following provisions shall apply for the achievement of the objectives set out in Article 26. The European Parliament and the Council shall, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee, adopt the measures for the approximation of the provisions laid down by law, regulation or administrative action in Member States which have as their object the establishment and functioning of the internal market.' Article 114(1) TFEU.

*pluralistic process for enacting laws, the separation of powers, the constitutional and judicial review of laws, a transparent and high-quality public administration as well as effective independent authorities such as ombudsperson institutions or national human rights institutions. In every Member State, the specific checks and balances differ depending on the equilibrium resulting from the political, legal and constitutional traditions. Whilst the precise model chosen by each Member State may vary, what is crucial is that it ensures the respect for the rule of law and democratic norms.*⁶⁸⁸

Based on comparisons of the Commission's annual rule of law reports from 2020 onwards, it is clear that, as the previous Commission's definition shows, this pillar, unlike the previous ones, is more difficult to define in terms of focus areas, thus allowing the Commission to expand the scope of the rule of law report from year to year, incorporating a number of new areas. Between 2020 and 2025, the Commission has spectacularly doubled the number of areas examined. While the part of Pillar IV covering the preparation and adoption of laws initially only covered public consultation and transparency in the legislative process, accelerated procedures and the system of constitutional review of laws, by 2025 the areas examined had been expanded to include the full framework, rules and application of impact assessments and evidence-based decision-making. By 2025, the areas examined had been expanded to include the full framework, rules and application of impact assessments and evidence-based decision-making, while in the area of consultations with stakeholders, particular emphasis was placed on the transparent participation and regulation of civil society in policy-making and decision-making processes. In addition, the transparency of the legislative process has been examined more broadly, both in the preparatory and parliamentary stages. From 2021, the examination of emergency systems and measures related to the extraordinary measures introduced in connection with the COVID-19 pandemic became a priority, which lost its relevance years later, so the Commission examined the general regulation and application of Member States' emergency legal systems, including judicial review and parliamentary control, as a new area of focus. The Commission moved from general findings on the independence and competences of national human rights institutions, ombudsmen and equality bodies to examining the implementation of their recommendations and the adequacy of their resources and statistics on the follow-up to their recommendations in recent years. While initially examining administrative decisions only in general terms, it later significantly expanded its analysis to cover the transparency of administrative decisions and sanctions, from publication to data collection processes, the scope of judicial review, the competent court, the scope, suspensive

⁶⁸⁸ COM(2020) 580 final, p. 20.

effect, interim measures and any special rules or other derogations applicable to the general judicial review system. From 2022, it examined, as a new area, the rules and practices governing the application of preliminary ruling procedures in all Member State courts, including constitutional courts. It also began examining the enforcement of judgments, including follow-up after decisions of the European Court of Human Rights and the remedies available in cases of non-enforcement.

Each year, the Commission's annual reports have placed greater emphasis on sections analysing the functioning of civil society organisations and measures affecting the operating environment of human rights activists, covering access to funding, the regulatory framework and its practical application, registration rules, transparency, measures relating to dialogue between the authorities and civil society, civil society participation in law-making, and measures influencing public opinion on civil society organisations. The rules and practices that guarantee the effective functioning and security of these organisations have become more prominent, with a particular focus on measures to protect them from verbal, physical or online attacks and negative narratives, and measures that influence public opinion about civil society organisations. A detailed analysis was carried out of the organisation of financial support for civil society, access to funding and the framework for ensuring financial viability, taxation/incentive/donation systems, and the existence of measures to ensure the equitable distribution of funding. The Commission placed the “ban on Pride” (without explicitly naming it, but referring to the organisers and participants of public gatherings aimed at promoting equality and diversity), which is also outside the scope of the rule of law report.

In addition to the above, the “internal market dimension” appearing in the 2025 report also appears in relation to pillar IV, as this year's report takes a stronger stance against the widespread use of emergency legislation and the regulation of investments of strategic importance to the national economy. There is also sharp criticism of special taxes in the construction sector and product price restrictions, which, according to the Commission, constitute *de facto* discrimination against foreign companies.

It should be noted that the vast majority of the regulatory issues raised by the Commission fall within the exclusive competence of the Member States, given that the Union must respect the national identity of the Member States, which is an integral part of their fundamental political and constitutional structures, including regional and local authorities. In this context, the provision referred to also requires the Union to respect the essential functions of the State, including ensuring the territorial integrity of the State, maintaining public order and safeguarding national security, so that, in particular (but not exclusively), national security remains the exclusive responsibility of

each Member State. Despite this provision of the TEU, the Commission has in recent years gradually sought to extend its scope of investigation within the fourth pillar to include respect for the fundamental rights and principles enshrined in the Charter, and the primacy of EU law. It should be noted that, as the Commission did not present any authorisation in this regard and did not justify its investigation, such an investigation exceeded the competences conferred on the Commission by the Treaties, disregarding the principle of the division of competences laid down in the Treaties.

It should be emphasised that, with regard to the primacy of EU law, the *Costa v E.N.E.L.* case⁶⁸⁹ and numerous other cases have given rise to decisions that have defined the characteristics of the primacy of EU law, thereby ensuring its axiomatic nature. This is confirmed by the *Walt Wilhelm* case⁶⁹⁰ (Case 14/68), in which the CJEU emphasised at a very early stage that it would be contrary to the nature of the EU legal system to allow Member States to introduce provisions that could impede the effectiveness of EU law. However, this interpretation does not mean that other EU principles should be disregarded when applying EU law. Other principles of EU law (which are expressly laid down in the Treaties), such as the principle of the division of competences, are equally relevant when assessing such situations.

In view of the latter finding, a mere reference to the primacy of EU law cannot serve to criticise the functioning of constitutional courts or to make recommendations in this regard. Moreover, within the framework of Hungarian public law thinking, Decision 22/2016. (XII. 5.) of the Hungarian Constitutional Court (HCC), in line with the practice of other Member States' constitutional courts, presented the possibility of so-called sovereignty and identity control in addition to the examination of fundamental rights and competences.⁶⁹¹ The HCC approaches this by stating that Hungary did not renounce its sovereignty upon joining the EU, but merely made it possible to exercise certain competences jointly with other Member States within the framework of EU integration. On this basis, the Constitutional Court also envisages constitutional dialogue. By examining the functioning of the constitutional courts of the Member States on the basis of legal principles and with reference to the rule of law, the Commission is in fact hindering the development of this constitutional dialogue, which, in addition to being contrary to the spirit of the Treaties, also undermines the trust on which such dialogue is based.

⁶⁸⁹ Judgment of the Court of Justice of 15 July 1964 in Case 6/64 *Flaminio Costa v E.N.E.L.* ECLI:EU:C:1964:66.

⁶⁹⁰ Judgment of the Court of Justice of 13 February 1969 in Case 14/68 *Walt Wilhelm and Others v Bundeskartellamt*, ECLI:EU:C:1969:4, paragraphs 6–7.

⁶⁹¹ See the Hungarian Constitutional Court's decision 22/2016 (XII. 5.),

The Commission's unlawful extension of its competences is further reinforced by Article 51 of the Charter, which states that Member States are subject to the provisions of the Charter insofar as they implement Union law.⁶⁹² Article 51(2) of the Charter emphasises that *'[t]he Charter does not extend the field of application of Union law beyond the powers of the Union or establish any new power or task for the Union, or modify powers and tasks as defined in the Treaties'*.⁶⁹³ In conclusion, the Charter contains a broad list of fundamental rights and freedoms, but as a general rule it applies to the EU institutions and is only applicable to Member States when and insofar as they are implementing EU law. The idea behind this approach is that the Charter was not intended to control Member States, but to 'keep the EU institutional system in check', since in a democratic society there can be no public authority without fundamental rights control. It should be noted that this is not surprising, since it was precisely the recognition of the primacy of Community law by the CJEU and the subsequent decisions of the constitutional courts of the Member States at the time, pointing to the resulting conflict of public law in relation to fundamental rights, that led to the requirement for fundamental rights to be imposed on the EU institutions.⁶⁹⁴ The CJEU established very early on that the EU must respect fundamental rights even if they are not expressly provided for in EU law.⁶⁹⁵ This was also stated in the Charter, which is not intended to be a general "stone tablet" of fundamental rights, but rather to restrict the EU institutions. What is more, the Charter itself openly declares that it respects the national identity of Member States and their central, regional and local public authorities.⁶⁹⁶

As in the previous example, direct individual enforcement before the CJEU is only possible against EU institutions and bodies, while against Member States, the persons concerned can enforce EU law – including the Charter of Fundamental Rights and other EU fundamental rights norms – through the courts of the Member States, which are obliged to apply EU law and may not apply Member State legislation that is contrary to EU law. The direct application of the Charter would lead to the disregard of Member State legislation⁶⁹⁷ and, moreover, to the disregard of the national constitution. Furthermore, this would happen not only in cases of delegated competences, but also in cases falling within the competence of the Member States. This effect would be contrary to Articles 4 and 5(1) of the TEU and could only be avoided by annulling such decisions, which may nevertheless occur in the practice of ordinary courts. It follows from the settled case law of the

⁶⁹² Article 51(1) of the Charter.

⁶⁹³ Article 51(2) of the Charter.

⁶⁹⁴ de Búrca, 2011, pp. 868–870.

⁶⁹⁵ See the judgment of the Court of Justice in Case 44/79 Hauer v Land Rheinland Pfalz, 13 December 1979, ECLI:EU:C:1979:290; Judgment of 13 July 1989 in Case C-5/8 Hubert Wachauf v Bundesamt für Ernährung und Forstwirtschaft, ECLI:EU:C:1989:321, paragraph 17.

⁶⁹⁶ Charter of Fundamental Rights of the European Union, Preamble.

⁶⁹⁷ Varga, 2021, p. 730.

CJEU that the fundamental rights guaranteed by the EU legal order must be applied to all situations governed by EU law, but not to situations outside that scope,⁶⁹⁸ bearing in mind that the fundamental rights found in the constitutional traditions of all Member States, which are expressly recognised by both the Treaties and the Charter, are available.⁶⁹⁹

In this regard, the Court has already pointed out that, in view of the Charter, it cannot review national legislation that does not fall within the scope of EU law. On the other hand, once such legislation falls within the scope of EU law, the Court, acting in a preliminary ruling, must provide all the necessary guidance for the national court to assess the compatibility of that legislation with the fundamental rights which it ensures are respected.⁷⁰⁰ An example of this is the joined cases of *Sándor Nagy and Others*, in which the Debrecen Labour Court requested the CJEU, in a preliminary ruling procedure, to examine the provisions of Hungarian law under which the government may terminate the employment relationship of civil servants and public servants without giving reasons. However, the CJEU found that it did not have jurisdiction to examine the issue, as Hungary was not implementing EU law when it adopted the measures, and therefore, in view of Article 51 of the Charter, the Charter of Fundamental Rights was not applicable on the basis of a reference to its provisions alone.⁷⁰¹ In this regard, it should also be noted that the Commission has not provided any substantive answers in this regard, even though, according to the case law of the CJEU (referred to above), the scope of application of the Charter in relation to Member States must be interpreted broadly.

As mentioned earlier, the Commission pays particular attention to the situation of civil society, bearing in mind that, from 2023 onwards, it will only make recommendations relating to civil society organisations in this area. At EU level, this issue is addressed in Article 15(2) of the Charter, which states that '*[e]very citizen of the Union has the freedom to seek employment, to work, to exercise the right of establishment and to provide services in any Member State*',⁷⁰² and, under Article 16 of the Charter, '*the freedom to conduct a business in accordance with Union law and national laws and practices is recognised*'.⁷⁰³ Civil society organisations and their functioning and activities are, of course, also governed by EU law, in particular the fundamental freedoms

⁶⁹⁸ Ibid.

⁶⁹⁹ Article 6(3) TEU; Charter of Fundamental Rights of the European Union, Preamble.

⁷⁰⁰ See the relevant argument: Article 51(2), Charter.

⁷⁰⁰ See the judgment of the Court of Justice of 26 February 2013 in Case C-677/10 *Åklagaren v Hans Åkerberg Fransson*, ECLI:EU:C:2013:105, paragraph 19; Judgment of 6 March 2014 in Case C-206/13, *Cruciano Siragusa v Regione Sicilia – Soprintendenza Beni Culturali e Ambientali di Palermo*, ECLI:EU:C:2014:126, paragraph 24.

⁷⁰¹ Judgment of the Court of Justice in Cases C-488/12, C-489/12, C-490/12, C-491/12 and C-526/12, *Nagy Sándor and Others v Hajdú-Bihar Megyei Kormányhivatal*, judgment of 10 October 2013, ECLI:EU:C:2013:703.

⁷⁰² Article 15(2), Charter.

⁷⁰³ Article 16, Charter.

enshrined therein, such as the freedom of establishment and the freedom to provide services. It should be noted, however, that the EU does not have an impact on all issues relating to the situation of the civil sphere, which are not covered by the Commission's annual rule of law reports.

It should therefore be emphasised that, despite the Commission's efforts to extend its competences, certain regulatory issues criticised by the Commission still fall within the competence of the Member States. It can be said that the majority of the areas criticised in the fourth pillar of the annual rule of law report do not fall within the competence of the EU, so it is clear from the above that the Commission would like to subject any area to its rule of law assessment on an arbitrary basis within the framework of this chapter. This area really shows the true methodology of the rule of law report developed by the Commission, which gives the Commission complete freedom even when it comes to bringing areas that fall under the competence of Member States under its authority.

6. The conditionality procedure

In 2017, the Commission first raised the idea of establishing a closer link between EU (cohesion) funds and the protection of the rule of law by creating a system of conditions.⁷⁰⁴ The EP was the main supporter of the idea, as it demanded the adoption of the proposal for a regulation on a general system of conditions for the protection of the EU budget⁷⁰⁵ after its publication in May 2018, so that EU funds could be withdrawn, primarily from Hungary.⁷⁰⁶

One of the most politically sensitive elements of the adoption of the current multiannual financial framework (2021-27) was the adoption of the rule of law conditionality regulation, which was finally decided by the heads of state and government at the December 2020 meeting of the European Council. They also set out their expectations for the application of the Regulation on the application of the rule of law,⁷⁰⁷ which they confirmed in their conclusions adopted at the extraordinary meeting in February 2024.⁷⁰⁸

⁷⁰⁴ Discussion paper on the future of EU finances COM/2017/0358 final, 28 June 2017, p. 24; EU Observer: Justice commissioner links EU funds to 'rule of law'.

⁷⁰⁵ COM(2018) 324 final.

⁷⁰⁶ The text of Chapter V is largely based on the manuscript entitled 'Az Európai Unió jogállamisági mechanizmusai' [The Rule of Law Mechanisms of the European Union] by Dr. Rita Rácz.

⁷⁰⁷ European Council meeting (10 and 11 December 2020) – Conclusions, see point 2.

⁷⁰⁸ Extraordinary meeting of the European Council (1 February 2024) – Conclusions, see point 39.

Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council on *general provisions for the protection of the Union's financial interests*⁷⁰⁹ (hereinafter: the Conditionality Regulation) applies from 1 January 2021. Hungary and Poland challenged the regulation before the CJEU, requesting that it be declared invalid.⁷¹⁰ Although the CJEU dismissed the actions, it made a number of important findings in interpreting the Regulation. The judgment provided an opportunity for the Court to interpret the relationship between the procedure under Article 7 and the Regulation. Hungary argued that the Regulation introduces a parallel procedure with the same objective as that set out in Article 7 TEU, but that, according to the Treaties, only Article 7 confers on the EU institutions the power to determine and sanction violations of the rule of law. In its argument, Hungary also emphasised that the Regulation extends the competences of the Commission and the Court of Justice, since, in the conditionality procedure, the right of initiative lies exclusively with the Commission, unlike in the procedure under Article 7; and the Regulation empowers the Court of Justice to review Council decisions adopted on the basis of the regulation and, therefore, to assess whether a Member State has violated the principles of the rule of law even if the national legislation or practice under review does not fall within the scope of EU law. The Court rejected this argument, stating that the EU legislature may introduce other procedures in secondary legislation to examine the provisions of Article 2 TEU, provided that those procedures differ from the procedure under Article 7 in terms of both their purpose and their subject matter. Accordingly, the Court of Justice found, in a questionable manner, that the purpose of the procedure under Article 7 and the conditionality procedure are fundamentally different, since the former aims to sanction serious and persistent breaches of the values enshrined in Article 2 TEU, while the latter aims to protect the EU budget and not to sanction violations of the principles of the rule of law.⁷¹¹ The question of whether the application of the Regulation can be considered a sanction for violating the principles of the rule of law remains open.

The Regulation soon became the subject of another lawsuit: since, contrary to the EP's expectations, the Commission did not immediately initiate the conditionality procedure against Hungary and Poland, the EP brought an action for failure to act against the Commission in order

⁷⁰⁹ Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council of 16 December 2020 on general provisions for the protection of the Union's financial interests, OJ L 433I, 22.12.2020, pp. 1–10.

⁷¹⁰ Judgments of the Court of Justice of 16 February 2022 in Case C-156/21 Hungary v Parliament and Council and Case C-157/21 Republic of Poland v Parliament and Council, ECLI:EU:C:2022:97 and ECLI:EU:C:2022:98.

⁷¹¹ Ibid. paras 164–172. See János Bóka and Enikő Krajnyák: The Interpretation of the Rule of Law in the Conditionality Regulation, Bóka, J. (ed.) The Supranational Interpretation of the Rule of Law. (Central European Academic Publishing 2024), p. 336.

to exert political pressure (the action was withdrawn after the Commission initiated the procedure).⁷¹²

It should be emphasised that this is the first EU legal act to define the concept of the rule of law and to specify the circumstances that may be assessed as violations of the principles of the rule of law for the purposes of the Regulation.⁷¹³ The concept of the rule of law in the Regulation is essentially based on the Commission's 2014 Communication on the Rule of Law Framework, thus legitimising the Commission's definition, which, as mentioned above, is based indirectly on the case law of the CJEU, the concept of the rule of law of the ECtHR and the Venice Commission, which are independent of the European Union, and the concepts of the Member States.

Under the Regulation, appropriate measures must be taken if it is established that a breach of the principles of the rule of law in a Member State has a sufficiently direct impact on the effective and efficient management of the EU budget or the protection of the Union's financial interests, or if there is a serious risk of this happening.⁷¹⁴ As a measure, financial penalties resulting in the partial or even total blocking of EU funds may be accepted in various forms.⁷¹⁵ The Regulation requires that the measures taken must be proportionate (they must be determined taking into account the actual or potential impact of the breach of the rule of law on the EU budget, and must take into account the nature, duration, severity and scope of the breach).⁷¹⁶ The Regulation also stipulates that the programme concerned by the measure (i.e. blocked) must be implemented by the Member State concerned, including the payment of final recipients or beneficiaries.⁷¹⁷

The procedural rules applicable until the measure is adopted⁷¹⁸ can be summarised as follows: if, on the basis of all relevant information, including the findings of EU, international and other institutions, the Commission has serious grounds for considering that the conditions for adopting the measure are met in respect of a Member State, it shall send a written notification setting out its reasons. The Commission may request any information it deems necessary from the Member State before and after sending the notification. The Member State concerned may respond within the deadline set by the Commission (at least 1 month, up to 3 months), in which it may make comments and propose corrective measures to address the findings. If the Member State responds, the Commission shall, taking into account the response (within one month, which may be extended for a reasonable period), decide whether to submit a proposal to the Council for the adoption of

⁷¹² Case C-657/21, *Parliament v Commission*,

⁷¹³ Article 2(a) and Article 4(2) of the Conditionality Regulation, see also Article 3 in this context.

⁷¹⁴ Article 4(1) of the Conditionality Regulation.

⁷¹⁵ Article 5(1) of the Conditionality Regulation.

⁷¹⁶ Article 5(3) of the Conditionality Regulation.

⁷¹⁷ Article 5(2) of the Conditionality Regulation.

⁷¹⁸ Article 6 of the Conditionality Regulation.

appropriate measures. If the Commission intends to make such a proposal, it shall first give the Member State concerned the opportunity to submit its comments (within one month). If the Commission considers that the conditions for adopting the measure are met and that, if any, the corrective measures proposed by the Member State do not adequately address the findings set out in the notification (within one month of receipt of the Member State's comments or, if no comments are received, without undue delay), it shall submit a proposal for an implementing decision on appropriate measures to the Council. The proposal shall set out the specific reasons and evidence on which the Commission's findings are based. The Council shall decide on the adoption of the measures. The Council shall adopt the implementing decision (by qualified majority) within one month of receipt of the Commission's proposal (the deadline may be extended by a maximum of two months), in which it may amend the Commission's proposal.

So far, the procedure has only been initiated against Hungary (in April 2022) and is still ongoing. The political nature of the procedure is clearly supported by the fact that, although the Commission assessed the 17 corrective measures proposed by Hungary as “in principle” appropriate in its proposal to the Council on 18 September 2022,⁷¹⁹ i.e. it stated that if Hungary implemented them fully and properly, the procedure would become redundant,⁷²⁰ despite the fact that by the deadline set in the proposal (19 November 2022), Hungary had, according to the Commission's assessment (30 November 2022),⁷²¹ the Commission maintained its original proposal to adopt the measures, taking into account the EP's resolution and thus its indirect pressure.⁷²² In other words, according to the Commission, Hungary had implemented the vast majority of its commitments, even according to the Commission's own assessment, but this was irrelevant in terms of sanctions, as the Commission proposed the same severe sanctions as if no progress had been made. In contrast, the Council, taking into account the principle of proportionality, made at least some effort to take into account the adopted Hungarian legislation and other measures, as a result of which it reduced the extent of one of the proposed measures in its implementing decision (the suspension of budgetary commitments for the three operational programmes identified by the Commission from 65% as proposed by the Commission to 55%), but it accepted the content unchanged with regard to public interest asset management foundations performing public tasks (hereinafter: KEKVA)

⁷¹⁹ Commission proposal: Council Implementing Decision on measures to protect the Union budget against breaches of the rule of law in Hungary, COM(2022) 485 final, 18.9.2022. The proposal contains a presentation of the 17 corrective measures and their assessment by the Commission.

⁷²⁰ Ibid. Recital 121.

⁷²¹ Commission Communication: Corrective measures notified by Hungary under Regulation (EU, Euratom) 2020/2092 on general conditions for the protection of the EU budget, COM(2022) 687 final, 30 November 2022.

⁷²² European Parliament resolution of 24 November 2022 on the assessment of Hungary's compliance with the rule of law conditions under the Conditions Regulation and the current state of the Hungarian Recovery and Resilience Plan (2022/2935(RSP)), point 3.

and the legal entities established by them, thus upholding the measure affecting several Hungarian universities, which imposed a complete ban on access to EU funds managed directly or indirectly by the Commission (including the Erasmus+ and Horizon Europe programmes).⁷²³ In order to have the measure affecting universities (among others) annulled, six Hungarian universities have filed lawsuits before the CJEU, and the proceedings are currently ongoing.⁷²⁴

It is worth noting, however, that the explanatory memorandum to the Commission's proposal for a conditionality regulation explicitly states that Erasmus students, researchers and civil society organisations should not be adversely affected by the conditionality procedure.⁷²⁵ The suspension of funds, which clearly disadvantages those who cannot be held responsible for the alleged infringements, raises the question of the extent to which the Commission respects the requirement of the rule of law, which is binding not only on Member States but also on EU institutions, as the Commission is contradicting its own proposal by suspending funds.⁷²⁶

In relation to the procedure, it is important to note that, although the decision on the measure(s) is formally taken by the Council, the Commission is in charge of the procedure. It cannot be expected from the Council, and in light of the Council's internal procedural mechanisms, the deadlines set out in the regulation make it impossible for the Council to assess the substance of the Commission's proposal, taking into account all the relevant rules of the Member State concerned.

The Regulation also lays down the rules for the procedure for the termination of measures adopted by the Council,⁷²⁷ which can be summarised as follows: the Member State concerned may, at any time, adopt new corrective measures to address the problems identified in the Council's implementing decision and submit a written notification to the Commission containing evidence that the conditions for the adoption of the measures are no longer met. At the request of the Member State concerned (in the case of written notification) or on its own initiative, the Commission shall reassess the situation in the Member State concerned no later than one year after

⁷²³ Council Implementing Decision (EU) 2022/2506 of 15 December 2022 on measures to protect the Union budget against breaches of the rule of law in Hungary, *OJ L* 325, 20.12.2022, 94–109. See Article 2 for the measures.

⁷²⁴ University of Debrecen (Case T-115/23), Óbuda University (Case T-132/23), University of Veterinary Medicine (Case T-133/23), Semmelweis University (Case T-138/23), University of Miskolc (Case T-139/23), University of Dunaújváros (Case T-140/23).

⁷²⁵ Commission proposal: Regulation of the European Parliament and of the Council on the protection of the Union's budget in case of generalised deficiencies as regards the rule of law in the Member States, COM(2018) 324 final, Explanatory memorandum: 'Measures need to be adopted in full respect of the principles of transparency and proportionality. It is also important to ensure that the consequences of measures have a sufficient connection with the aim of the funding. This also points to the need to ensure that the consequences fall on those responsible for identified shortcomings. It should therefore reflect the fact the individual beneficiaries of EU funding, such as Erasmus students, researchers or civil society organisations, cannot be considered responsible for such breaches.'

⁷²⁶ Krajnyák, 2024

⁷²⁷ Article 7 of the Conditionality Regulation.

the adoption of the measures by the Council,⁷²⁸ which may lead to three possible outcomes: (a) if the Commission considers that the conditions are no longer met, it shall submit a proposal to the Council for an implementing decision to terminate the measures adopted; (b) if the Commission considers that the situation that led to the adoption of the measures has been only partially remedied by the Member State, it shall submit a proposal to the Council for an implementing decision to adjust the measures adopted; (c) if the Commission considers that the Member State has not remedied the situation that led to the adoption of the measures, it shall address a reasoned decision to the Member State concerned and inform the Council thereof. The Commission shall take its decision within one month of the notification by the Member State (the deadline may be extended in duly justified circumstances). If it submits a proposal to the Council, the Council shall take a decision within one month (the deadline may be extended by a maximum of two months).

The Regulation requires that the Commission's assessments be objective, impartial and fair.⁷²⁹ Furthermore, the procedure for adopting and terminating measures must respect the principles of objectivity, non-discrimination and equal treatment of Member States, and must be conducted on the basis of an impartial and fact-based approach. If, in exceptional cases, the Member State concerned considers that these principles have been seriously infringed, it may request the President of the the European Council to refer the matter to the next meeting of the Council. In such exceptional cases, no decision on the measures may be taken until the Council has discussed the matter. As a general rule, this process should not take longer than three months after the Commission has submitted its proposal to the Council.⁷³⁰

The proceedings against Hungary have already shown that the procedure for repealing the measures adopted can easily become politicised and that, in practice, the principles laid down in the regulation can be overridden. It would be difficult not to accuse the Commission of bias against Hungary when it decided⁷³¹ to maintain the measure affecting (among others) universities that had changed their model in its current form (without making a proposal to the Council), despite the fact that Hungary had notified a new law which – as indirectly acknowledged in the Commission's

⁷²⁸ For the only procedure to date, see: following Council Implementing Decision (EU) 2022/2506 of 15 December 2022 concerning Hungary, the Commission initiated a reassessment of the fulfilment of the conditions set out in Article 4 of Regulation (EU, Euratom) Commission Decision of 13 December 2023 on the re-assessment, at the initiative of the Commission, of the fulfilment of the conditions set out in Article 4 of Regulation (EU, Euratom) No 2020/2092, C(2023) 8999 final, 13 December 2023.

⁷²⁹ Recital 16 of the Conditionality Regulation.

⁷³⁰ Recital 26 of the Conditionality Regulation.

⁷³¹ Based on Article 7(2) of Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council of 16 December 2020 on general provisions for the protection of the Union's financial interests, Hungary's written notification of 15 December 2022 Commission Decision of 16 December 2024 on the written notification of Hungary concerning Article 2(2) of Council Implementing Decision (EU) 2022/2506 of 15 December 2022, C(2024) 9140 final.

reasoning – remedied the only shortcoming cited in the Council’s implementing decision as justification for adopting the measure.⁷³² Hungary has initiated an annulment procedure against this Commission decision, which is currently ongoing.⁷³³

Finally, it is worth mentioning that the European Court of Auditors itself pointed out in its special report entitled ‘The rule of law in the EU: An improved framework to protect the EU’s financial interests, but risks remain’, published on 22 February 2024 and essentially concerning the application of the Conditionality Regulation,⁷³⁴ that the Commission applies double standards in the practical application of the Conditionality Regulation, as it has not systematically assessed and documented the impact on the Union’s financial interests in all Member States where it has identified challenges in the area of the rule of law. The report refers, for example, to the fact that, according to the Commission’s internal guidance note, the sources of information under the conditionality regulation should not be used systematically for all Member States, but on a case-by-case basis. It therefore made a recommendation to the Commission.

6.1 Corrective measures necessary to close the conditionality procedure

1. Establishment of the Integrity Authority

The first corrective measure undertaken by Hungary under the conditionality procedure was the establishment of the Integrity Authority, with the aim of strengthening the prevention, detection and correction of fraud, conflicts of interest and corruption, as well as other infringements and irregularities related to the implementation of EU financial support.⁷³⁵ The commitment set out strict conditions for the appointment of the Integrity Authority’s management and the selection of members of the so-called “suitability committee” responsible for appointments, in terms of conflict of interest rules, professional experience and background, in order to ensure that members are fully independent. According to the commitment, the Integrity Authority’s competences in relation to public procurement procedures were defined very broadly, including the suspension of procedures and the imposition of penalties. According to the commitment, the competences of the Integrity Authority in relation to public procurement procedures were defined very broadly, including the suspension of procedures, the initiation of investigations, the exclusion of certain economic

⁷³² Recital 43 of Council Implementing Decision (EU) 2022/2506.

⁷³³ Case T-138/25, Hungary v Commission.

⁷³⁴ European Court of Auditors Special Report No 2024/03: The rule of law in the European Union – The framework provides better protection for the Union’s financial interests than before, but risks remain; points VI and IX of the summary, points 37 and 101 of the Special Report and Recommendation 2.

⁷³⁵ For details of the elements of the commitment, see: COM(2022) 485 final – Proposal for a Council Implementing Decision on measures to protect the Union budget against breaches of the rule of law in Hungary (18 September 2022) Recitals 85–87.

operators from EU funding, and, in addition, the power to instruct national authorities to perform their duties, in particular in relation to declarations of conflict of interest and procedures for investigating suspected irregularities in the management of EU funds; it has the right to request access to all information relating to public procurement procedures; has the right to initiate proceedings to establish infringements or irregularities; has the power to verify asset declarations in relation to high-risk officials; has the right to request a judicial review of any official decision relating to public procurement procedures involving EU funding. The Authority shall prepare and publish an annual report on its activities, to which the Government shall respond in writing within three months. The Integrity Authority had to commence operations within an extremely short period of one month from this point in the procedure, by 19 November 2022.

The Commission envisaged the Authority outlined above as an additional supervisory body for the use of EU funds in Hungary. According to the Council implementing decision adopted on the basis of the Commission's proposal, the establishment of the Integrity Authority is a horizontal measure aimed at remedying systemic breaches of the principles of the rule of law in public procurement affecting the Union's financial interests. The Commission and the Council considered the establishment of the Authority to be one of the most important corrective measures.⁷³⁶ However, this has resulted in the creation of an organisation that is alien to the Hungarian administrative system in terms of its logic, management structure (board of directors) and broad competences, and whose precise powers – despite having been agreed with the Commission at the legislative level – continue to be considered insufficient by the Brussels body, which has been voicing its concerns for years in its rule of law reports.

In reality, the competences of the Integrity Authority, for example with regard to the verification of the asset declarations of certain high-ranking officials, have been found to go far beyond what is necessary to remedy the “systemic violation of the principles of the rule of law” in the area of public procurement. The question therefore arises as to whether the Commission really did force the Hungarian institutional structure to establish the Integrity Authority in order to ensure compliance with the principles of the rule of law in public procurement procedures and, if so, why it does not require other Member States to establish an organisation with such extensive competences to monitor the use of EU funds.

⁷³⁶ Council Implementing Decision 2022/2506, Recital 34.

2. Establishment of the Anti-Corruption Working Group

The second corrective measure under the conditionality procedure was the establishment of the Anti-Corruption Task Force. According to the agreement, the Hungarian Government undertook to establish the Anti-Corruption Task Force by 1 December 2022, whose task is to review existing anti-corruption measures and develop proposals for detecting and investigating corrupt practices, submit proposals for measures to improve the prevention and detection of corruption, and prepare an annual report analysing the risks and trends of corruption and corrupt practices, recommending effective countermeasures and best practices, and assessing their effective implementation. The corrective measure set out strict procedural rules for the obligations relating to the annual report, stipulating that the Government must discuss the report within two months and, if it does not take a decision on a proposal, send a detailed explanation to the chair of the Working Group. In addition, the corrective measure laid down detailed rules on the composition of the Working Group. According to these rules, the chair of the Working Group must be the chair of the Integrity Authority, and 50% of its members must be relevant non-governmental actors who are demonstrably independent of the government, public authorities, political parties and business interests, who must be selected in an open, transparent and non-discriminatory application process based on objective criteria related to expertise and merit. The corrective measure also sets specific deadlines, according to which the Working Group shall hold its first meeting before 15 December 2022 and shall adopt and submit its 2022 report to the Government by 15 March 2023. In connection with the previous corrective action, the corrective action also includes the fact that the rules governing the Working Group are part of the draft law on the Integrity Authority, which must be submitted to the National Assembly by 30 September 2022.⁷³⁷

It should be emphasised that the corrective measure not only provided for the establishment of the Anti-Corruption Working Group, but also stipulated how it should be regulated (at the legislative level, in conjunction with the Integrity Authority), as well as its composition and the extent to which non-governmental actors should be involved in it and how they should be selected. In addition, the corrective measure dictated by the Commission specified the exact date by which the law had to be submitted to the National Assembly and by which the Working Group had to hold its first meeting. It also stipulates in similar detail when the first annual report must be adopted and how long the Government has to respond to the annual report. Given that the constitutional and political structure of Member States remains within their exclusive competence, the establishment of such a body in itself goes well beyond the EU's competences, as does the

⁷³⁷ COM(2022) 485 final, Recitals 88–89.

Commission's setting of precise deadlines and procedural rules for both the Working Group and the Government. Moreover, these deadlines were set without any justification, in a quasi *ad hoc* manner, with reference only to the value of the rule of law.

On the basis of the Commission's assessment, the Council considered that Hungary had taken the relevant key implementation steps and had fulfilled its commitments in relation to this measure.⁷³⁸

3. Strengthening the anti-corruption framework

The third corrective measure under the conditionality procedure was to strengthen the anti-corruption framework. The content of the corrective measure can be divided into two parts. The first part strictly defines the strategies that the government must adopt in this area, as well as the deadlines and content of these strategies. Accordingly, by 30 September 2022, it must adopt anti-fraud and anti-corruption strategies that define the tasks of actors involved in the implementation of EU financial support in relation to the prevention, detection and correction of fraud, conflicts of interest and corruption. The strategies must include an analysis of the main risks, factors and practices related to fraud, conflicts of interest and corruption. Similarly, the corrective action specified a precise date by which Hungary must fully implement all measures of the National Anti-Corruption Strategy for the period 2020-2022. In addition to the above strategies, the corrective action similarly stipulated in a strict manner that the Government must adopt a new national anti-corruption strategy and action plan by 30 June 2023, paying particular attention to combating high-level corruption. The text of the latter must also be drafted with the participation of the Anti-Corruption Working Group. The Anti-Corruption Working Group should be involved in drafting the latter.⁷³⁹

The other part of the corrective measure was related to Hungary's asset declaration system. The measure imposed strict and detailed obligations with a view to submitting a draft law to the National Assembly, to be brought into force on 1 November 2022, which extends the personal and material scope of the asset declaration system. It also imposed further strict rules on the creation of a digital asset declaration system, specifying its detailed characteristics. Similarly, the corrective measure also imposed detailed obligations on the Government in relation to sanctions under the asset declaration system, requiring it to introduce an effective, proportionate and dissuasive system of administrative and criminal sanctions by 1 October 2023 at the latest.⁷⁴⁰

⁷³⁸ Council Implementing Decision 2022/2506, Recital 38.

⁷³⁹ Ibid. Recitals 90–91.

⁷⁴⁰ Ibid.

As the document points out in connection with the Commission's annual rule of law reports, the Union has only limited competence in relation to anti-corruption issues, which means that it has no competence to determine whether a Member State should draw up a specific anti-fraud or even anti-corruption strategy. Logically, it is also well beyond the EU's competence to determine the content of these strategies or the deadlines for their adoption or implementation. As regards the other part of the commitment, a Member State's rules on asset declarations have no connection with EU law. It should be noted that, despite this, the Commission proposed this part of the corrective measure after Hungary adopted regulations on asset declarations that were identical in content to those applied by the EP. In view of this, it is surprising that the Commission considered such a corrective measure to be essential on the grounds of the rule of law.

4. Ensuring the transparency of the use of EU support by public interest asset management foundations

Under the fourth corrective measure, Hungary undertook to ensure the transparency of the use of EU support by public interest asset management foundations by amending the Act on Public Interest Asset Management Foundations⁷⁴¹ by 30 September 2022. Following the submission of the proposal, the National Assembly adopted a legislative act (Act XXIX of 2022), which entered into force on 13 October 2022.⁷⁴²

The Commission and the Council acknowledge in the Council Implementing Decision that, in line with the corrective measure, the law already introduced amendments in 2022 which, in accordance with the commitment extended the scope of the rules on public procurement and conflicts of interest to include public interest asset management foundations performing public tasks. However, they note that, despite repeated requests from the Commission, the regulatory framework still does not prevent high-ranking officials from joining the governing bodies of public interest asset management foundations (Hungarian acronym: KEKVA). Furthermore, from 1 November 2022, Hungary has reintroduced the possibility (as an exception to the general prohibition) for senior political leaders to hold other remunerated positions, including in the governing bodies of public interest asset management foundations. On this basis, the two bodies considered that the weaknesses in the regulatory framework, combined with the new legislative developments, exacerbate the potential conflicts of interest that the corrective measures are

⁷⁴¹ Ibid. Recital 92.

⁷⁴² Act XIX of 2022 amending certain acts relating to the control of the use of European Union budgetary resources, concerning the control of public interest asset management foundations performing public tasks, the National Tax and Customs Administration and the European Anti-Fraud Office.

intended to address, and therefore did not consider it appropriate to dispel the concerns originally raised by the Commission.⁷⁴³

At this point, it is worth noting that Hungary did not make a commitment to exclude senior political leaders from the governing bodies of public interest asset management foundations by force of law, but merely to tighten the rules on conflicts of interest – as agreed with the Commission – which is still in force today in Act IX of 2021 on public interest asset management foundations performing public tasks (hereinafter: KEKVA Act). Based on the Commission’s proposal, the Council therefore acknowledged that, in line with the corrective measures undertaken, the rules on public procurement and conflicts of interest had been extended compared to what had been officially communicated previously, but it also raised a completely new objection, namely the requirement that high-ranking officials be prohibited from serving on the governing bodies of KEKVA.

At this point, it should be noted that the EU institutions made this statement without ever providing detailed justification as to what specific risks the KEKVA regulations pose in terms of the proper management and use of EU funds, especially considering that the restrictive measure adopted on the basis of the assessment was determined with regard to access to the Erasmus+ and Horizon Europe programmes, of which the Erasmus programme provides EU funds to students and teachers in a strictly regulated system for precisely defined purposes, so that there can be no suspicion of financial abuse, while the Horizon programme is a centrally managed programme, meaning that applications must be submitted to the Commission, which decides on them and also directly monitors their use. It is extremely perverse that the Commission should impose conditions on an issue such as the organisation of domestic higher education, which is completely outside the EU’s remit.

The Commission, and on the basis of its assessment, the Council (which does not have the infrastructure to carry out an independent assessment, and is therefore, in practice, completely dependent on the former body for decisions of this kind) concluded that there are systemic problems with the use of EU funds by KEKVAs, without, however, being able or willing to prove this in any meaningful way. Furthermore, the prohibition under Article 2(2) of the relevant Council Implementing Decision,⁷⁴⁴ which applies to both KEKVAs and the legal entities they maintain, and which completely excluded them from EU funds implemented under the direct or indirect management of the Commission, is completely incompatible with the principle of proportionality

⁷⁴³ Council Implementing Decision 2022/2506, Recitals 42–43.

⁷⁴⁴ Ibid. Article 2(2).

to be applied in accordance with Regulation 2020/2092 and the relevant case law. It should also be noted that the “Commission request” referred to in the above-mentioned document imposed additional requirements on senior political leaders, which in itself raises the question of abuse of power on the part of the Commission.

The Hungarian Government, maintaining its position that the changes implemented in 2022 already fully and adequately fulfilled all the obligations undertaken in the corrective action, had no other option but to take note of the Council’s decision and set as its primary objective the prompt remedy of the “shortcomings” identified therein in order to lay the groundwork for lifting this measure, which applies to all Hungarian higher education institutions maintained by KEKVA and their students, creating enormous obstacles to student and researcher mobility in most Hungarian higher education institutions. It should also be noted that the ministers who were members of the KEKVA’s board of trustees or supervisory board, and who were therefore the subject of the Commission’s criticism, resigned from their positions by 15 February 2023.

Regardless of this, following consultations with the Commission, the Hungarian Government sent several draft laws to the Brussels body, which did not provide comprehensive feedback on any of them. Accordingly, the Hungarian Government prepared a draft law which, in our opinion, was and remains suitable for lifting the restriction set out in the Council’s implementing decision, at least in relation to the KEKVAs that maintain universities. In accordance with the requirements of the conditionality procedure, Hungary notified the Commission on 2 December 2024 of the adoption of Act LIII of 2024 amending the KEKVA Act.⁷⁴⁵

With the adoption of this legislation, Hungary has fully remedied the only shortcoming identified in the Council’s implementing decision and, by virtue of the law, has excluded high-ranking officials from the governing bodies of KEKVAs using EU funds, with a much broader personal scope than that set out in the implementing decision.⁷⁴⁶ The extension of the conflict of interest rule in itself already met the Commission’s additional expectations, and went far beyond what was

⁷⁴⁵ Act LIII of 2024 amending Act IX of 2021 on public interest asset management foundations performing public tasks.

⁷⁴⁶ The Council Decision required the exclusion of high-ranking officials, including the political leaders of the National Assembly and Hungarian autonomous bodies. According to the notified law, high-ranking officials and political leaders of Hungarian autonomous bodies, namely members of the National Assembly, senior political leaders under Act CXXV of 2018 on Government Administration (Kit.) (the Prime Minister, ministers, the Prime Minister’s political director and state secretaries), government commissioners and ministerial commissioners under the Kit. In addition, the notified law applies to members of the governing bodies of public interest asset management foundations, senior professional managers as defined in the Kit. (including ministerial administrative state secretaries and deputy state secretaries, heads and deputy heads of government offices and central offices, directors-general of government offices, and the head of the Internal Audit and Integrity Directorate) and professional managers, as well as civil servants employed by bodies under Act CVII of 2019 on bodies with special legal status and the legal status of their employees, from the possibility of holding such management board membership.

necessary to remedy the shortcoming identified by the Council. The conflict of interest rules were supplemented by a one-year cooling-off period, stipulating that persons belonging to the specified group of senior officials may not hold office on the boards of trustees or supervisory boards of KEKVAs for one year after leaving their positions. The new law limits the term of office of members of the governing bodies to six years, which may be renewed once. In addition to the conflict of interest rules, it also sets out eligibility criteria for senior officials. Compliance with all of these requirements is monitored by an external independent body, namely the State Audit Office. The legislator has also established a rule on the obligation to declare assets, according to which the senior officials of such foundations and the legal entities established by them must make a public declaration of assets, with the same content as that applicable to members of parliament, which is verified by the Integrity Authority.

In view of the guarantee system introduced, which goes far beyond the broad expectations set out in the Council's implementing decision the Hungarian Government was confident that the Brussels body would assess the notified legislation positively and recommend to the Council that, at least in part, the measure specified in Article 2(2) of the implementing decision with regard to the KEKVAs maintaining higher education institutions and the legal entities established or maintained by them, including the majority of Hungarian universities.

In view of the above, Hungary is deeply disappointed that, in its decision of 16 December 2024 assessing the notified law, the Commission concluded that it does not remedy the reasons for the measure set out in Article 2(2) of the implementing decision and, despite not disputing that the new legislation adequately addressed the only remaining shortcoming identified in the Council's implementing decision, it laid down 12 new criteria. The first three criteria are in no way related to the conditionality regulation, while the remaining nine criteria clearly go beyond what is necessary to remedy the single shortcoming identified in the Council's implementing decision, as they are not even indirectly related to it.⁷⁴⁷

The case of the KEKVAs is the most striking example of how the Commission can, in a completely arbitrary manner, without the Member State involved in the procedure being able to counterbalance this in any meaningful way or have any legal remedy against abuses, change the objectives and conditions that the Member State must meet in order to progress in the conditionality procedure. By applying the practice referred to in its assessment above, the

⁷⁴⁷ Commission decision of 16 December 2024 pursuant to Article 7(2) of Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget, concerning a written notification from Hungary with regard to Article 2(2) of Council Implementing Decision (EU) 2022/2506 of 15 December 2022, C(2024) 9140 final.

Commission not only infringed the Council's implementing decision, but also, by imposing new and completely unfounded additional requirements as a precondition for a positive assessment, and, moreover, by abusing the possibility provided for in the conditionality regulation, it informed the Council of this in the form of a Commission decision, as if the notified measure were not even partially suitable for remedying the reasons for the measure referred to in Article 2(2) of the Council's implementing decision, effectively deprived the Council of the possibility of assessing the new corrective measure that was the subject of the notification, thereby, in the Government's view, essentially violating the Conditionality Regulation. In the Hungarian Government's view, this conduct is contrary to the principle of sincere cooperation, undermines institutional balance and clearly constitutes an abuse of power on the part of the Commission. On the basis of the legal arguments set out above, Hungary had no choice but to bring an action before the CJEU challenging the European Commission's decision of 16 December 2024. The proceedings are pending.⁷⁴⁸

5. Introduction of a special procedure applicable to serious crimes related to the exercise of public authority or the management of public assets

As part of the fifth corrective measure, the Hungarian Government undertook to amend Act XC of 2017 on criminal proceedings with a view to establishing a procedure applicable to priority crimes related to the exercise of public authority and the management of public assets. The procedure provides for judicial review of decisions by the public prosecutor's office and the investigating authority to reject a complaint or terminate criminal proceedings. On the basis of the review, the investigating judge is empowered to order the initiation or continuation of criminal proceedings, thus the procedure establishes the right to bring charges before the court as an independent and impartial forum established by law.⁷⁴⁹

The procedure is applicable, *inter alia*, to corruption offences, all cases of bribery committed by public officials, as well as other cases of bribery, with the exception of minor offences, abuse of office (with the exception of minor offences), serious cases of budget fraud, failure to comply with supervisory or control obligations related to budget fraud, and agreements restricting competition in public procurement and concession procedures. The procedure may also be applied in cases of more serious crimes against property, provided that the crime is committed against state property or property managed by public interest foundations performing public tasks, or causes damage to

⁷⁴⁸ Case T-138/25, Hungary v Commission.

⁷⁴⁹ COM(2022) 485 final, Recitals 94–96.

such property, as well as in cases of participation in a criminal organisation and money laundering, if these are committed in connection with the above-mentioned offences.⁷⁵⁰

It should be noted that the corrective measure also includes the exclusive jurisdiction of a specialised court (i.e. the Buda Central District Court), which refers to the fact that all courts and investigating judges involved in the proceedings comply with the requirements of Article 19 TEU⁷⁵¹ (see above for the case law of the CJEU following from Article 19 TEU).

In order to ensure the proper implementation of the corrective measure, Hungary has undertaken to finalise the draft text of the additional implementing rules necessary for the application of the review procedure by 31 October 2022 and to adopt them without delay after the new law enters into force. and initiate a preliminary review by the Constitutional Court of the legislation's compliance with the Fundamental Law. In addition, it will ensure that the procedure is applicable from 1 January 2023, maintain the above-mentioned framework in force without conditions or time limits, and review the functioning of the procedure by 31 December 2023 at the latest.⁷⁵²

The procedure primarily covers offences under Directive 2017/1371/EU of the European Parliament and of the Council of 5 July 2017 on *the fight against fraud to the Union's financial interests by means of criminal law* (the so-called PIF Directive). However, the scope of criminal offences has been defined more broadly in several respects, covering corruption and corrupt practices as defined in Chapter III of the United Nations Convention against Corruption.⁷⁵³ It is also important to note that *the Convention* of 26 July 1995 on *the protection of the European Communities' financial interests, based on Article K.3 of the Treaty on European Union*⁷⁵⁴ sets minimum standards for the definition of criminal offences and criminal penalties in the field of fraud affecting the Union's financial interests. However, it is also clear from the corrective measures described above, particularly with regard to human resources, where the Commission requested the assignment of at least two judges and two court clerks and the designation of the Central District Court as the competent court, clearly shows that the Commission, significantly exceeding the Union's competence, wishes to interfere in the smallest details of Member State regulations when they are being developed. It should be emphasised that the fact that all judges must meet the conditions set out in Article 19 TEU does not give the EU such extensive

⁷⁵⁰ Section 817/A of Act XC of 2017 on Criminal Procedure.

⁷⁵¹ COM(2022) 485 final, Recital 95.

⁷⁵² COM(2022) 485 final, Recitals 94–96.

⁷⁵³ Promulgated by Act CXXXIV of 2005 on the promulgation of the United Nations Convention against Corruption, signed in Merida on 10 December 2003.

⁷⁵⁴ Convention based on Article K.3 of the Treaty on European Union, on the protection of the European Communities' financial interests, OJ C 316, 27.11.1995, pp. 49–57.

competences in these matters. Given that the “organisation” of the details of the procedure affects Hungary’s constitutional order, this level of procedure is clearly not in line with Article 4(2) TEU.

6. Strengthening audit and control mechanisms to ensure the proper use of EU funds

The sixth corrective measure provides for the strengthening of audit and control mechanisms to ensure the proper use of EU funds. In this context, the Government undertook to set up organisational units responsible for the management, audit and control of the use of EU funds, as well as a working group involving the Directorate-General for Audit of European Funds (hereinafter: EUTAF) for this purpose, by 31 August 2022. A further objective of the measure was to define conflicts of interest, thereby strengthening the rules and procedures for the more effective prevention, detection and correction of conflicts of interest. The corrective measure also includes the establishment by the Government of a Directorate-General for Internal Audit and Integrity (hereinafter referred to as BEIF) responsible for regularly checking the validity of declarations of conflict of interest and declarations of interest. The BEIF shall submit an annual activity report to the Integrity Authority and, at the request of the Integrity Authority, shall immediately provide full access to declarations of incompatibility or BEIF documents. The EU’s competence is valid in relation to the EUTAF, as it implements EU law in its independent operation.⁷⁵⁵

Given that the content of the corrective measure is largely based on the obligations of Member States under EU law, and thus specifically sets out obligations in relation to the implementation of Hungary’s Recovery and Resilience Plan, there is no question of the Union exceeding its competences in this case.

On the basis of the Commission’s assessment, the Council considered that Hungary had taken the relevant key implementation steps and had fulfilled its commitments in relation to this measure.⁷⁵⁶

7. Reduction of the share of single-bid public procurement procedures financed from EU funds and 8. Reduction of the share of single-bid public procurement procedures financed from the national budget

The seventh and eighth corrective measures set out the reduction in the proportion of single-bid public procurement procedures financed from EU funds and the national budget. In connection with the seventh corrective measure, we have undertaken to reduce the proportion of public procurement procedures financed from the EU budget and concluded with a single tender in 2022 to below 15% by 31 December 2022, calculated in accordance with the uniform market scoreboard

⁷⁵⁵ COM(2022) 485 final, Recitals 97–98.

⁷⁵⁶ Council Implementing Decision 2022/2506, Recital 47.

methodology. In the eighth corrective measure, we undertook the same conditions for single-bid public procurement procedures financed from the national budget, in such a way that their proportion must be reduced gradually (in three stages). If the commitment exceeds 15%, the Government will take further measures within four months to reduce it and, in such a case, will notify the Integrity Authority and the Commission.⁷⁵⁷ It should be emphasised that although the Union has competence in the field of public procurement, the condition of a reduction below the 15% threshold does not appear in EU legislation. Moreover, setting such a threshold as part of the corrective action procedure clearly goes beyond the Union's competence in the field of public procurement.

On the basis of the Commission's assessment of this corrective measure, the Council considered that Hungary had taken the relevant key implementation steps and had fulfilled its commitments in relation to this measure.⁷⁵⁸ The eighth corrective measure was not assessed, given that its implementation deadline had not yet expired at the time of the Council's implementing decision.

9. Development of a reporting tool for monitoring and reporting public procurement procedures concluded with a single tender, and 10. Development of the Electronic Public Procurement System (EKR) to increase transparency

The ninth corrective measure is the development of a reporting tool for the monitoring and reporting of public procurement procedures closed with a single bid. Similar to the previous two corrective measures, the Hungarian Government has committed to developing a new monitoring and reporting tool by 30 September 2022 to measure the proportion of public procurement procedures resulting in a single bid and financed from national resources, EU support or both. It also committed to ensuring that the ministry responsible for public procurement prepares an annual written report based on the information collected through the reporting tool for single-bid procedures, which must be published on the website of the Electronic Public Procurement System (hereinafter: EKR) by 15 February each year.⁷⁵⁹

The tenth corrective measure also requires the development of the EKR to increase transparency. The Government has undertaken to create and publish a database on the EKR website containing all information on the award of contracts resulting from public procurement procedures in a structured format. This database will be updated regularly (at least quarterly) and made available to the public free of charge. The database must allow for structured searches and the bulk export

⁷⁵⁷ COM(2022) 485 final, Recitals 99–102.

⁷⁵⁸ Council Implementing Decision 2022/2506, Recital 48.

⁷⁵⁹ COM(2022) 485 final, Recitals 103–104.

of data relating to public procurement procedures. The Hungarian Government has also undertaken to take the necessary measures to develop the EKR, ensuring that the newly developed functions are fully operational by 30 September 2022. When developing the monitoring and reporting tool and upgrading the EKR, it is indeed necessary to comply with the relevant EU regulations, but the Commission does not have the expertise to go into such detail in developing the methodology and drafting regulatory and logistical issues, so reference to EU competence is not acceptable in the case of these measures either.⁷⁶⁰

It should be noted that although the content of both corrective measures relates to the field of public procurement and is linked to EU legal texts in this regard, as with previous corrective measures relating to public procurement, the question arises as to what extent such detailed corrective measures are required by EU law. In any case, based on the Commission's assessment, the Council considered that Hungary had taken the relevant key implementation steps and fulfilled its commitments in relation to this measure.⁷⁶¹

11. Development of a performance measurement framework to assess the efficiency and cost-effectiveness of public procurement and 12. Adoption of an action plan to increase competition in public procurement

The eleventh corrective measure involves developing a performance measurement framework to assess the efficiency and cost-effectiveness of public procurement. Hungary has undertaken to develop a performance measurement framework for assessing the efficiency and cost-effectiveness of public procurement by 30 September 2022. The performance measurement framework had to be operational by 30 November 2022, and we also undertook to ensure the proper application of the performance measurement framework and the publication of its results for an indefinite period and without conditions. The results of the performance measurement must be made publicly available by 28 February each year.⁷⁶² Based on the Commission's assessment, the Council considered that Hungary had taken the relevant key implementation steps in relation to this commitment and had fulfilled its obligations in relation to this measure.⁷⁶³

The twelfth corrective measure requires the adoption of an action plan to increase competition in public procurement. Under this measure, the Government committed to adopting a comprehensive action plan by 31 March 2023 to increase the level of competition in public procurement, which will set deadlines for the implementation of the measures specified in the action plan. The action

⁷⁶⁰ Ibid. Recitals 105–106.

⁷⁶¹ Council Implementing Decision 2022/2506, Recitals 49–50.

⁷⁶² COM(2022) 485 final, Recitals 107–108.

⁷⁶³ Council Implementing Decision 2022/2506, Recital 51.

plan should take into account, among other things, the first results of the performance measurement framework to be operational by 31 December 2022.⁷⁶⁴ Given that the timing of the corrective action was beyond the timeframe for the adoption of the Council Implementing Decision, the Council did not issue an assessment of this commitment.

It should be emphasised that, in relation to the two corrective measures referred to, the Commission cannot invoke the direct relevance of EU law, as the measures concern exclusively internal legal issues. It should be noted that the mere fact that the corrective measure relates to the field of public procurement does not confer such competence on the Union, nor does it confer competence on the EU legislator to lay down obligations for a Member State in such detail.

13. Training on public procurement practices for micro, small and medium-sized enterprises and 14. Establishment of a support system to reimburse the costs of micro, small and medium-sized enterprises participating in public procurement

The thirteenth corrective measure imposes an obligation to develop training on public procurement practices for micro, small and medium-sized enterprises. In this context, the Hungarian Government has undertaken to provide free training opportunities to at least 1,000 micro, small and medium-sized enterprises by 31 March 2024 in order to facilitate their participation in public procurement. The corrective measure also includes providing such training opportunities to at least 1,200 additional micro, small and medium-sized enterprises (i.e. a total of at least 2,200 enterprises) by 30 June 2026.⁷⁶⁵ Given that the timing of the corrective action was beyond the time of adoption of the Council Implementing Decision, the Council did not issue an assessment of this commitment.

The fourteenth corrective measure establishes a support scheme to reimburse the costs incurred by micro, small and medium-sized enterprises in participating in public procurement. The Hungarian Government has committed to introducing a support scheme for micro, small and medium-sized enterprises in public procurement procedures by 31 March 2023. This scheme will provide flat-rate reimbursement to at least 1,800 micro, small and medium-sized enterprises on the basis of objective, non-discriminatory and transparent selection criteria. The scheme would cover the costs incurred by the enterprises concerned in participating in public procurement procedures, with a view to facilitating their participation in public procurement and reducing the barriers to their

⁷⁶⁴ Ibid. Recitals 109–110.

⁷⁶⁵ Ibid. Recitals 111–112.

entry.⁷⁶⁶ Given that the timing of the corrective measure went beyond the date of adoption of the Council Implementing Decision, the Council did not issue an assessment of this commitment.

From the point of view of the scope of competence, given the content of the domestic regulations in question, in line with the above, there is no direct link to EU law, and therefore the Commission cannot claim that the examination of these measures and regulations falls within the competence of the Union.

15. Extended use of the Commission's Arachne risk assessment tool

The fifteenth corrective measure in the conditionality procedure is the extended use of the Arachne risk assessment tool. The corrective measure required that the full and effective application of the Arachne system be maintained without conditions or time limits, while undertaking to ensure that all relevant audit and control bodies have full access to the data files uploaded to the Arachne system. This includes Hungary applying procedures to ensure the systematic and extended use of all its functions in all EU funding and in all programming periods, with a view to effectively preventing and detecting conflicts of interest, fraud, corruption, double funding and other irregularities.

The corrective measures clearly go beyond the EU's competences. Under the available EU rules, the use of the Arachne risk assessment tool remains optional and is only recommended to Member States. In this context, it should also be noted that, according to the Commission's own admission, 11 Member States make full use of the tool's capabilities (uploading and using data). Three other Member States are already uploading data to the tool but are not yet using the enriched data available from Arachne. Seven Member States have only participated in introductory training and have not yet started uploading and using the tool. The remaining six Member States requested introductory training at the time of writing.⁷⁶⁷ In view of this, its use will become mandatory for data uploading after 2027.⁷⁶⁸ In contrast, the Commission, citing the rule of law, is making the use of the Arachne tool, with all its functions, fully mandatory. Not only does this clearly exceed the framework provided by EU law, but the Commission also fails to provide any justification as to how the implementation of the corrective measure contributes to remedying systemic deficiencies in the rule of law.

⁷⁶⁶ Ibid. Recitals 113–114.

⁷⁶⁷ Report from the Commission on ARACHNE – Implementation for CAP expenditure, COM(2025) 58 final.

⁷⁶⁸ Article 36(6) and Article 277(5) of Regulation (EU, Euratom) 2024/2509 of the European Parliament and of the Council of 23 September 2024 on the financial rules applicable to the general budget of the Union.

16. Strengthening cooperation with OLAF

The objective set out in the sixteenth corrective measure is to strengthen measures to detect fraud in the use of EU funds and to strengthen cooperation with OLAF. To this end, Hungary has undertaken to submit, by 30 September 2022, a proposal to amend the Act on the National Tax and Customs Administration (NAV), designating the NAV as the competent national authority. It also undertook to submit to the National Assembly a proposal to introduce financial penalties to be imposed when an economic operator subject to an audit refuses to cooperate. It also undertook to submit to the National Assembly a proposal to introduce financial penalties to be imposed on economic operators who refuse to cooperate with OLAF in the conduct of OLAF on-the-spot investigations and inspections.⁷⁶⁹

It should be noted that cooperation with OLAF is directly linked to the relevant EU legislation, which requires Member States to take appropriate measures. As a result of the measures adopted by Hungary and based on the Commission's assessment, the Council considered that Hungary had taken the relevant key implementation steps and fulfilled its commitments in relation to this measure.⁷⁷⁰

17. Adoption of legislation to ensure greater transparency of public expenditure

Under the conditionality procedure, the final corrective measure required the Government to adopt, by 31 October 2022, legislation ensuring greater transparency of public expenditure, requiring all public bodies to publish their expenditure in a centralised manner. The central register provides information on subcontractors in the central register and remains in force without any conditions or time limits. The central register provides information on subcontractors in the central register and keeps the above-mentioned legislation in force without any conditions or time limits and ensures its enforcement.⁷⁷¹

Like the other corrective measures, the specific commitments go well beyond the EU's competences and, moreover, do not indicate how these proposed measures relate to the rule of law. It is clear that both the provisions of such a law and its detailed rules, which moreover apply to all state bodies, would significantly affect the exclusive competences of Member States and the constitutional order of a Member State.

⁷⁶⁹ COM(2022) 485 final, Recitals 117 and 118.

⁷⁷⁰ Council Implementing Decision 2022/2506, Recital 53.

⁷⁷¹ Ibid.

In this context, it should also be emphasised that, according to the Council Implementing Decision, based on the Commission's assessment updated on 9 December 2022, weaknesses undermining the effectiveness of the regulatory framework remain, in particular the lack of an obligation to publish information on all contracting entities in cases where the minimum data set to be uploaded to the central register does not include data on the "body responsible" for public expenditure, the contracting entity, service providers, suppliers and capacity providers. However, the Council Implementing Decision does not address how these constitute a systemic violation of the principle of the rule of law.⁷⁷²

7. European Semester

The European Semester is a framework for coordinating economic, fiscal, employment and social policies within the Union, which is part of the European Union's economic governance framework. Its aim is to ensure that Member States coordinate their fiscal and economic policies with the rules adopted at EU level. It originated in the 2008 economic crisis, which highlighted the need for EU Member States to coordinate their fiscal and social policies more closely than before. In order to better coordinate these Member State policies, the European Council created this tool in accordance with its decision. In the first half of the semester, Member State governments submit reports to the Commission on the progress made in their approved national reform programmes. Country-specific recommendations are then drawn up, the first part of which analyses the economic situation of the country concerned, while the second part sets out proposals for measures to be implemented in the following year. The recommendations cover areas such as the state of public finances, pension reform, measures to reduce unemployment and create jobs, and challenges in education and innovation.⁷⁷³

It should be noted that the Commission's 2019 communication in the context of the European Semester emphasised that greater attention should be paid to the economic implications of the rule of law, including its impact on the business environment. In this regard, the Commission considers the European Semester to be an important early warning and preventive tool. Furthermore, the Commission emphasises that it takes into account the findings of the European Semester in its annual rule of law reports.⁷⁷⁴ In this context, it should be emphasised that the European Semester has no connection with the rule of law in terms of its function, as its purpose is necessarily to

⁷⁷² Council Implementing Decision 2022/2506, Recital 54.

⁷⁷³ See the European Commission's website for information on the European Semester

⁷⁷⁴ COM(2020) 580 final, pp. 11–12.

coordinate Member States' economic and social policies. This clearly circumvents the original intention of the Member States regarding the precise purpose for which the mechanism was designed, as the Member States certainly did not intend to adopt yet another rule of law instrument that would be binding on them. Furthermore, as with the Commission's rule of law report, under the European Semester Member States only receive recommendations, which are not binding. Given that the non-binding recommendations contained therein are ultimately given binding force, the principle of the division of competences within the EU is circumvented by invoking the rule of law.⁷⁷⁵

8. The EU Justice Scoreboard

The EU Justice Scoreboard faces a similar problem to that encountered in the context of the European Semester. In terms of its function, the EU Justice Scoreboard aims to help Member States improve the performance of their national justice systems by providing objective, reliable and comparable data.⁷⁷⁶ In contrast, the Commission makes it clear in its 2019 communication that it will take into account the relevant parts of the EU Justice Scoreboard in its Rule of Law Report. It also attaches importance to it in its own right in the context of the rule of law, emphasising that it could be further developed and improved by providing comparative data on the independence, quality and efficiency of national justice systems, including in order to better cover areas relevant to the rule of law, such as criminal and administrative justice.⁷⁷⁷ Given that the findings of the EU Justice Scoreboard are not binding on Member States in the same way as the findings of the European Semester, treating the mechanism in this way, with reference to the rule of law, similarly circumvents the principle of the division of competences.⁷⁷⁸

9. Infringement proceedings

Based on the Commission's 2019 communication on this subject, the institution pays particular attention to the handling of infringement procedures, which it treats as an additional tool. In this regard, the communication emphasises that *'the Commission will pursue a strategic approach to infringement proceedings related to the rule of law, requesting expedited proceedings and interim*

⁷⁷⁵ See Pastuszko, 2024, pp. 210–224.

⁷⁷⁶ See the European Commission's information on the EU Justice Scoreboard

⁷⁷⁷ COM(2019) 343 final, p. 11.

⁷⁷⁸ See Sehnálek, 2024, pp. 174–194.

*measures whenever necessary. The Commission will also actively promote the standards developed in the Court of Justice case law, including by compiling the relevant findings of the Court.*⁷⁷⁹

In this regard, it should be noted that infringement proceedings against a Member State are necessarily initiated when the Commission (or, where appropriate, another Member State) considers that the Member State in question has failed to fulfil an obligation under the Treaties. In this regard, according to the wording of the Treaties, a breach of an obligation under the Treaties can take many forms. It may result from obligations expressly laid down in the Treaties, with the exception of obligations relating to the CFSP,⁷⁸⁰ from any binding instrument adopted by the EU institutions,⁷⁸¹ including international agreements concluded by the Union,⁷⁸² or even from obligations arising from the general principles of EU law. It is clear that the common feature of these is that Member States must expressly breach an obligation arising from the Treaties. However, given that issues relating to the rule of law often go far beyond the obligations of Member States under the Treaties and other EU legal instruments, and that the alleged problems referred to above often disregard the principle of the division of competences within the EU, and the political and constitutional arrangements of the Member States referred to in Article 4(2) TEU, the use of infringement proceedings in this way also raises problems.

It should also be emphasised that, given the function of infringement proceedings, their purpose is to ensure that Member States fulfil their obligations under EU law, and the Commission does not, in principle, use this tool solely for the purpose of sanctioning Member States. In fact, once a Member State has put an end to the infringement, the Commission will in most cases should close the case. However, given that political allegations based on perceived violations of the rule of law are in fact aimed at “establishing guilt”, infringement proceedings may also be used against a Member State in a manner that deviates from their original purpose.

9.1 The horizontal enabling condition

In the current EU budget cycle (2021-2027), the requirement for the effective application and implementation of the Charter has been included as one of the horizontal enabling conditions for EU funds implemented under shared management between the Commission and the Member

⁷⁷⁹ COM(2019) 343 final, p. 14.

⁷⁸⁰ See Article 275 TFEU.

⁷⁸¹ Judgment of the Court of Justice of 4 March 1970 in Case 33/69 Commission v Italy, ECLI:EU:C:1970:14; Judgment of 18 November 1970 in Case 8/70 Commission v Italy, ECLI:EU:C:1970:94.

⁷⁸² Judgment of the Court of Justice of 7 October 2004 in Case C-239/03 Commission v France, ECLI:EU:C:2004:598.

States.⁷⁸³ This is important to mention because it is indirectly related to the rule of law, to such an extent that the Commission blocked the entire cohesion funds allocated to Hungary and Poland in 2022 (with the exception of the operational programme for implementation) on the grounds of non-compliance with the requirement of judicial independence.⁷⁸⁴

The mechanism⁷⁸⁵ can be summarised as follows: when preparing operational programmes and any programme amendments, each Member State must assess whether the horizontal enabling conditions related to the selected specific objective are met. The condition relating to the Charter requires compliance with the Charter in general terms.⁷⁸⁶ This requires all Member States to submit a self-assessment. (While Hungary's self-assessment in 2022 confirmed the independence of the judiciary, Poland gave a negative self-assessment on the same requirement). Within three months of the submission of the self-assessment, the Commission will assess whether, in its opinion, the horizontal enabling conditions are met and will inform the Member State of its findings. If the Member State disagrees with the Commission's assessment, it may submit its comments within one month. In this case, the Commission shall follow the procedure referred to above. Member States must ensure compliance with the horizontal enabling conditions throughout the programming period. The Commission has exclusive authority over the procedure and decides (by decision) on the approval of Member States' operational programmes, suspending payments for the measures concerned in the operational programme in the event of inadequate implementation of horizontal (or thematic) enabling conditions according to its own assessment. In such cases, if the Member State submits a new self-assessment, it is also assessed by the Commission under its own authority. In this procedure, unlike in the case of the conditionality regulation, the Council has no decision-making power and no guarantees (principles) have been established to protect Member States.

Practice has already shown that the Commission can apply the procedure in a politically biased manner. The most striking example of this is that, while in the case of Poland (where the self-assessment was negative, the Commission did not specify the requirements for compliance in its decisions approving the operational programmes), following the change of government in December 2023, based on the aforementioned action plan (without implementing it), it

⁷⁸³ Common provisions applicable to the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund, the Just Transition Fund and the European Maritime, Fisheries and Aquaculture Fund, and financial rules for those and for the Asylum, Migration and Integration Fund, the Internal Security Fund and the instrument for financial support for border management and visa policy, *OJ L 231, 30 June 2021, 159–706*.

⁷⁸⁴ The text of Chapter IX draws heavily on the manuscript entitled 'Az Európai Unió jogállamisági mechanizmusai' ['The Rule of Law Mechanisms of the European Union'] by Dr. Rita Rácz.

⁷⁸⁵ See Article 15 of the Regulation referred to above.

⁷⁸⁶ See Annex III to the Regulation referred to above.

immediately decided (on 29 February 2024) that the requirement for the independence of the judiciary had now been met,⁷⁸⁷ until then, it required Hungary to implement the detailed requirements set out in its decisions approving the operational programmes by adopting legislation and taking other necessary measures, and only then did it conclude,⁷⁸⁸ that Hungary was fulfilling the requirement in question. The EP has also demonstrated that it approaches this mechanism on a political basis and applies double standards (like the Council, the EP has no decision-making power): while it initiated annulment proceedings before the CJEU against the Commission's decision on Hungary (the proceedings are ongoing),⁷⁸⁹ it has not even expressed any concerns in a resolution regarding the decision on Poland, despite the fact that the reforms promised in the action plan have not yet been implemented.

9.2 Outlook: the Commission's proposal for the EU's next multiannual financial framework (2028-2034)

On the basis of the Commission's proposal package for the forthcoming Multiannual Financial Framework (MFF), published on 16 July 2025 (hereinafter: the "MFF proposal")⁷⁹⁰, the Commission intends, under the European Economic, Territorial, Social, Rural Development and Fisheries Fund for Sustainable Prosperity and Security (hereinafter: the "Fund"), to consolidate, in the next MFF, all instruments that include a pre-allocated national envelope into a single programme (hereinafter: the "Single Plan"). Compared to the previous MFF, the MFF proposal suggests a simplified but reinforced and extended conditionality system. The proposed regulation represents a combination of the various existing rule of law mechanisms (the conditionality procedure already described, horizontal enabling conditions, super milestones, annual rule of law report), with the proviso that their application would make it possible to block access to any shared management fund under a significantly simpler procedure.⁷⁹¹

The Single Plan proposal would introduce a horizontal condition linked to the Charter of Fundamental Rights and an additional horizontal condition relating to the rule of law, which must be met by all measures eligible for support under the Member State's national and regional partnership plan (hereinafter: NRP plan) throughout the entire implementation period of the Fund.

⁷⁸⁷ See the European Commission's Press Release (2024 February 29nd)

⁷⁸⁸ See the European Commission's Press Release (2023 December 13th)

⁷⁸⁹ Case C-225/24, Parliament v Commission.

⁷⁹⁰ Proposal for a Regulation of the European Parliament and of the Council establishing the European Fund for economic, social and territorial cohesion, agriculture and rural, fisheries and maritime, prosperity and security for the period 2028–2034 and amending Regulation (EU) 2023/955 and Regulation (EU, Euratom) 2024/2509, COM(2025) 565 final, Brussels, 16 July 2025, 2025/0240 (COD).

⁷⁹¹ The text of Chapter X draws heavily on the manuscript entitled 'Az Európai Unió jogállamisági mechanizmusai' ['The Rule of Law Mechanisms of the European Union'] by Dr. Rita Rác.

The proposal extends both horizontal conditions to other instruments under the Single Plan, including the common agricultural policy.⁷⁹²

According to the MFF proposal, when preparing the NRP Plan, Member States must explain how the NRP Plan and its planned implementation ensure compliance with the horizontal rule of law condition. As the plan is adopted by the Council on a proposal from the Commission in an implementing decision, based on the published version of the draft, the drawdown of funds or part of the funds from the EU budget could be prevented at an early stage on the grounds of concerns about the rule of law, but failure to comply with these horizontal conditions could also be established at a later stage (in essence, at any time). Following the approval of the plan, in the case of the rule of law condition, the Council could, on a proposal from the Commission, take a negative decision by a qualified majority (similar to the conditionality regulation).

When assessing compliance with the rule of law condition, the MFF proposal highlights the Commission's annual rule of law reports and the country reports adopted under the European Semester as information to be taken into account by the Commission. In addition, the proposal would require that the actual or potential impact on the effective and efficient management of the EU budget and on the financial interests of the Union, as well as the nature, duration, severity and scope of the non-compliance, be taken into account.⁷⁹³

The proposal on the rule of law condition refers back to the concept of the rule of law in the Conditionality Regulation,⁷⁹⁴ but would maintain the Conditionality Regulation unchanged. Given that both the rule of law condition and the conditionality regulation essentially serve the same purpose, the horizontal rule of law condition would duplicate the conditionality mechanism and essentially render it meaningless, as the rule of law condition would allow for the same rule of law violations to be invoked, but with fewer additional preconditions (the impact on the EU budget would not be an explicit requirement), without guarantees for Member States (the principles laid down in the conditionality regulation are missing from the MFF proposal), any EU funds belonging to the Fund could be blocked in a simpler and faster procedure. In addition, the possibility of permanent loss of funds would be tightened in such a way that if the decision establishing non-compliance were not repealed within one year (shortening the current two years), the amount concerned would be lost to the Member State.⁷⁹⁵

⁷⁹² Articles 7–9 the Regulation referred to above.

⁷⁹³ Ibid. Article 9.

⁷⁹⁴ Ibid. Article 9(1).

⁷⁹⁵ Ibid. Article 9(7).

It can be concluded that, in addition to the fact that the draft conditionality system of the MFF proposal described above does not contain any elements reminiscent of the political or legal guarantees for Member States that were previously included in the conditionality regulation and in practice, leaving the Commission conducting the assessment free to determine at its own discretion which Member State has access to its funds and to what extent. As with other instruments, this provides fertile ground for political abuse, as well as for the instrument's application to disregard the principle of the division of competences under EU law.

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References

- Regulation (EU) 2024/1083 of the European Parliament and of the Council of 11 April 2024 establishing a common framework for media services in the internal market and amending Directive 2010/13/EU (European Media Freedom Act) (Text with EEA relevance): https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=OJ:L_202401083
- A Bizottság Közleménye az Európai Parlamentnek, az Európai Tanácsnak, a Tanácsnak, az Európai Gazdasági és Szociális Bizottságnak és a Régiók Bizottságának az Unión belüli jogállamiság megerősítése intézkedési terv, COM/2019/343 final
- A Commission's 2023 Rule of Law Report, Country Chapter on Hungary, Brussels, 5 July 2023, SWD(2023) 817 final, p. 2.
- Act CXV of 2005 on the Promulgation of the Convention of 26 May 1997 on the Fight against Corruption involving Officials of the European Communities or Officials of Member States of the European Union: <https://net.jogtar.hu/jogszabaly?docid=a0500115.tv>
- Act CXXXIV of 2005 on the promulgation of the United Nations Convention against Corruption, signed in Merida on 10 December 2003.
- Act LIII of 2024 amending Act IX of 2021 on public interest asset management foundations performing public tasks.
- Regulation (EU, Euratom) 2024/2509 of the European Parliament and of the Council of 23 September 2024 on the financial rules applicable to the general budget of the Union.
- Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council of 16 December 2020 on general provisions for the protection of the Union's financial interests, Hungary's written notification of 15 December 2022 Commission Decision of 16 December 2024 on the written notification of Hungary concerning Article 2(2) of Council Implementing Decision (EU) 2022/2506 of 15 December 2022, C(2024) 9140 final.
- Judgment of the Court (Grand Chamber) of 15 July 2021 – European Commission v Republic of Poland (C-791/19): <https://op.europa.eu/en/publication-detail/-/publication/e5798221-e54d-11eb-a1a5-01aa75ed71a1/language-en>
- Bakó, Beáta (2021): Hungary's Latest Experiences with Article 2 TEU: The Need for 'Informed' EU sanctions. In: von Bogdandy, Armin et al. (ed.): *Defending Checks and Balances in EU Member States – Taking Stock of Europe's Actions*, Beiträge zum

ausländischen öffentlichen Recht und Völkerrecht, Max-Planck-Institut für ausländisches öffentliches Recht und Völkerrecht (Springer).

- Besselink, Leonard (2017): The Bite, the Bark, and the Howl: Article 7 TEU and the Rule of Law Initiatives, in Jakab, A. - Kochenov, D. (ed.): *The Enforcement of EU Law and Values: Ensuring Member States' Compliance*.
- Bóka, János – Krajnyák, Enikő (2024): The Interpretation of the Rule of Law in the Conditionality Regulation. In: *Bóka, János (ed.) The Supranational Interpretation of the Rule of Law*. (Central European Academic Publishing)
- Budai, Péter (2023): Guy Fiti Sinclair elmélete és az uniós jog vizsgálata: a jogállamiság fejlődése és az ASJP-ügy, *Közjogi Szemle*, No. 1.
- C-542/18 RX-II and C-543/18 RX-II Simpson and HG EU:C:2020:232, paragraph 71; C-132/20 Getin Noble Bank EU:C:2022:235, paragraphs 95–97, 125–131; W.Ż. paragraphs 130, 134–152. Simpson and HG paragraph 75; C-748/19 to C-754/19 Prokuratura Rejonowa EU:C:2021:931 paragraphs 78–79; C-896/19 Repubblica EU:C:2021:311 paragraphs 53–57; Judgment of the Court of Justice of 7 September 2023 in Case C-216/21 Asociația ‘Forumul Judecătorilor din România’ YN v. Consiliul Superior al Magistraturii, ECLI:EU:C:2023:628, paragraphs 78–82, 85–86; C-824/18 A.B. and Others EU:C:2020:1053 paragraph 122; C-204/21 Commission v Poland, paragraphs 69, 73; C-791/19 Commission v Poland EU:C:2021:596, paragraphs 88–122 and 129–130.
- Conclusions of the Council of the EU and the Member States meeting within the Council on ensuring respect for the rule of law, 17014/14, 16 December 2014: <https://data.consilium.europa.eu/doc/document/ST-17014-2014-INIT/en/pdf>.
- Action brought on 29 October 2021 — European Parliament v European Commission (Case C-657/21): <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:62021CN0657>
- Charter of Fundamental Rights of the European Union, OJ C 202, 7.6.2016
- Closa, Carlos - Kochenov, Dimitry (2016): Reinforcement of the Rule of Law Oversight in the European Union: Key Options, in Werner Schroeder (ed.) *Strengthening the Rule of Law in Europe: From a Common Concept to Mechanisms of Implementation* (Bloomsbury Publishing PLC).
- See the Hungarian Constitutional Court’s decision 22/2016 (XII. 5.) AB, https://public.mkab.hu/dev/dontesek.nsf/0/1361afa3cea26b84c1257f10005dd958/%24FILE/22_2016%20AB%20hat%C3%A1rozat.pdf.

- Commission Communication to the European Parliament and the Council on a new EU framework to strengthen the rule of law, COM/2014/0158 final, Annex I.
- Commission Communication: Corrective measures notified by Hungary under Regulation (EU, Euratom) 2020/2092 on general conditions for the protection of the EU budget, COM(2022) 687 final, 30 November 2022.
- Commission Communication: Rule of Law Report 2025, COM(2025) 900 final, 8 July 2025.
- See the European Commission's Press Release (2023 December 13th) https://ec.europa.eu/commission/presscorner/api/files/document/print/hr/ip_23_6465/IP_23_6465_EN.pdf.
- Commission decision of 16 December 2024 pursuant to Article 7(2) of Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget, concerning a written notification from Hungary with regard to Article 2(2) of Council Implementing Decision (EU) 2022/2506 of 15 December 2022, C(2024) 9140 final.
- Commission proposal: Regulation of the European Parliament and of the Council on the protection of the Union's budget in case of generalised deficiencies as regards the rule of law in the Member States, COM(2018) 324 final,
- Commission Recommendation (EU) 2023/2829 of 12 December 2023 on the inclusive and resilient electoral processes in the Union and enhancing the European nature and efficient conduct of the elections to the European Parliament.
- Common provisions applicable to the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund, the Just Transition Fund and the European Maritime, Fisheries and Aquaculture Fund, and financial rules for those and for the Asylum, Migration and Integration Fund, the Internal Security Fund and the instrument for financial support for border management and visa policy, OJ L 231, 30 June 2021, 159–706.
- Communication from the Commission on the European Citizens' Initiative 'Cohesion policy for the equality of the regions and sustainability of the regional cultures' C(2025) 6015 final.
- Communication from the Commission to the Council and the European Parliament on Article 7 of the Treaty on European Union - Respect for and promotion of the values on which the Union is based, COM(2003) 606 final (15 October 2003), Conclusions.

- Vörös, Imre (2016): Az Európai Unió kiütkeresése az Európai Parlament 2014. évi, az alapjogok helyzetét elemző határozata után: az új uniós jogállamisági keret, *Jogtudományi Közlöny*, No. 7-8.
- Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – 2020 Rule of Law Report – The state of the rule of law in the European Union COM(2020) 580 final
- Communication from the Commission to the European Parliament, the European Council and the Council on further strengthening the rule of law in the Union, COM(2019) 163 final.
- Communication on Pluralism and Media Concentration in the Internal Market – an Assessment of the Need for Community Action, COM (94) 353 final.
- Convention based on Article K.3 of the Treaty on European Union, on the protection of the European Communities' financial interests, OJ C 316, 27.11.1995
- Council Framework Decision 2003/568/JHA of 22 July 2003 on combating corruption in the private sector, OJ L 192, 31.7.2003,
- Council Implementing Decision (EU) 2022/2506 of 15 December 2022 concerning Hungary, the Commission initiated a reassessment of the fulfilment of the conditions set out in Article 4 of Regulation (EU, Euratom) Commission Decision of 13 December 2023 on the re-assessment, at the initiative of the Commission, of the fulfilment of the conditions set out in Article 4 of Regulation (EU, Euratom) No 2020/2092, C(2023) 8999 final, 13 December 2023.
- Council Implementing Decision (EU) 2022/2506 of 15 December 2022 on measures to protect the Union budget against breaches of the rule of law in Hungary, OJ L 325, 20.12.2022, 94–109. See Article 2 for the measures.
- Court (full court) Opinion 1/17 on the Comprehensive Economic and Trade Agreement between Canada, of the one part, and the European Union and its Member States, of the other part (CETA), delivered on 30 April 2019, ECLI:EU:C:2019:341, paragraph 110.
- Crego, Maria D. - Manko, Rafał - van Ballegooij, Wouter (2020): Protecting EU common values within the Member States. *European Parliamentary Research Service*: [https://www.europarl.europa.eu/thinktank/en/document/EPRS_STU\(2020\)652088](https://www.europarl.europa.eu/thinktank/en/document/EPRS_STU(2020)652088)
- Csink, Lóránt (2021): What can law and politics do? In: Drinóczi, Tímea - Bień-Kacała, Agnieszka (szerk.): *Rule of Law, Common Values, and Illiberal Constitutionalism Poland and Hungary within the European Union*. (Routledge Taylor & Francis Group,).

- de Búrca, Gráinne (2011): The Road Not Taken: The EU as a Global Human Rights Actor. *American Journal of International Law*, 4. sz.
- Decision 22/2016 (XII. 5.) AB,,: https://public.mkab.hu/dev/dontesek.nsf/0/1361afa3cea26b84c1257f10005dd958/%24FILLE/22_2016%20AB%20hat%C3%A1rozat.pdf.
- Delledonne, Giacomo (2016): Homogénéité constitutionnelle et protection des droits fondamentaux et de l'État de droit dans l'ordre juridique européen. *Politique européenne*, No. 3.
- Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law, OJ L 198, 28.7.2017,
- Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons reporting on suspected breaches of Union law.
- Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive), OJ L 95, 15.4.2010, pp. 1–24.
- Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC, OJ L 94, 28.3.2014,
- Directive 89/552/EEC of the European Parliament and of the Council of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive), OJ L 298, 17/10/1989 p. 0023 – 0030.
- Draft treaty establishing a constitution for Europe (not ratified): https://www.europarl.europa.eu/about-parliament/en/in-the-past/the-parliament-and-the-treaties/draft-treaty-establishing-a-constitution-for-europe?&at_campaign=2024-AboutParliament&at_medium=Google_Ads&at_platform=Search&at_creation=DSA&at_goal=TR_G&at_advertiser=Webcomm&at_topic=Constitution&at_location=HU&gad_source=1&gad_campaignid=23095470191&gbraid=0AAAABBTTrHUkOqdDDdy0TB4dW0-6glAOmW&gclid=EAIaIQobChMI34Pev5qakwMV04yDBx2D-xeNEAAYASAAEgKomfD_BwE
- Duxbury, Allison (1995): Austria and the European Union – The report of the 'Three Wise Man'. *Melbourne Journal of International Law*, 2000, No. 1.
- EP resolution of 10 March 2011 on the Hungarian media law, 2011/2510(RSP).

- See the European Parliament's DRAFT INTERIM REPORT on the proposal for a Council decision determining, pursuant to Article 7(1) of the Treaty on European Union, the existence of a clear risk of a serious breach by Hungary of the values on which the Union is founded (C9-0000/2022–2018/0902R(NLE))at:
https://www.europarl.europa.eu/doceo/document/LIBE-PR-777005_EN.pdf.
- EU Observer: Justice commissioner links EU funds to 'rule of law':
<https://euobserver.com/political/139720>.
- European Commission (2023) Press Release: Commission considers that Hungary's judicial reform addressed deficiencies in judicial independence, but maintains measures on budget conditionality
https://ec.europa.eu/commission/presscorner/api/files/document/print/hr/ip_23_6465/IP_23_6465_EN.pdf.
- European Commission (2024 May 6th) Press Release: Commission intends to close Article 7(1) TEU procedure for Poland:
https://ec.europa.eu/commission/presscorner/detail/en/ip_24_2461.
- European Commission Press Release (2024. February 29nd):
https://ec.europa.eu/commission/presscorner/detail/hu/mex_24_1242.
- European Council conclusions, 10-11 December 2020:
<https://www.consilium.europa.eu/en/press/press-releases/2020/12/11/european-council-conclusions-10-11-december-2020/>
- European Council conclusions, 1993. July 21-22, Copenhagen, SN 180/1/93 REV 1;
<https://www.consilium.europa.eu/en/european-council/conclusions/1993-2003/>
- European Court of Auditors Special Report No 2024/03: The rule of law in the European Union – The framework provides better protection for the Union's financial interests than before, but risks remain; points VI and IX of the summary, points 37 and 101 of the Special Report and Recommendation 2
- European Parliament resolution of 12 March 2014 on evaluation of justice in relation to criminal justice and the rule of law (2014/2006(INI)), P7_TA(2014)0231.
- European Parliament resolution of 12 September 2018 on a proposal calling on the Council to determine, pursuant to Article 7(1) of the Treaty on European Union, the existence of a clear risk of a serious breach by Hungary of the values on which the Union is founded (2017/2131(INL)): https://www.europarl.europa.eu/doceo/document/TA-8-2018-0340_EN.html.

- European Parliament resolution of 24 November 2022 on the assessment of Hungary's compliance with the rule of law conditions under the Conditions Regulation and the current state of the Hungarian Recovery and Resilience Plan (2022/2935(RSP))
- European Parliament resolution of 3 July 2013 on the situation of fundamental rights: standards and practices in Hungary (pursuant to the European Parliament resolution of 16 February 2012) (2012/2130(INI)):
https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=oj:JOC_2016_075_R_0010
- European Parliament resolution on the result of the legislative elections in Austria and the proposal to form a coalition government between ÖVP (Austrian People's Party) and FPÖ (Austrian Freedom Party) - B5-0102/2000.
- Website of the EU on the European Citizens' Initiative: https://citizens-initiative.europa.eu/initiatives/details/2017/000004_hu.
- Farrell, Henry - Héritier, Adrienne (2007): Introduction: Contested Competences in the European Union. *West European Politics*, No. 2.
- Fekete, Balázs (2015): Az EU szerződés 7. cikke - valóban atomfegyver? *Társadalomtudományi Kutatóközpont*: <https://hpops.tk.hu/blog/2015/01/az-eu-szerzodes-7-cikke-valoban-atomfegyver>.
- Fekete, Balázs (2016): Alternatív kommentár az EUSZ 7. cikkéhez. *Közjogi Szemle*.
- Gombos, Katalin (2022): A jogállamiság színe fonákja. *Ars Boni*, No. 3-4.
- Gordos, Árpád – Ódor, Bálint (2004): Az Európai Alkotmányos szerződés születése. *Tanulmányok-dokumentumok* (HVG-ORAC).
- Hegedüs, Daniel (2019): What role for EU institutions in confronting Europe's democracy and rule of law crisis? *The German Marshall Fund Policy Paper*, 4. sz.
- Hermansen, Silje Synnøve Lyder (2020): Building legitimacy: strategic case allocations in the Court of Justice of the European Union, *Journal of European Public Policy*, 8. sz.
- Jakusovszki, Tibor Péter (2023): The institutional framework for the enforcement and compliance with EU values – The European Union's rule of law toolkit' (2023) – Pázmány Péter Catholic University – Department of European Law.
- Judgement of the Court of Justice' in Case C-650/18, Hungary v Parliament, 3 June 2021, ECLI:EU:C:2021:426, and the Opinion of Advocate General Bobek in Case C-650/18, Hungary v Parliament, 3 December 2020, ECLI:EU:C:2020:985.
- Judgment of the Court of Justice in Case 44/79 Hauer v Land Rheinland Pfalz, 13 December 1979, ECLI:EU:C:1979:290; Judgment of 13 July 1989 in Case C-5/8 Hubert Wachauf v Bundesamt für Ernährung und Forstwirtschaft, ECLI:EU:C:1989:321,

- Judgment of the Court of Justice in Case C-83/19, C-127/19, C-195/19, C-291/19, C-355/19 and C-397/19, Asociația ‘Forumul Judecătorilor din România’ (AFJR), judgment of 18 May 2021, ECLI:EU:C:2021:393, paragraphs 195–198; Judgment of the Court of Justice of the European Union in Case C-791/19 Commission v Poland, delivered on 15 July 2021, ECLI:EU:C:2021:596, paragraphs 167–168.
- Judgment of the Court of Justice in Cases C-488/12, C-489/12, C-490/12, C-491/12 and C-526/12, Nagy Sándor and Others v Hajdú-Bihar Megyei Kormányhivatal, judgment of 10 October 2013, ECLI:EU:C:2013:703.
- Judgment of the Court of Justice of 13 February 1969 in Case 14/68 Walt Wilhelm and Others v Bundeskartellamt, ECLI:EU:C:1969:4, paragraphs 6–7.
- Judgment of the Court of Justice of 15 July 1964 in Case 6/64 Flaminio Costa v E.N.E.L. ECLI:EU:C:1964:66.
- Judgment of the Court of Justice of 15 July 2021 in Case C-791/19 Commission v Poland, ECLI:EU:C:2021:596, paragraph 72.
- Judgment of the Court of Justice of 19 November 2019 in Joined Cases C-585/18, C-624/18 and C-625/18, A.K. and Others, ECLI:EU:C:2019:98, paragraphs 137–138 and 143; Judgment of the CJEU in Case C-272/19 VQ v Land Hessen, 9 July 2020, ECLI:EU:C:2020:535, paragraph 53; Judgment of the CJEU in Case C-824/18 A.B. and Others, 2 March 2021, ECLI:EU:C:2021:153, paragraphs 124–125; Judgment of the CJEU in Case C-896/19 Repubblika v Il-Prim Ministru, 20 April 2021, ECLI:EU:C:2021:311, paragraph 66; Judgment of the CJEU in Case C-791/19 Commission v Poland, 15 July 2021, ECLI:EU:C:2021:596, paragraphs 103–108.
- Judgment of the Court of Justice of 2 March 2021 in Case C-824/18, A.B. and Others, ECLI:EU:C:2021:153, paragraphs 128 and 136; Judgment of the Court of Justice of 19 November 2019 in Joined Cases C-585/18, C-624/18 and C-625/18 A.K. and Others, ECLI:EU:C:2019:98, paragraph 145.
- Judgment of the Court of Justice of 23 April 1986 in Case 294/83 Les Verts v European Parliament ECLI:EU:C:1986:166, paragraph 23.
- Judgment of the Court of Justice of 24 June 2019 in Case C-619/18 Commission v Poland, ECLI:EU:C:2019:531, paragraphs 75–96; Judgment of the CJEU in Case C-192/18 Commission v Poland, 5 November 2019, ECLI:EU:C:2019:924, Judgment of the CJEU in Case C-487/19 W. Ž. of 6 October 2021, ECLI:EU:C:2021:798,
- Judgment of the CJEU in Case C-791/19 Commission v Poland, 15 July 2021, ECLI:EU:C:2021:596, Judgment of the CJEU in Case C-564/19 IS, delivered on 23

November 2021, ECLI:EU:C:2021:949, paragraph 91; Judgments of the CJEU in Cases C-357/19, C-379/19, C-547/19, C-811/19 and C-840/19. Euro Box Promotions and Others, judgment of 21 December 2021, ECLI:EU:C:2021:1034, paragraphs 238–243. Judgment of the CJEU in Case C-619/18 Commission v Poland, 24 June 2019, ECLI:EU:C:2019:531, paragraphs 82–97; Judgment of the CJEU in Case C-216/18 PPU. LM, 25 July 2018, paragraph 57. Judgment of the CJEU in Case C-487/19 W. Ž., 6 October 2021, ECLI:EU:C:2021:798, paragraph 113; Judgment of the CJEU in Case C-817/21 R. I. v Inspecția Judiciară, N. L., 11 May 2023, ECLI:EU:C:2023:391, paragraphs 53–73.

- Judgment of the Court of Justice of 26 February 2013 in Case C-677/10 Åklagaren v Hans Åkerberg Fransson, ECLI:EU:C:2013:105, paragraph 19; Judgment of 6 March 2014 in Case C-206/13, Cruciano Siragusa v Regione Sicilia – Soprintendenza Beni Culturali e Ambientali di Palermo, ECLI:EU:C:2014:126
- Judgment of the Court of Justice of 27 February 2018 in Case C-64/16, Associação Sindical dos Juizes Portugueses v Tribunal de Contas, ECLI:EU:C:2018:117.
- Judgment of the Court of Justice of 4 March 1970 in Case 33/69 Commission v Italy, ECLI:EU:C:1970:14; Judgment of 18 November 1970 in Case 8/70 Commission v Italy, ECLI:EU:C:1970:94.
- Judgment of the Court of Justice of 5 June 2025 in Case C-26/23 P, Citizens’ Committee of the European Citizens’ Initiative ‘Minority SafePack – one million signatures for diversity in Europe v Commission, ECLI:EU:C:2025:407.
- Judgment of the Court of Justice of 6 February 2021 in Case C-156/21 Hungary v Council and Parliament, ECLI: EU:C:2022:97, paragraph 232; Judgment of 6 February 2021 in Case C-157/21 Poland v Council and Parliament, paragraph 264.
- Judgment of the Court of Justice of 6 November 2012 in Case C-286/12 Commission v Hungary, ECLI:EU:C:2012:687.
- Judgment of the Court of Justice of 7 October 2004 in Case C-239/03 Commission v France, ECLI:EU:C:2004:598.
- Judgment of the Court of Justice of 7 September 2023 in Case C-216/21, Asociația ‘Forumul Judecătorilor din România’ YN v Consiliul Superior al Magistraturii, ECLI:EU:C:2023:628, paragraphs 78–82.
- Judgment of the General Court of 19 November 2022 in Case T-158/21, Citizens’ Committee of the European Citizens’ Initiative ‘Minority SafePack – one million signatures for diversity in Europe’ v European Commission, ECLI:EU:T:2022:696.

- Judgments of the Court of Justice of 16 February 2022 in Case C-156/21 Hungary v Parliament and Council and Case C-157/21 Republic of Poland v Parliament and Council, ECLI:EU:C:2022:97 and ECLI:EU:C:2022:98.
- Kecsmár, Krisztián (2020): A jogállamiság fogalma az Európai Unió Bíróságának ítélezési gyakorlatában, avagy a jog került a politika vagy a politika a jog csapdájába? *Európai Tükör*, No. 2.
- Kochenov, Dimitry - Pech, Laurent (2015): Monitoring and Enforcement of the Rule of Law in the EU: Rhetoric and Reality, *European Constitutional Law Review*, No. 3.
- Kochenov, Dimitry (2017): Busting the myths nuclear: A Commentary on Article 7 TEU. *University of Groningen Faculty of Law Research Paper*.
- Krajnyák, Enikő (2024): Rule of Law and Academic Freedom (?): Reflections on Hungary's Case with the Planned Suspension of Erasmus+ and Horizon Europe Funds, *Constitutional Discourse*: <https://constitutionaldiscourse.com/rule-of-law-and-academic-freedom-reflections-on-hungarys-case-with-the-planned-suspension-of-erasmus-and-horizon-europe-funds/>
- Minority SafePack – one million signatures for diversity in Europe: https://citizens-initiative.europa.eu/initiatives/details/2017/000004_en
- Nézőpont Institute: Report on the Rule Of Law situation in the Institutions of the EU 2025: <https://nezopont.hu/en/what-we-do/political-analyses/report-on-the-rule-of-law-situation-in-the-institutions-of-the-eu-2025>
- Nowak-Far, Artur (2021): The Rule of Law Framework in the European Union: Its Rationale, Origins, Role and International Ramifications. In: Armin von Bogdandy et al. (ed.): *Defending Checks and Balances in EU Member States – Taking Stock of Europe's Actions*. Beiträge zum ausländischen öffentlichen Recht und Völkerrecht, Max-Planck-Institut für ausländisches öffentliches Recht und Völkerrecht (Springer, 2021).
- Ursula von der Leyen (2019): Political Guidelines For The Next European Commission 2024–2029. The document is available at: https://commission.europa.eu/document/download/e6cd4328-673c-4e7a-8683-f63ffb2cf648_en?filename=Political%20Guidelines%202024-2029_EN.pdf.
- Opinion of Advocate General Bobek in Case C-650/18, Hungary v Parliament, 3 December 2020, ECLI:EU:C:2020:985.
- Opinion of Advocate General Ćapeta delivered on 5 June 2025 in Case C-769/22, Commission v Hungary, ECLI:EU:C:2025:408, paragraph 28.

- Opinion of Advocate General Kokott delivered on 2 October 2012 in Case C-286/12 Commission v Hungary, ECLI:EU:C:2012:602, paragraphs 54–56.
- Opinion of the CJEU (full court) No. 2/13 on the accession of the European Union to the European Convention for the Protection of Human Rights and Fundamental Freedoms, delivered on 18 December 2014, ECLI:EU:C:2014:2454
- Opinion of the Council Legal Service on the Commission's Communication on a new EU Framework to strengthen the Rule of Law: - compatibility with the Treaties, Brussels, 2014. May 27th, 10296/14.
- Pastuszko, Grzegorz (2024): The Interpretation of the Rule of Law in the European Semester, Bóka János (ed.) *The Supranational Interpretation of the Rule of Law*. (Central European Academic Publishing, 2024).
- Polish minister questioned over rule of law breach, Euractiv.com 2021. June 23rd, https://www.euractiv.com/section/politics/short_news/polish-minister-questioned-over-rule-of-law-breach/.
- Priebus, Sonja (2022): Watering down the ‘nuclear option’? The Council and the Article 7 dilemma, *Journal of European Integration*, No. 7.
- Proposal for a Council Implementing Decision on measures to protect the Union budget against breaches of the rule of law in Hungary, COM(2022) 485 final (18 September 2022)
- Proposal for a Directive of the European Parliament and of the Council on combating corruption, replacing Council Framework Decision 2003/568/JHA and the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union and amending Directive (EU) 2017/1371 of the European Parliament and of the Council: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52023PC0234>
- Proposal for a Regulation of the European Parliament and of the Council establishing the European Fund for economic, social and territorial cohesion, agriculture and rural, fisheries and maritime, prosperity and security for the period 2028-2034 and amending Regulation (EU) 2023/955 and Regulation (EU, Euratom) 2024/2509, 2025. July 16th, COM/2025/565 final.
- Protection of investigative journalists in Europe: the case of Slovak journalist Ján Kuciak and Martina Kušnírová, 2018/2628(RSP).
- Rácz, Rita: ‘The Rule of Law Mechanisms of the European Union’ (the manuscript is expected to be published in the professional journal Pro Publico Bono – Magyar Közigazgatás in spring 2026).

- Reasoned proposal on the rule of law in Poland pursuant to Article 7(1) of the Treaty on European Union, COM/2017/835 final: <https://eur-lex.europa.eu/legal-content/HU/TXT/PDF/?uri=CELEX:52017PC0835&from=EN>.
- Recommendation CM/Rec(2010)12 of the Committee of Ministers of the Council of Europe
- Reflection Group's Report, European Parliament, Brussels, 1995. December 5th https://www.europarl.europa.eu/enlargement/cu/agreements/reflex2_en.htm.
- Reflection Paper on the Future of EU Finances COM/2017/0358 final, 2017. July 28th; <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52017DC0358>
- Regulation (EU) 2023/2844 of the European Parliament and of the Council of 13 December 2023 on the digitisation of judicial cooperation and access to justice in cross-border civil, commercial and criminal matters, and amending certain legal acts in the area of judicial cooperation.
- Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council of 16 December 2020 on general provisions for the protection of the Union's financial interests, OJ L 433I, 22.12.2020,
- Report from the Commission on ARACHNE - Implementation for CAP expenditure, COM(2025) 58 final.
- Republic of Poland, Ministry of Justice (2024): Polish Minister of Justice presents Action Plan for restoring the rule of law: <https://www.gov.pl/web/justice/polish-minister-of-justice-presents-action-plan-for-restoring-the-rule-of-law>.
- Resolution on media concentration and diversity of opinions, A3-0153/92/corr. PE 747.930.
- Rule of Law in Poland - Article 7(1) TEU Reasoned Proposal - Report on the hearing held by the Council on 22 February 2022, 2022. March 15th. 6600/22. <https://data.consilium.europa.eu/doc/document/ST-6600-2022-INIT/en/pdf>.
- Schroeder, Werner (2021): The Rule of Law As a Value in the Sense of Article 2 TEU: What Does It Mean and Imply?, In: von Bogdandy, Armin et al. (ed.): *Defending Checks and Balances in EU Member States* (Springer, 2021).
- Schusterschitz, Gregor (2016): The EU and Rule of Law – The Unavoidable Question of: Who controls it? In Wernver Schroeder (ed.): *Strengthening the Rule of Law in Europe: From a Common Concept to Mechanisms of Implementation*. (Bloomsbury Publishing PLC, 2016)
- Section 817/A of Act XC of 2017 on Criminal Procedure.

- Sehnálek, David (2024): The Interpretation of the Rule of Law in the Rule of Law Review Cycle and the EU Justice Scoreboard, Bóka, János (ed.): *The Supranational Interpretation of the Rule of Law*. (Central European Academic Publishing, 2024)
- See the website of the Polish Government: <https://www.gov.pl/web/justice/polish-minister-of-justice-presents-action-plan-for-restoring-the-rule-of-law>.
- Website of the Public Procurement Authority: <https://english.kozbeszerzes.hu/>

EDUCATION, CULTURE AND FAMILY POLICY

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Constraints on EU Action in the Areas of Education, Culture, and Family

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"We must learn to desire what is ours."

János Pilinszky

1. Introduction

Although the early stages of European integration were dominated by the construction of the internal market, there was nevertheless growing interest in the European dimensions of culture and education from the 1970s onwards. This was partly linked to efforts to explore European identity,⁷⁹⁶ but it was also accompanied by the process of deepening the four freedoms of the internal market.⁷⁹⁷ European thinking following the fall of the Berlin Wall, and subsequent the continuous expansion of integration beginning with the Maastricht Treaty, spurred states to take on new roles and set ambitious goals for cooperation. These developments increasingly raised the European dimensions of education, culture and the concept of family. The recent case law of the Court of Justice of the European Union (CJEU) (hereinafter: the Court) and the latest EU legislative efforts also have a significant impact on these areas and, in many respects, point towards pan-European regulation.⁷⁹⁸ At the same time, in light of these dynamic and expanding integration efforts, the question arises as to what exactly the competences conferred by the Treaties permit in terms of European action on these issues, and what the nature of such action is. Closely related to this is the question of what legal principles can be used to distinguish between EU and Member State action. Another related question is how education, culture and the family are reflected in the constitutional systems of the Member States, and, conversely what kind of international legal cooperation European countries are seeking in these areas alongside European integration. This

⁷⁹⁶ Document on the European Identity published by the Nine Foreign Ministers (Copenhagen, 14 December 1973)

⁷⁹⁷ The target date for the completion of the internal market was set in 1992.

⁷⁹⁸ See, for example, certain elements of the European Education Area discussed later.

study seeks to answer these questions, among others, in order to outline the relationship and function of EU and Member State action in these areas.

Accordingly, the study first places the initial steps of EU policy in this area and the responses of Member States in a historical perspective (II.). It then examines current trends in European action, specifically examining the role of the CJEU in developing the law relating to fundamental freedoms (III.1.) and recent EU legislative efforts (III.2.). In light of this, the study examines the possible limitations of EU action based on EU law, constitutional principles and international law (IV.1.), and, in a broader sense, analyses the role of the interrelationship between education, culture and the family in the life of European states (IV.2.). Finally, the study formulates conclusions on the function of EU action in these areas (V.).

By shedding light on these issues, the study aims to contribute to a broader understanding of the relationship between EU and Member State action in the fields of education, culture, and family, thus reflecting on the academic and public debate surrounding current EU efforts.

2. Initial steps of EU policy in the area of education, culture and family policy and the responses of Member States in a historical perspective

Although European integration was primarily organised around the creation of an internal market under the Treaty of Rome (EEC Treaty) signed in 1957,⁷⁹⁹ it has continuously sought opportunities to expand the community and, in addition to creating legislation, to establish and consolidate institutional realities.⁸⁰⁰ An early manifestation of this can be seen in March 1962, when the ‘Assembly’ [...] ⁸⁰¹, composed of members of national parliaments, renamed itself ‘Parliament’.⁸⁰² In the same vein, at the same time as the United Kingdom joined the European Communities, a *soft* law instrument on European identity was created. This document attempted to identify common legal, moral, and cultural traditions, albeit based on artificial considerations in order to define the characteristic features of European identity. It did so to find binding elements that would unite Member States or, from the perspective of EU institutions, even unify them, going beyond

⁷⁹⁹ Following the establishment of the European Coal and Steel Community in 1952, it was not yet clear whether integration would take the form of an economic or possibly a military alliance.

⁸⁰⁰ See: Middelaar, 2011, pp. 287-302.

⁸⁰¹ See: Sándor, 2024, pp. 120-135.

⁸⁰² See: Luxemburg Centre for Contemporary and Digital History’s information on the European Parliamentary Assembly

the context of market and economic calculations. In other words, it sought to explore ways of strengthening the European ties that bind Member States in their self-determination. The 1973 document can therefore be seen as a turning point in the process that shifted European integration from a Treaty-based organisation towards a political organisation seeking to create a common identity.⁸⁰³ It was within this framework that European issues relating to education and culture first received significant attention.

The basis for a common identity that could serve as a possible connecting link includes, among other things, a perspective that can be acquired through education and a shared culture.⁸⁰⁴ With this in mind, the EU institutions began work on the first European cultural proposal package, in which the European Commission's proposal of December 1977 set out the need for action at the Community level in areas such as the arts, cultural heritage, and exchange programmes, or, more broadly, in the field of culture.⁸⁰⁵ The scale and, at the same time, the exaggerated nature of this initial ambition is well illustrated by the fact that the Commission's original proposal included the creation of so-called 'Europe rooms' in museums, the introduction of compulsory television series promoting Europe, the expansion of the Community through the harmonisation of education in the Member States, and the compilation of a single book presenting the history of Europe.⁸⁰⁶ The Commission presented its proposals without sufficient legal authority, as the Treaty of Rome did not provide for explicit action in the field of culture. For this reason, the legal basis for the proposals was indirect, partly linked to the free movement of goods and services,⁸⁰⁷ partly to the powers granted in the fields of education, youth and vocational training, and partly based on the flexibility clause or the principle of implied powers.⁸⁰⁸ Criticism of the initiative mainly drew attention to the dangers of a top-down approach and the pitfalls of homogenisation. In addition, many parts of the package did not achieve the desired effect in practice, namely, strengthening European culture but in many cases led instead to the weakening of the cultures of the Member States.⁸⁰⁹

Despite numerous failures, the long-term impact of the cultural proposal package is well demonstrated by the fact that it paved the way for a process, through which the 1992 Maastricht

⁸⁰³ See, for example, Middelaar, *op. cit.*, pp. 306–307.

⁸⁰⁴ See: Bellamy, 2022. The significance of this will be discussed in more detail below.

⁸⁰⁵ Commission of the European Communities, Community Action in the Cultural Sector, COM(77) 560 final (Brussels, 1977)

⁸⁰⁶ Duroselle, 1990

⁸⁰⁷ Much of the expansion of EU competence in the fields of education, culture and family, including in particular the case law of the Court of Justice of the European Union, is linked to an expansive interpretation of fundamental freedoms, which will be discussed in detail later in this study.

⁸⁰⁸ Article 235 of the Treaty of Rome (now Article 352 TFEU).

⁸⁰⁹ Middelaar, *op. cit.*, pp. 309–310.

Treaty recognised the possibility of European action in the field of culture within the framework of supporting competence.⁸¹⁰ However, partly in view of the exaggerated ambitions of the 1970s and the failure of efforts to promote unification, as well as the doubts of the Member States, European competence in the field of culture remained limited. Accordingly, it does not aim to create or shape a unified European culture or, in a broader sense, identity. The competence provision therefore expressly requires respect for national and regional diversity and excludes any obligation to coordinate Member States' actions. In this context, it is worth noting that this provision is placed in a broader context by Article 4(2) of the TEU, which expressly protects national identity, including cultural self-determination. In light of the failure of initial attempts to harmonise culture and related education policy, European decision-making in the second half of the 1980s placed emphasis on cultural diversity, intercultural dialogue, and mutual understanding. One example that has been a resounding success is the student mobility programme known as the Erasmus Programme, established in 1987.⁸¹¹

At the same time, the competence provision also provides for taking cultural aspects into account in the development of European policies.⁸¹² This horizontal consideration of cultural aspects is reflected in areas such as audiovisual policy, the internal market, competition law, and regional development policy.

In this context, it is worth highlighting the EU legislative framework adopted in the audiovisual field, first embodied in the 1989 Directive "Television without Frontiers", due to its potential impact on shaping "European public opinion".⁸¹³ The legal basis for European action was provided by the internal market competence, reflecting the expectation that liberalisation and the free movement of audiovisual products would also strengthen cultural aspects. Despite the cultural exception in the regulation, the steps taken towards a single European audiovisual market did not live up to expectations in terms of protecting culture; specifically, they were unable to protect European programmes from global and, above all, overseas content.⁸¹⁴ This aligns with the criticisms raised in the debates surrounding the regulation, which emphasised that market and economic rationality are often incompatible with the goal of protecting culture.⁸¹⁵ In regulations based on such principles, the dominance of internal market interests is so great that it can undermine the fulfilment of competences in the field of culture. This is particularly true in

⁸¹⁰ Article 128 of the Maastricht Treaty (now Article 167 TFEU).

⁸¹¹ Council Decision 87/327/EEC

⁸¹² See: Article 128(4) of the Maastricht Treaty; [Article 167(4) of the TFEU currently in force].

⁸¹³ Council Directive 89/552/EEC Television without Frontiers (TVWF)

⁸¹⁴ Middelaar, *op. cit.*, p. 309.

⁸¹⁵ See, for example: Shore, 2000 and Smith, 2004.

European civilisation, where culture is a combination of intersecting and coexisting national and regional historical experiences. Despite criticism, the Audiovisual Media Services Directive, which replaced the Television Without Frontiers Directive, follows a similar regulatory principle and seeks to regulate and protect culture by using internal market competences. All this illustrates that, in the European decision-making ecosystem, the regulation of culture takes shape outside the competences and frameworks specifically prescribed for culture.

The next part of the study highlights this through the case law of the CJEU and the EU legislation.

3. Current trends in European action

The CJEU has played and continues to play a key role not only in establishing and protecting the autonomy of EU law,⁸¹⁶ but also in expanding the scope of EU action on issues relating to culture, education, and the family. The development of this case law was encouraged by the efforts of the EU institutions from the second half of the 1970s onwards, which later gave further impetus to legislative efforts at the EU level.

3.1 The role of the CJEU in developing the law relating to fundamental freedoms

From the 1980s onwards, the Court began to develop its case law on issues relating to culture and education and their relationship with the internal market.

With regard to Member State measures, the CJEU recognised in the 1985 *Cinéthèque v Fédération nationale des cinémas français* case that restrictions on the free movement of goods may be justified in the interests of cultural protection, provided that the Member State's action satisfies the principles of proportionality and non-discrimination.⁸¹⁷ At the same time, in its 1991 decision in *Commission v France*, the CJEU found that French legislation requiring broadcasters to devote a significant proportion of their transmission time to European and, within that, French productions was contrary to the Television without Frontiers Directive.⁸¹⁸ The Court, while recognising the legitimate aim of the national measure protecting culture, gave priority to the freedom to provide and receive services and the prohibition of discrimination, arguing that the restrictive effect did not meet the requirement of proportionality.

⁸¹⁶ Gallo, 2025, pp. 7–34.

⁸¹⁷ Joined Cases 60 and 61/84 *Cinéthèque SA and others v Fédération nationale des cinémas français* [1985] ECR 2605.

⁸¹⁸ Case C-154/89 *Commission of the European Communities v French Republic* [1991] ECR I-659

The case of *European Parliament v Council (Edicom – Telematic Networks)* is of particular importance in terms of assessing EU action and competences.⁸¹⁹ The case was brought as an action for annulment by the European Parliament because the contested EU legal act was adopted by the Council on the basis of its internal market legal basis, which meant the Parliament had weaker powers in the decision-making process. However, the CJEU dismissed the action, stating that to determine competence, it is necessary to examine primarily the ‘purpose and content’ of the EU legal act. In the case of the Edicom programme, this was strongly linked to the internal market. In other words, regardless of whether a legal act has an impact on education or culture, if its function is related to the internal market, the rules on internal market competence apply. Consequently, the decision considers the adoption of regulations that shape non-economic areas, such as culture and education, to be justified on the basis of the internal market. This is also true in light of the fact that the CJEU has set limits on the exercise of internal market powers in its case law⁸²⁰, where the principle of cultural exception may validly restrict secondary legislation based on internal market powers.⁸²¹ In judicial practice, this requires that legislation be genuinely linked to the objective of the internal market and that the “competence creep” be necessary and proportionate to achieve the objectives of the Treaty.

At the same time, this interpretation of the powers set out in the Treaty, subject to review by the Court of Justice of the European Union, leaves room for an innovative, dynamic and evolutionary interpretation of those powers. This interpretation may undermine the national regulatory autonomy reserved for culture and education, with the risk of removing Member State responsibility in these areas and exceeding the ‘supporting, coordinating or supplementing’ competence of European action as laid down in the Treaty. The principles established in the Edicom case were subsequently confirmed on several occasions, leading to the institutional acceptance of this practice.⁸²² In line with this, and in accordance with the doctrine of ‘implied powers’, European-level action extends to the establishment of supporting institutions, the monitoring of implementation by Member States, and negotiations in the field of external relations. This interconnection of competences explains the development of the ERASMUS programme, which started as a support measure and has become central institution of the EU's education policy.

⁸¹⁹ Case C-271/94 *European Parliament v Council of the European Union* [1996] ECR I-1689.

⁸²⁰ Case C-376/98 *Federal Republic of Germany v European Parliament and Council of the European Union* [2000] ECR I-08419

⁸²¹ Case T-193/06, *Télévision française 1 SA (TF1) v European Commission*, ECLI:EU:T:2010:389.

⁸²² See, for example: Case C-84/94 *United Kingdom v Council* [1996] ECR I-05755 or Case C-490/10, *European Parliament v Council*, EU:C:2012:525, Judgment of the Court (Second Chamber) of 6 September 2012; Judgment of the General Court (Second Chamber) of 24 September 2019, *Romania v European Commission*, T-391/17, EU:T:2019:672.

Under the Treaties, substantive legal issues relating to the family, in particular the definition of marriage, divorce, or parental status, including child custody and inheritance, fall within the regulatory competence of the Member States. Action at the EU level is possible within the framework of the 'Area of Freedom, Security and Justice' for measures relating to family law issues that affect several Member States. The Council decides unanimously on such matters.⁸²³

Despite the limited scope for action provided for in the Treaties, the case law of the Court nevertheless allows greater scope for EU legislation on family law, particularly with regard to the free movement of persons and the enforcement of fundamental rights. Accordingly, on the basis of the free movement and residence guaranteed to EU citizens in Article 21(1) TFEU, the Court ruled in *Coman and Others* that the derived right of residence applies to the third-country spouse of an EU citizen who is legally married to a person of the same sex in another Member State, even if that Member State does not recognise same-sex marriages in its national family law.⁸²⁴ According to the reasoning of the judgment, the concept of marriage is detached from its national family law context and appears as an independent concept of EU law, which also includes same-sex marriages. The Court linked this to Articles 7 and 21 of the EU Charter of Fundamental Rights, which provide for the protection of privacy and prohibit discrimination, thereby linking EU citizenship and its fundamental rights dimensions.

Likewise, in the *Bulgarian V.M.A.* case, the CJEU based its decision on the right of Union citizens to move and reside freely as recognised in Articles 20 and 21 TFEU. The question arose whether a Member State is obliged to recognise a same-sex parental relationship (parentage) not recognised under its own national family law, for the purpose of a child's birth certificate.⁸²⁵ In its ruling, the CJEU stated that a Member State is obliged to recognise a document issued by another Member State if this is necessary for the child to exercise his or her right to free movement based on EU citizenship. Although the ruling does not, in theory, affect the Member States' competence to determine family law rules, it stipulates that Member States may not impede the exercise of EU legal freedoms and, in this context, must recognise the child's identity, nationality and right to free movement in accordance with the Charter of Fundamental Rights. Consequently, the *V.M.A. v.*

⁸²³ See Article 81(3) TFEU. Such rules are contained in Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, commonly known as the Brussels II Regulation. The possibility of narrow action was confirmed in the initial practice of the European Court of Justice: Case C-7/98 *Dieter Krombach v André Bamberski* [2000] ECR I-1935, Case C-148/02 *Carlos Garcia Avello v Belgian State* [2003] ECR I-11613.

⁸²⁴ Case C-673/16 *Relu Adrian Coman and Others v Inspectoratul General pentru Imigrări and Ministerul Afacerilor Interne* ECLI:EU:C:2018:385.

⁸²⁵ Judgment of the Court (Grand Chamber) of 14 December 2021, *V.M.A. v Stolichna obshtina, rayon „Pancharevo“*, C-490/20, ECLI:EU:C:2021:1008.

Stolichna obshtina case further strengthens the integration of fundamental rights under EU law in the assessment of family law issues.

Finally, it is worth highlighting the 2025 case of *Jakub Cupriak-Trojan and Mateusz Trojan v Wojewoda Mazowiecki*, which raised the question of whether a Member State that does not recognise same-sex marriage can refuse to recognise and register a same-sex marriage concluded in another Member State.⁸²⁶ Building on the *Coman and Others* ruling, the Court ruled that Member States must recognise same-sex marriages legally concluded in another Member State, provided that the persons concerned exercised their right to free movement as EU citizens. In addition to Articles 20 and 21 TFEU, the court ruling also referred to the provisions of the Charter of Fundamental Rights. Consequently, according to the Court ruling, Member State law must comply with the requirements for the enforcement of EU freedoms, which are also reinforced by fundamental rights.

In addition to the Treaties, the Court's interpretation of secondary EU law has also had a significant impact on the fundamental institutions and concepts of family law. Although the Court has largely accepted the concepts of family and marriage recognised in national law when applying the Treaty rule prohibiting discrimination in terms of pay,⁸²⁷ this practice appears to be changing somewhat in the interpretation of Directive 2000/78/EC on equal treatment in employment and occupation.⁸²⁸ In its judgments in the *Maruko* and *Römer* cases, the Court required that, when assessing entitlement to a pension, that it be examined whether the partner and the spouse are in a comparable situation.⁸²⁹ If the rights and obligations under the two institutions are comparable, then from this point of view, discrimination between Member States is not permissible.

Under Council Directive 2003/86/EC on the right to family reunification (hereinafter: the Family Reunification Directive), it is at the discretion of Member States to decide whether to treat registered or unregistered partnerships equally with spouses.⁸³⁰ However, following an action for annulment brought against the Family Reunification Directive, the CJEU, in conjunction with Articles 7 and 24 of the Charter of Fundamental Rights and Article 8 of the European Convention

⁸²⁶ Judgment of the Court (Grand Chamber) of 25 November 2025, *Jakub Cupriak-Trojan and Mateusz Trojan v Wojewoda Mazowiecki*, C-713/23, ECLI:EU:C:2025:917

⁸²⁷ See: Case C-249/96, *Grant v South-West Trains Ltd*, [1998] ECR I-621 and Joined Cases C-122/99 P and C-125/99 P *D and Kingdom of Sweden v Council of the European Union* [2001] ECR I-4319.

⁸²⁸ Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation. OJ L 303, 2.12.2000, pp. 16-22.

⁸²⁹ See Case C-267/06, *Tadao Maruko v. Versorgungsanstalt der deutschen Bühnen*, Judgment of the Court (Grand Chamber) of 1 April 2008, ECLI:EU:C:2007:486 (Opinion), [2008] ECR I-01757 and Case C-147/08, *Jürgen Römer v Freie und Hansestadt Hamburg*, Judgment of the Court (Grand Chamber) of 10 May 2011.

⁸³⁰ See Article 4(3) of the Family Reunification Directive: 'Member States may decide to treat unmarried partners in the same way as married couples for the purposes of family reunification.'

on Human Rights, gave an expansive interpretation to the provisions of the Family Reunification Directive and the concept of family contained therein – read in conjunction with Articles 7 and 24 of the Charter of Fundamental Rights and Article 8 of the European Convention on Human Rights – in a broad sense that places serious demands on national family law provisions.⁸³¹ Accordingly, the CJEU generally interprets the right to reunification in an expansive manner, while interpreting restrictions in a restrictive manner, as it has done with regard to property,⁸³² waiting periods⁸³³ or minimum age⁸³⁴. In the case of *Y. v Minister voor Immigratie, Integratie en Asiel*, the Court ruled that the assessment of applications for family reunification falls within the scope of EU law and constitutes the implementation of EU law, and that the procedural guarantees laid down in the Charter of Fundamental Rights, in particular the right of access to documents, the right to a reasoned decision and the right to full judicial review, are therefore applicable.⁸³⁵

It is clear that, in the field of family law, the CJEU is extending its jurisdiction in a manner similar to the *Edicom* case cited above, and is enforcing EU freedoms in the context of family law when several Member States are involved. Regardless of the fact that EU action in the field of family law is subject to extremely limited contractual powers, the Court gives priority to EU requirements over national legal norms within the scope of freedom of movement and the protection of fundamental rights.

In summary, the case law of the CJEU interpreting the powers conferred by the Treaty narrows the scope for local regulation in the areas examined and reduces diversity at the European level. It integrates policies by relying on internal market powers and pursuing internal market objectives while enforcing EU fundamental rights requirements in these areas. In some cases, it can also be observed that the CJEU takes into account and protects the institutional balance,⁸³⁶ while the powers of the Member States or the vertical division of powers are given less weight. This carries the risk that the limited scope of action guaranteed by the Treaty in the areas of education, culture and family will not be enforced as a guarantee and that these areas will be absorbed by the expansion of the internal market, undermining the protection of national identity, as set out in Article 4(2) TEU.

⁸³¹ Case C-540/03, *European Parliament v Council of the European Union*, Judgment of the Court (Grand Chamber) of 27 June 2006, ECLI:EU:C:2006:429, [2006] ECR I-5769.

⁸³² Case C-578/08, *Rhimou Chakroun v Minister van Buitenlandse Zaken*, [2010] ECR I-01839.

⁸³³ Case C-338/13, *Marjan Noorzia v Bundesministerin für Inneres*, Judgment of the Court (Second Chamber) of 17 July 2014.

⁸³⁴ *Ibid.*

⁸³⁵ Joined Cases C-141/12 and C-372/12, **YS v Minister voor Immigratie, Integratie en Asiel**, (17 July 2014) ECLI:EU:C:2014:2059

⁸³⁶ See, for example: Case C-300/89 *Commission v Council* [1991] ECR I-2867 (Titanium Dioxide case).

3.2 Recent EU legislative efforts

Although the Treaty of Lisbon did not change the rules on competence in these areas, European legislative efforts also reflect the broader European action outlined in court decisions. EU efforts, typically in the form of *soft law*, go beyond the scope of complementary and supporting competences in the fields of culture and education. Accordingly, the European Commission's recently presented proposal for a "Culture Compass for Europe" aims to create an integrated European cultural area, mainstreaming culture across other policy areas.⁸³⁷ Linking culture in this way with other policy areas serves to strengthen EU action, while provisions linking action in the field of culture with EU values and the EU budget raise the issue of protecting Member States' powers as enshrined in the Treaty.

In light of these ambitious efforts in the field of culture, it is worth mentioning the relationship between the European Union and the 2003 UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage.⁸³⁸ Essentially, the 1972 Convention Concerning the Protection of the World Cultural and Natural Heritage sought to achieve the popularity and success of intangible heritage, i.e. traditions, rituals, social customs, knowledge about nature and the universe, and the specific way of life of a particular community. This intangible cultural heritage is in constant interaction with the environment and history contributing to the formation of the specific identity of communities. The instrument used in it became very popular in the 2010s in European countries, which see it as a means of protecting their own cultural traditions and identities.⁸³⁹ At the same time, despite the European Union's long history of institutional cooperation with UNESCO, it did not support the convention either during its preparation or during its promotion among member states. According to Professor Hanna Schreiber, who has researched the subject, this is best explained by the fact that while the convention and the participating states see and protect intangible cultural heritage as the way of life and supporting structure for communities, the European Union's approach is primarily linked to "economic interests and rationality".⁸⁴⁰ All this shows that although judicial practice has broadened the scope of competence in the field of culture without amending the Treaty, the ideas and aspirations of the EU institutions are not always in line with the common will of the Member States as expressed in international Treaties. While the main objective of the Convention and the EU Member States that are parties to it is to strengthen and protect cultural traditions in a 'bottom-up' manner, the EU's approach seeks to create a common

⁸³⁷ See the European Commission on the Strategic framework for the EU's cultural policy

⁸³⁸ See UNESCO's information on the Convention for the Safeguarding of the Intangible Cultural Heritage

⁸³⁹ See UNESCO's information on the Convention for the Safeguarding of the Intangible Cultural Heritage:

⁸⁴⁰ Schreiber, 2019, pp. 333-337.

cultural identity in a 'top-down' manner. Another consequence is that, while the convention focuses on protecting communities and cultural transmission, the EU's efforts rather concentrates on the market and income-generating capacity..

In the field of education, the European Commission has formulated a comprehensive initiative consisting of several sub-areas: : "European Education Area".⁸⁴¹ In addition to strengthening mobility and exchange programmes, this includes the Jean Monnet Actions, which aim to promote European Union awareness in school education. Another important part of the initiative is the introduction of the so-called 'European degree Label', a precursor to the introduction of a European diploma as a result of a three-stage process lasting until 2029.⁸⁴² According to the Council Resolution published on this subject, one of the conditions for using the European degree label is compliance with the values set out in Article 2 of the TEU.⁸⁴³ In addition, the draft new Erasmus+ regulation contains several points that weaken the decentralised nature of the programme and the allocation of resources, while increasing the role of the Commission not only in the selection of programmes but also in the selection of the heads of national agencies.⁸⁴⁴ Furthermore, on the basis of the European budget and associated reference to the protection of EU values, the European Union is currently taking action against Member States in the field of education. Accordingly, the Council's Implementing Decision of 15 December 2022 (2022/2506) provided for the suspension of certain EU funds in relation to Hungary, primarily due to conflicts of interest identified in the governance structure of higher education institutions maintained by public interest asset management foundations performing a public service function (KEKVA)⁸⁴⁵. On this basis, the European Commission prohibited the conclusion of new Erasmus+ and Horizon Europe legal commitments with the institutions concerned from January 2023.⁸⁴⁶ A group of the Hungarian universities concerned has brought an action for annulment before the General Court of the European Union seeking the annulment of the Council's 2022 decision.⁸⁴⁷

⁸⁴¹ See the European Commission's information on the European Education Area

⁸⁴² See the website of the European Commission on the European degree label and the Council Resolution (C/2025/2939) on the joint 'European degree' label and the next steps towards a possible joint European degree: enhancing Europe's competitiveness and the attractiveness of European higher education.

⁸⁴³ Council Resolution, point 10.

⁸⁴⁴ Proposal for a Regulation of the European Parliament and of the Council establishing the Erasmus+ programme for the period 2028-2034 and repealing Regulations (EU) 2021/817 and (EU) 2021/888.

⁸⁴⁵ Public interest trusts

⁸⁴⁶ Council Implementing Decision (EU) 2022/2506 of 15 December 2022 on measures for the protection of the Union budget against breaches of the principles of the rule of law in Hungary, published in the Official Journal of the European Union (OJ L 325, 20.12.2022, pp. 94–109).

⁸⁴⁷ Case T-115/23, University of Debrecen v Council (action brought in 2023), General Court of the European Union, pending; Case T-132/23, Óbuda University v Council and Commission (action brought in 2023), General Court of the European Union, pending; Case T-133/23, University of Veterinary Medicine v Council and Commission (action brought in 2023), General Court of the European Union, pending; Case T-138/23, Semmelweis University v Council (action brought in 2023), General Court of the European Union, pending; Case T-139/23, University of Miskolc v

It is clear that the objectives of proposed EU action in the field of education go beyond the powers laid down in the Treaties, raising the question of the Member States' right to act independently and the protection of that right.

4. Possible limitations of EU action

Over the past decades, without any changes to the rules on competence, EU action has expanded in the interrelated areas of science, education, culture, and family life, largely as a result of the evolutionary interpretation of the law by the CJEU.. EU action stems partly from broader action based on internal market objectives and partly from the expansion of the scope of EU fundamental rights. However, this approach upsets the balance struck in the Treaties, which does not seek a single solution in these areas and thus protects the democratically established, independent regulatory powers of the Member States. Accordingly, European action in these areas is constrained in several respects, which this part of the study seeks to outline and clarify by summarising the main points.

4.1 Limitation based on EU law, constitutional principles and international law

The broadening of EU action and the dynamics of this broadening disrupts the balance agreed by the Member States in the Treaties, which assigns the European Union a supporting, coordinating, and supplementary role in the fields of culture, scientific research, and education. This is expressed in Articles 165 and 167 TFEU, which stipulate that Member States' regulatory autonomy in the fields of culture and education must be respected in order to preserve European diversity.⁸⁴⁸ Furthermore, there is no competence for European action in the field of family law, so decisions adopted in this area are based on related competences.⁸⁴⁹ These Treaty rules are supported by several fundamental legal principles that form an integral part of the functioning of the European Union and, at the same time, of EU law. Although the CJEU refers to the aspect of respecting and

Council and Commission (action brought in 2023), General Court of the European Union, pending; Case T-140/23, *University of Dunaújváros v Council and Commission* (action brought in 2023), General Court of the European Union, pending.

⁸⁴⁸ According to Article 165(1) TFEU, '(...) while fully respecting the responsibility of the Member States for the content of teaching and the organisation of education systems and their cultural and linguistic diversity', and Article 167(1) TFEU states that '(...) while respecting their national and regional diversity and at the same time bringing the common cultural heritage to the fore'.

⁸⁴⁹ Article 81(3) TFEU.

safeguarding Member State action in its decisions⁸⁵⁰ the evolution of its case law since the second half of the 1980s challenge the primary regulatory competence of the Member States. This development and the increasing scope of EU action raise concerns not only with regard to specific Treaty provisions, but also in relation to the general legal principles that underpin EU law.

Three constitutional and legal principles are worth highlighting: subsidiarity, public order, and national identity. The principle of subsidiarity and the complementary principle of proportionality impose guarantee requirements on EU legislation, which are assessed during judicial review. In the context of EU law, the principle of subsidiarity requires that, even when the European Union—excluding areas of exclusive competence—has the power to regulate a given area or issue, it may exercise that power only in accordance with the principle of subsidiarity. That is, the EU may act in cases and to the extent that Member States are unable to adequately address the issue themselves, and where action at the European level would achieve better results.⁸⁵¹ Protocol (No. 2) on the application of the principles of subsidiarity and proportionality sets out in detail all the conditions that must be taken into account under the principle of subsidiarity.

In relation to education, culture, and the family, the exercise of Union competences is, in many cases, effectively established as an ancillary exercise of the powers conferred under the EU's exclusive internal market competence. The CJEU has accepted this approach, following the *Edicom* case mentioned above, on the basis of the doctrine of implied powers. Since the regulation of the internal market falls within the exclusive competence of the EU, the conditions set out in the principle of subsidiarity are not required to be examined for the EU to exercise its powers.. However, this interpretation carries the risk that the legal principle safeguarding Member States' actions and competences may not be upheld, as the internal market competence could effectively “absorb” other competences. A further concern is that, although the Treaties exclude the possibility of harmonisation of education and culture, both the EU Charter of Fundamental Rights and latest initiatives are moving towards a kind of “hidden harmonisation”.. A similar dynamic can be observed in the area of family law. EU decisions in this field are based on competences relating to internal market freedoms and, in terms of their function, are linked to traditional areas of family law. However, when read in conjunction with the EU fundamental rights provisions invoked in these cases, these decisions impose requirements on Member States' actions that restrict their regulatory autonomy. Accordingly, the European Commission held that Hungary infringed EU law in 2021 by adopting Act LXXIX of 2021, which introduced stricter measures against

⁸⁵⁰ See, for example: *Joined Cases 60 and 61/84 Cinéthèque SA and others v Fédération nationale des cinémas français* [1985] ECR 2605 and *Case C-490/20, V. M. A. v. Stolichna obshtina, rayon ‘Pancharevo’*, ECLI:EU:C:2021:1008.

⁸⁵¹ Article 5(1) and (3) TEU. For details see: Koen et al, 2021, pp. 98-104.

paedophile offenders and amended certain laws for the protection of children. The Commission argued that the legislation violated EU internal market rules, including the freedom to provide services and regulations on audiovisual media and electronic commerce, as well as the Charter of Fundamental Rights—particularly the prohibition of discrimination and the fundamental values enshrined in Article 2 TEU.⁸⁵² The Advocate General’s opinion in this case is the first in the history of infringement proceedings to cite Article 2 TEU as a standalone legal basis. If accepted by the CJEU, this could allow for a significantly stronger restriction of Member States’ powers.⁸⁵³

In this context, it is worth highlighting public order (*ordre public*), particularly the concept of immaterial public order. In EU law, this concept has a dual effect: it is restrictive in certain respects, but it also plays a crucial role in safeguarding the division of powers between the EU and the Member States, as well as in protecting Member State autonomy and sovereignty. While the concept of public order has an autonomous meaning in EU law that is developed by the CJEU in its case law,⁸⁵⁴ the concept and content of immaterial public order is closely intertwined with the specific development of each political community, and therefore its precise meaning is subject to variations. It refers to values that are of decisive importance to each political community and are therefore so fundamental to the legal order that they demand unconditional respect.⁸⁵⁵ Education, culture, and the family are all areas that are intrinsically linked to the concept of public order, which is recognised and protected in each country, regardless of its precise content or requirements. This is primarily because education, culture, and family provide the arenas in which a community’s specific order of life can be transmitted and preserved. Consequently, the fundamental institutions in these areas can be regarded as falling within the scope of public order protection. This also implies that Member States are expected to play a supportive and facilitative role in European cooperation, in order to strengthen their own fundamental institutions.

However, the CJEU generally interprets public policy restrictions strictly, especially when they limit freedoms recognised as key goals of integration.⁸⁵⁶ Similar conclusions can be drawn when examining the areas of education, culture, and family, because the CJEU has only exceptionally

⁸⁵² Among cases relevant to Hungary, see: *Commission v Hungary (Valeurs de l’Union)* Case C-769/22; Opinion of Advocate General: *Commission v Hungary*, Opinion of Advocate General Ćapeta of 5 June 2025, ECLI:EU:C:2025:408.

⁸⁵³ Opinion of Advocate General Ćapeta, delivered on 5 June 2025, *European Commission v Hungary*, Case C-769/22, Advocate General’s Opinion, ECLI:EU:C:2025:408.

⁸⁵⁴ C-36/75 *Rutili v Ministre de l’intérieur*, [1975] ECR 1219, C-348/96, *Criminal proceedings against Donatella Calfa*, Judgment of the Court (Full Court) of 19 January 1999, ECLI:EU:C:1999:6, C-36/02, *Omega Spielhallen und Automatenaufstellungs-GmbH v Oberbürgermeisterin der Bundesstadt Bonn*, [2004] ECR I-9609.

⁸⁵⁵ Lange, 2007

⁸⁵⁶ Karsai, 2011, pp. 29-38.

upheld public policy arguments in its case law to date.⁸⁵⁷ In cases concerning family law, the CJEU has not upheld public policy arguments at all, despite the fact that EU action in this field only has an incidental effect. It is clear from the above that public policy considerations do not currently provide a sufficiently strong or sophisticated guarantee for the division of competences.

The concept of immaterial public policy is closely related to the concept of national identity, which is also referred to in Article 4(2) TEU and constitutes another safeguard in relation to the division of competences and the preservation of Member States' autonomy. The unique national identity of each country encompasses its understanding and perception of the world, its traditions and customs, its moral values and virtues, and its established way of life. The transmission of this knowledge from one generation to the next is facilitated by the triangle of family, education, and culture. From this perspective, the family, school, and culture play an identity-forming and identity-preserving role in the life of a community. Although the protection of national identity appears among the fundamental provisions of the TEU, the CJEU has invoked it only in a few limited instances in relevant cases, thereby largely failing to fulfil its safeguarding role in the designation and delimitation of competences.

4.2 The role of the interrelationship between education, culture and the family in the life of European states

Family, education, and culture form a triangle that enables a community to pass on its unique worldview from generation to generation. The primary medium for the transmission of life and culture is the family, which is why it appears specifically in each constitution and across most areas of law. People learn about the world as members of a community through its culture, and moral system.⁸⁵⁸ Later, this intellectual heritage - which in European civilisation is partly Christian and partly rooted in national traditions - can serve as a foundation for the development of new ideas, providing opportunities for both the development and self-fulfillment of individuals and the preservation of a community's spiritual self-identity. The intertwined roles of education, culture and the family are therefore essential for the survival and self-determination of a country's community. Due to its unique dialogue with immaterial public order and national identity, the preservation and cultivation of culture, the organisation and institutions of education, the definition of the fundamental framework of family law, are among the most important decisions of a community.

⁸⁵⁷ One such exceptional case was the Omega case, C-36/02, Omega Spielhallen und Automatenaufstellungs-GmbH v. Oberbürgermeisterin der Bundesstadt Bonn, [2004] ECR I-9609.

⁸⁵⁸ Bellamy, *op. cit.*

In addition, there is also a practical constraint regarding European action. Scientific activity and academic freedom are achievements of freedom of expression in the broader sense.⁸⁵⁹ This provides an opportunity for the development of academic discourse, which is an integral part of the wider public sphere in each country.. Consequently, the research and teaching priorities of academic life vary from one Member State to another. Resources are provided primarily by the Member States through democratic processes. Just as there is no uniform pan-European discourse in public debates, academic and scientific dialogue are specific to each country. At the same time, this reflects the diversity recognised in the Treaties, the protection and promotion of which, has a beneficial effect on the competitiveness and vitality of European intellectual life.

In this context, the limitation of EU action and the principle of subsidiarity protect the freedom of Member States to determine their own policies and institutional arrangements in a democratic manner.

5. Conclusions on the function of EU action in these areas

Although education, culture and family matters were not part of the original objectives of European integration, they have gradually gained importance since the 1970s. EU legislation, which initially sought ways to create a common European identity,, gradually began to address programmes and rules affecting these areas, a development that was subsequently reinforced by the case law of the Court.. Based on the principles established in the *Edicom* case, the case law accepts that EU legislation adopted under internal market competence and pursuing such objectives may also have regulatory effects in the fields of education and culture. EU institutions have recently been formulating ambitious regulatory initiatives, and the direction and dynamics of change suggests that institutional action has weakened the guarantees of vertical division of competences.

The developments examined raise concerns regarding the effective enforcement of the fundamental principles of EU law. Union action based on the internal market's exclusive competence not only goes beyond the competence applicable in these areas—which is intended to be of a supporting nature—but also entails the risk that the safeguard requirements flowing from the principle of subsidiarity will not or effectively applied. Although education, culture, and the family are closely linked to the concepts of immaterial public order and national identity, in judicial practice these principles have not been able to define the limits of EU action in a sufficiently precise manner.

⁸⁵⁹ See in this regard: ECtHR, *Mustafa Erdoğan and Others v. Turkey*, nos. 346/04 and 39779/04, judgment of 27 May 2014; §§ 33-41.

In a broader context, these areas are closely linked to a country's intellectual freedom and self-determination. A community can transmit its distinctive worldview primarily through the institutional triangle of family, education, and culture. For this reason, the institutional and legal protection of these areas constitutes one of the most intimate public choices of a political community. These considerations define both the function and the outer limits of European action, which remains fundamentally supportive and facilitative in nature.

6. Limits of European action in the fields of education, culture and the family

Cases relevant to Hungary

6.1 Case C-92/23; European Commission v Hungary (the so-called Klubrádió case)

I.1. Background to the case

Case C-92/23 is a case brought by the Commission against Hungary before the Court of Justice of the European Union, in which the Commission alleges that Hungary infringed EU law by failing to renew the contract for the use of the 92.9 MHz frequency in Budapest by Klubrádió and subsequently excluding it from the new tender procedure. Klubrádió was a politically critical commercial radio station that had been operating since 1999, broadcasting on the 92.9 MHz analogue frequency in the capital. In 2014, it signed a seven-year contract with the Hungarian Media Council, which included an option for extension.

When the contract expired, the Media Council refused to extend it, stating that Klubrádió had twice failed to meet its obligation to provide monthly information regarding broadcasting quotas, which Hungarian media regulations classify as a “repeated infringement”.

A new tender was subsequently issued for the use of the frequency, for which Klubrádió also submitted an application. However, Klubrádió's application was declared invalid, partly due to programming errors and partly due to negative equity. On this basis, Klubrádió's application for the temporary use of the frequency was also rejected.

The Commission therefore claimed that Hungary had violated EU law, in particular the rules on objective, transparent, non-discriminatory and proportionate procedures for the allocation of radio frequencies, as well as the principle of proportionality and the regulatory framework for electronic

communications networks and services established by Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services.

II.1. Opinion of the Advocate General in the case

The Advocate General of the Court of Justice of the European Union, Athanasios Rantos, delivered his opinion in the case on 3 April 2025. The Advocate General's opinion is not binding on the Court but usually carries considerable weight in the Court's legal deliberations.

The key findings of the Advocate General's opinion include the following.

A/ With regard to the scope of EU law and directives, the Advocate General considers that EU rules on the use of radio frequencies (for example the common regulatory framework for electronic communications established by Directive 2002/21/EC and related directives) apply to such cases. Spectrum usage rights must be allocated on the basis of objective, transparent, non-discriminatory and proportionate criteria not only under national media regulation but also under EU law.

B/ Refusal to extend the contract is disproportionate: in the Advocate General's view, Klubrádió's breach of its reporting obligation was not a sufficiently serious infringement to justify the automatic refusal to extend the contract. When assessing proportionality, both the practical significance of the relevant rules and the seriousness of the infringement must be taken into account.

C/ Exclusion from the tender procedure is disproportionate: the Advocate General emphasised that minor technical errors in programming cannot justify declaring a tender invalid if they do not affect its substance and if the possibility of legal remedy (such as a request for supplementation or correction) could have been ensured. Similarly, he also considered the exclusion on the basis of negative equity to be clearly unlawful, as this criterion is irrelevant from the perspective of EU rules governing frequency tenders and therefore contravenes the principles of proportionality and equal treatment.

D/ Compatibility of national provisions with EU law: the Advocate General emphasised that national media regulations which automatically provide for the refusal of renewal in the event of repeated infringements are not compatible with the EU regulatory framework, which sets higher standards in terms of proportionality, transparency and non-discrimination.

The main conclusion of the Advocate General's opinion is that Hungary infringed EU law both by refusing to renew Klubrádió's contract and by applying exclusionary conditions in the tender

procedure. Accordingly, the Advocate General considers that most of the points raised by the Commission in its application are well founded in the proceedings before the Court of Justice.

The Advocate General consistently applies the principle of proportionality and rejects the view that the formal or administrative nature of the infringements alone can justify the most serious legal consequence, namely the loss of the right to use the frequency. This interpretation strengthens the legal protection of the EU's internal market and media freedom.

At the same time, although the Advocate General's opinion clearly emphasises the primacy of EU law in situations of conflict between EU law and national media regulation, this position raises questions regarding jurisdiction: how far does the EU's regulatory competence extend in matters of media freedom and media pluralism, and what role should national media regulators continue to play? These potential conflicts between fundamental rights and internal market regulation require deeper analysis.

Furthermore, although the Advocate General's opinion treats the principles of proportionality and transparency as the main benchmarks, legal scholarship suggests that in such cases the Court of Justice of the European Union may also take into account the discretionary powers of national regulatory authorities, especially in matters relating to access to technical frequencies. This could potentially limit the Advocate General's critical approach, which leaves relatively little room for Member States' discretion.

In summary, Case C-92/23 is a key case concerning the relationship between the EU internal market and media freedom. According to the Advocate General's opinion, Hungary violated EU law by refusing to extend Klubrádió's right to use the radio frequency and by unjustifiably excluding the radio station from the new tender procedure, thereby infringing the principles of proportionality, transparency and equal treatment.

A critical assessment of the opinion suggests that, although the Advocate General provides a detailed legal argument, the Court's final judgment may differ, particularly if greater weight is given to Member States' regulatory powers and to the national characteristics affecting the application of EU law.

6.2 Case C-66/18; European Commission v Hungary

(infringement proceedings relating to the amendment of the Law on Higher Education, known as the "CEU case")

I.1. Background to the case

Case C-66/18 concerns infringement proceedings brought by the European Commission against Hungary under Article 258 TFEU. The Commission claimed that Hungary had violated EU law by amending its national Higher Education Act in 2017, introducing new and stricter conditions for foreign higher education institutions operating in Hungary.

The amendment was motivated by the legislative intention to make the legal framework governing foreign universities operating in Hungary more transparent and controllable, particularly in the case of institutions offering education in Hungary while being based in another country. In practice, the regulation primarily affected higher education institutions outside the European Economic Area, particularly those registered in the United States, including the Central European University (CEU).

The amended law established two key conditions:

- International treaty requirement: higher education institutions based in countries outside the EEA may only conduct higher education activities in Hungary if an international treaty is concluded between Hungary and the country in which the institution is based.
- Actual provision of education in the country of origin: the institution concerned must not only formally exist in the country of origin but must also actually provide higher education there.

The legislation set a short deadline for compliance with these conditions and attached serious legal consequences to non-compliance, including a ban on the admission of new students and the withdrawal of the operating licence. In the European Commission's view, the regulation effectively made it impossible for certain foreign universities to operate in Hungary and therefore violated EU law.

II.2. The Commission's action and the applicable legal framework

In its action, the Commission argued that Hungary had violated several interrelated sources of law. These included the GATS Agreement adopted within the framework of the WTO, in particular Article XVII thereof (national treatment); Article 49 TFEU (freedom of establishment); Article 16 of Directive 2006/123/EC (freedom to provide services); and several provisions of the Charter of Fundamental Rights of the European Union, in particular academic freedom and the freedom to conduct a business.

The Court therefore did not examine the case from the perspective of a single branch of law but conducted a complex, multi-level analysis in which international trade law, EU internal market law and the protection of fundamental rights were intertwined.

II.3. Assessment of the merits of the case under GATS

The Court of Justice of the European Union first examined whether the Hungarian legislation was compatible with the principle of national treatment laid down in Article XVII of the GATS. Under this provision, the EU – and thus Hungary – is obliged to ensure that foreign service providers are not treated less favourably than domestic service providers.

The Court found that both the requirement of an international agreement and the requirement to actually provide training in the country of establishment applied exclusively to foreign higher education institutions but not to Hungarian universities. The regulation therefore altered the conditions of competition in favour of Hungarian service providers.

Of particular significance was the Court's finding that the conclusion of international agreements depends entirely on the discretionary decision of the Hungarian state, meaning that foreign institutions' access to the market becomes uncertain and subject to potentially arbitrary conditions. According to the Court, this situation is incompatible with the GATS obligation of national treatment.

Hungary justified the measures by referring to Article XIV of the GATS, citing public order and consumer protection considerations. However, the Court found that Hungary had not demonstrated the existence of a real and serious threat, nor that the contested measures were necessary and proportionate. Therefore, a violation of the GATS rules was established.

II.4. Infringement of the freedoms of the EU internal market

A/ Freedom of establishment (Article 49 TFEU)

The Court of Justice of the European Union ruled that higher education services provided for remuneration constitute an economic activity. Consequently, higher education institutions established in an EU Member State are entitled to the freedom of establishment guaranteed by Article 49 TFEU.

The requirement to actually provide training in the Member State of establishment constituted an additional condition which was not directly related to the activity in Hungary and was likely to deter institutions from establishing themselves there. The Court therefore considered this requirement to be a restriction on the freedom of establishment which Hungary was unable to justify.

B/ Freedom to provide services (Directive 2006/123/EC)

The Court also found that higher education services fall within the scope of the Services Directive. The contested Hungarian legislation imposed additional unjustified conditions on service providers established in other Member States, thereby infringing the freedom to provide services laid down in Article 16 of the Directive.

II.5. Violation of the Charter of Fundamental Rights

The Court emphasised that, since Hungary adopted the contested legislation while implementing its EU law obligations, it was required to respect the Charter of Fundamental Rights. In this context, the Court found that the amendment to the Higher Education Act infringed academic freedom (Article 13 of the Charter) and restricted the freedom to found higher education institutions as well as the freedom to conduct a business (Article 16 of the Charter). These restrictions did not meet the requirements of necessity or proportionality. Accordingly, the Court concluded that the Charter of Fundamental Rights had also been violated.

II.6. Summary assessment

In summary, Case C-66/18 constitutes one of the most significant precedents in EU law concerning higher education and fundamental rights. The Court set clear limits on the regulatory powers of Member States in the field of higher education. Among these limits, it emphasised the prohibition of discrimination, the freedoms of the internal market, university autonomy and academic freedom. It concluded that EU law takes precedence in these areas while rejecting the Member State's reliance on public policy justifications.

6.3 Case C-769/22; European Commission v Hungary (child protection case)

Case C-769/22 is a case brought by the European Commission against Hungary before the Court of Justice of the European Union, in which the Commission takes the view that Hungary violated EU law in 2021 by adopting Act LXXIX of 2021 on stricter measures against paedophile offenders and on the amendment of certain acts for the protection of children.

The amendments to the law prohibit or restrict minors' access to content in education, the media and advertising that promotes or depicts deviation from gender identity, gender reassignment or homosexuality (“LGBTI content”). However, according to the Hungarian government, the aim of the regulation is to protect children and to ensure parents' right to raise their children within the framework of national identity and culture.

The European Commission, joined by 16 Member States and the European Parliament as interveners, argued in its application that the regulation violates EU internal market rules, such as the freedom to provide services, the regulation of audiovisual media and electronic commerce, the Charter of Fundamental Rights of the European Union (in particular the prohibition of discrimination), and the fundamental values enshrined in Article 2 of the Treaty on European Union (TEU).

The Advocate General of the Court of Justice of the European Union, Tamara Čapeta, delivered her opinion in the case on 5 June 2025. The Advocate General's opinion is not binding on the Court but usually carries considerable weight in the Court's legal deliberations, particularly in a case of such importance for EU values.

The key findings of the Advocate General's opinion include the following.

A/ The enforceability of EU fundamental values (Article 2 TEU):

In this regard, one of the Advocate General's most important statements is that the values enshrined in Article 2 TEU (human dignity, equality and human rights) are not merely political guidelines or principles but binding legal norms. According to the Advocate General, the Hungarian law therefore does not merely constitute a technical infringement but denies these values at a systemic level, crossing a constitutional “red line”. She therefore recommends a separate finding of infringement of Article 2 TEU.

B/ Violation of the Charter of Fundamental Rights:

According to the Advocate General, the legislation directly discriminates on the basis of gender identity and sexual orientation (Article 21), violates freedom of expression and information

(Article 11), and infringes the right to respect for private and family life (Article 7). The law also has a stigmatising effect, as it conflates the LGBTI community with paedophilia within a single legislative package, thereby violating the right to human dignity.

C/ Violation of internal market rules:

According to the Advocate General's opinion, the law restricts cross-border services such as book publishing, advertising and broadcasting, thereby violating the Audiovisual Media Services Directive, the Directive on electronic commerce and the Services Directive. The Advocate General rejects the government's reference to “child protection” as a justification, as Hungary has been unable to provide scientific evidence that LGBTI content is in itself harmful to children.

D/ Violation of data protection rules (GDPR):

The Advocate General found that the rules concerning the registration of paedophile offenders violate the GDPR because they define the circle of persons entitled to access the register too broadly and do not provide adequate safeguards for the protection of the data of the persons concerned.

The main conclusion of the Advocate General's opinion is that Hungary violated EU law through the contested legislation, as the measures are not suitable or necessary for the protection of children and are seriously discriminatory. Accordingly, the points raised by the European Commission in its action are, in the Advocate General's view, well founded in the proceedings before the Court.

The Advocate General therefore rejects the Member State's argument that cultural autonomy or national identity can justify restrictions on fundamental rights. In her opinion, this interpretation reinforces the EU's character as a “community of values” and strengthens the protection of fundamental rights against Member State legislation.

At the same time, with regard to the conflict between EU law and Member State competences in the fields of education and child protection, the Advocate General's opinion clearly states that the exercise of Member State competences must not infringe EU fundamental rights and internal market rules.

In addition, the Advocate General's opinion is notable in that it treats Article 2 TEU as an independent legal basis which, according to legal literature, could open a new chapter in the enforcement of EU law (particularly in rule-of-law proceedings), allowing for stronger limitations on Member States' powers and potentially stricter sanctions. On this point, however, the Advocate General's opinion contrasts with the more restrained judicial practice of the Court, which has rarely relied independently on fundamental values in infringement proceedings.

In summary, Case C-769/22 may prove decisive for the future development of EU law, particularly in the area of LGBTI rights and the protection of EU values. According to the Advocate General's opinion, Hungary violated EU law by introducing discriminatory rules which cannot be justified by the legitimate aims of child protection or public order. Accordingly, the Advocate General proposes an expansive interpretation of internal market rules and EU fundamental values, while limiting the scope of Member State competences and public order justifications.

6.4 Exclusion of Hungarian higher education institutions from the Erasmus+ and Horizon Europe programmes

The exclusion of Hungarian universities from the Erasmus+ and Horizon Europe programmes can be traced back to Council decisions adopted under the European Union's rule of law conditionality mechanism (Regulation (EU, Euratom) 2020/2092). The Council's implementing decision of 15 December 2022 (2022/2506) ordered the suspension of certain EU funds in relation to Hungary, primarily due to conflicts of interest identified in the governance structure of higher education institutions maintained by public interest asset management foundations (KEKVA).

As part of the institutional model change implemented in 2021–2022, the governance rights of 21 universities were transferred to public interest asset management foundations whose boards of trustees initially included a number of active or former government officials. In the view of the European Commission, this structure risks compromising the financial interests of the EU budget, as the boards of trustees possess decision-making powers regarding institutional asset management and strategic governance while the possibility of political influence remains.

As a result, from January 2023 the Commission prohibited the entities concerned from concluding new Erasmus+ and Horizon Europe agreements (i.e. new legal commitments) and suspended payments under existing agreements. The decision affects approximately 180,000 students and thousands of teachers and researchers, significantly limiting international mobility and participation in European cooperation projects.

In February 2023, all active members of the Hungarian government resigned from their positions on university boards of trustees. In December 2024, legislative amendments were also adopted regulating board membership (including fixed-term mandates and cooling-off periods for high-ranking officials) in relation to the contested KEKVA legislation (Act LIII of 2024 amending Act IX of 2021 on public interest trusts performing public tasks).

However, the European Commission's decision of 16 December 2024 did not consider these measures sufficient, as they did not fully remedy the lack of transparency and independence identified in the governance structure. As a result, the exclusion remained in place until the start of the 2027–2028 programme cycle.

As an alternative, the Hungarian government launched programmes financed from domestic sources (the Pannonia Scholarship Programme and the expansion of the Makovecz Programme) to partially compensate for the loss of student mobility opportunities.

In March 2023, six universities affected by the decision (Semmelweis University, the University of Debrecen, Óbuda University, the University of Miskolc, the University of Dunaújváros and the University of Veterinary Medicine) filed actions for annulment before the General Court of the European Union, seeking the annulment of the Council's 2022 decision.

The case numbers are as follows:

- T-115/23 – University of Debrecen v Council
- T-132/23 – Óbuda University v Council and Commission
- T-133/23 – University of Veterinary Medicine v Council and Commission
- T-138/23 – Semmelweis University v Council
- T-139/23 – University of Miskolc v Council and Commission
- T-140/23 – University of Dunaújváros v Council and Commission

The applicants argue that the measures constitute disproportionate and discriminatory treatment and infringe academic freedom and institutional autonomy.

The General Court declared the actions admissible in 2024, and the proceedings continued with in-person hearings from September 2025. In addition, in February 2025 the Hungarian government brought a separate action for annulment before the Court of Justice of the European Union against the Commission's December 2024 rejection decision, arguing that the Commission's decision constitutes an abuse of power and is politically motivated and unrelated to the original Council decision adopted in 2022. The judgments in these cases are expected to be delivered in 2026–2027. Until then, the exclusion remains in force.

This chapter was prepared on the basis of a background study by Károli Gáspár University of the Reformed Church, Centre for European Studies.

References

- Document on the European Identity published by the Nine Foreign Ministers (Copenhagen, 14 December 1973); available at: https://www.cvce.eu/content/publication/1999/1/1/02798dc9-9c69-4b7d-b2c9-f03a8db7da32/publishable_en.pdf (downloaded on 15 December 2025).
- Middelaar, Luuk van: *Somehow into Europe* (2011): A Perpetual Crossing. Typotex, Budapest.
- Sándor, Lénárd (2024): The European Way(s) of Democracy: Chances and Challenges of Democratic Legitimacy in the European Construction. *Telos Winter*; pp. 120-135.
- Luxemburg Centre for Contemporary and Digital History's information on the European Parliamentary Assembly: <https://www.cvce.eu/en/recherche/unit-content/-/unit/02bb76dfd066-4c08-a58a-d4686a3e68ff/bfe343b9-ca20-4eae-94ce-2c200b12cca5>
- Bellamy, François-Xavier (2022): *The Dispossessed: The Indispensability of Knowledge Transfer*. *Századvég Public Knowledge Centre*.
- Commission of the European Communities, *Community Action in the Cultural Sector*, COM(77) 560 final (Brussels, 1977), available at: COM(77)560 final. - COMMUNITY ACTION IN THE CULTURAL SECTOR (Communication from the Commission to the Council) (downloaded on 19 December 2025).
- Jean-Baptiste Duroselle (1990): *Europe: A History of Its Peoples*. Viking.
- Treaty of Rome
- Maastricht Treaty
- Council Decision 87/327/EEC, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A31987D0327> (downloaded on 24 December 2025).
- Council Directive 89/552/EEC *Television without Frontiers* (TVWF); available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A31989L0552> (downloaded on 24 December 2025).
- Shore, Cris (2000): *Building Europe: The Cultural Politics of European Integration*. Routledge.
- Smith, Craufurd Rachael (2004): *Culture and European Union Law*. Oxford University Press
- Gallo, Daniele (2025): *Direct Effect in EU Law*. Oxford University Press,
- Joined Cases 60 and 61/84 *Cinéthèque SA and others v Fédération nationale des cinémas français* [1985] ECR 2605.

- Case C-154/89 Commission of the European Communities v French Republic [1991] ECR I-659
- Case C-271/94 European Parliament v Council of the European Union [1996] ECR I-1689.
- Case C-376/98 Federal Republic of Germany v European Parliament and Council of the European Union [2000] ECR I-08419
- Case T-193/06, *Télévision française 1 SA (TF1) v European Commission*, ECLI:EU:T:2010:389.
- Case C-84/94 United Kingdom v Council [1996] ECR I-05755 or Case C-490/10, *European Parliament v Council*, EU:C:2012:525, Judgment of the Court (Second Chamber) of 6 September 2012; Judgment of the General Court (Second Chamber) of 24 September 2019, *Romania v European Commission*, T-391/17, EU:T:2019:672.
- European Court of Justice: Case C-7/98 *Dieter Krombach v André Bamberski* [2000] ECR I-1935, Case C-148/02 *Carlos Garcia Avello v Belgian State* [2003] ECR I-11613.
- Case C-673/16 *Relu Adrian Coman and Others v Inspectoratul General pentru Imigrări and Ministerul Afacerilor Interne* ECLI:EU:C:2018:385.
- Judgment of the Court (Grand Chamber) of 14 December 2021, *V.M.A. v Stolichna obshtina, rayon „Pancharevo“*, C-490/20, ECLI:EU:C:2021:1008.
- Judgment of the Court (Grand Chamber) of 25 November 2025, *Jakub Cupriak-Trojan and Mateusz Trojan v Wojewoda Mazowiecki*, C-713/23, ECLI:EU:C:2025:917
- Case C-249/96, *Grant v South-West Trains Ltd*, [1998] ECR I-621 and Joined Cases C-122/99 P and C-125/99 P *D and Kingdom of Sweden v Council of the European Union* [2001] ECR I-4319.
- Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation. OJ L 303, 2.12.2000, pp. 16-22.
- Case C-267/06, *Tadao Maruko v. Versorgungsanstalt der deutschen Bühnen*, Judgment of the Court (Grand Chamber) of 1 April 2008, ECLI:EU:C:2007:486 (Opinion), [2008] ECR I-01757 and Case C-147/08, *Jürgen Römer v Freie und Hansestadt Hamburg*, Judgment of the Court (Grand Chamber) of 10 May 2011.
- Article 4(3) of the Family Reunification Directive: ‘Member States may decide to treat unmarried partners in the same way as married couples for the purposes of family reunification.
- Case C-540/03, *European Parliament v Council of the European Union*, Judgment of the Court (Grand Chamber) of 27 June 2006, ECLI:EU:C:2006:429, [2006] ECR I-5769.

- Case C-578/08, Rhimou Chakroun v Minister van Buitenlandse Zaken, [2010] ECR I-01839.
- Case C-338/13, Marjan Noorzia v Bundesministerin für Inneres, Judgment of the Court (Second Chamber) of 17 July 2014.
- Joined Cases C-141/12 and C-372/12, *YS v Minister voor Immigratie, Integratie en Asiel*, (17 July 2014) ECLI:EU:C:2014:2059
- Case C-300/89 Commission v Council [1991] ECR I-2867 (Titanium Dioxide case).
- The European Commission on the Strategic framework for the EU's cultural policy, available at: <https://culture.ec.europa.eu/hu/policies/strategic-framework-for-the-eus-cultural-policy> (downloaded on 26 December 2025).
- UNESCO's information on the Convention for the Safeguarding of the Intangible Cultural Heritage: <https://www.unesco.org/en/legal-affairs/convention-safeguarding-intangible-cultural-heritage#item-0>
- Schreiber, Hanna, Intangible Cultural Heritage, Europe, and the EU: Dangerous Liaisons? In: Andrzej Jakubowski et al., Cultural Heritage in the European Union. A Critical Inquiry into Law and Policy (Brill, 2019) pp. 333-337.
- The European Commission's information on the European Education Area, available at: <https://education.ec.europa.eu/hu>
- The website of the European Commission: <https://www.consilium.europa.eu/en/press/press-releases/2025/05/12/council-takes-steps-towards-a-new-joint-european-degree-label/>
- Council Resolution (C/2025/2939) on the joint 'European degree' label and the next steps towards a possible joint European degree: enhancing Europe's competitiveness and the attractiveness of European higher education. Available at: <https://data.consilium.europa.eu/doc/document/ST-8671-2025-INIT/hu/pdf>
- Proposal for a Regulation of the European Parliament and of the Council establishing the Erasmus+ programme for the period 2028-2034 and repealing Regulations (EU) 2021/817 and (EU) 2021/888. Available at: <https://data.consilium.europa.eu/doc/document/ST-14944-2025-REV-1/hu/pdf> (downloaded on 26 December 2025).
- Council Implementing Decision (EU) 2022/2506 of 15 December 2022 on measures for the protection of the Union budget against breaches of the principles of the rule of law in Hungary, published in the Official Journal of the European Union (OJ L 325, 20.12.2022, pp. 94–109).

- Case T-115/23, University of Debrecen v Council (action brought in 2023), General Court of the European Union, pending; Case T-132/23, Óbuda University v Council and Commission (action brought in 2023), General Court of the European Union, pending; Case T-133/23, University of Veterinary Medicine v Council and Commission (action brought in 2023), General Court of the European Union, pending; Case T-138/23, Semmelweis University v Council (action brought in 2023), General Court of the European Union, pending; Case T-139/23, University of Miskolc v Council and Commission (action brought in 2023), General Court of the European Union, pending; Case T-140/23, University of Dunaújváros v Council and Commission (action brought in 2023), General Court of the European Union, pending
- Joined Cases 60 and 61/84 Cinéthèque SA and others v Fédération nationale des cinémas français [1985] ECR 2605 and Case C-490/20, V. M. A. v. Stolichna obshtina, rayon ‘Pancharevo’, ECLI:EU:C:2021:1008.
- Lenaertz, Koen et al. (2021): EU Constitutional Law. Oxford University Press.
- Commission v Hungary (Valeurs de l’Union) Case C-769/22; Opinion of Advocate General: Commission v Hungary, Opinion of Advocate General Ćapeta of 5 June 2025, ECLI:EU:C:2025:408.
- Opinion of Advocate General Ćapeta, delivered on 5 June 2025, European Commission v Hungary, Case C-769/22, Advocate General’s Opinion, ECLI:EU:C:2025:408.
- C-36/75 Rutili v Ministre de l’intérieur, [1975] ECR 1219, C-348/96, Criminal proceedings against Donatella Calfa, Judgment of the Court (Full Court) of 19 January 1999, ECLI:EU:C:1999:6, C-36/02, Omega Spielhallen und Automatenaufstellungs-GmbH v Oberbürgermeisterin der Bundesstadt Bonn, [2004] ECR I-9609.
- Lange, de Roel (2007): The European Public Order, Constitutional Principles and Fundamental Rights. Erasmus Law Review, Vol 1, Issue 1.
- Karsai, Krisztina (2011): The European (legal) concept of public order. In: Studies from the scientific conference entitled "Law enforcement research – the development of law enforcement". Pécs Border Guard Scientific Communications (12). MHT Border Guard Section Pécs Working Group, Pécs, pp. 29-38.
- Omega case, C-36/02, Omega Spielhallen und Automatenaufstellungs-GmbH v. Oberbürgermeisterin der Bundesstadt Bonn, [2004] ECR I-9609.
- EctHR: Mustafa Erdoğan and Others v. Turkey, nos. 346/04 and 39779/04, judgment of 27 May 2014; §§ 33-41.