

Brussels, 16 November 2022

Joint NGO letter to the GAC ministers ahead of their hearing of the Hungarian government under the Article 7(1) TEU procedure

Dear Ministers,

On 18 November, the General Affairs Council will hold its fifth hearing of the Hungarian government since the Article 7(1) TEU procedure was launched in 2018.

Our organisations welcome the Czech government’s commitment to taking the Article 7 procedure forward by holding this hearing under its EU Presidency. Amid all the immense challenges confronting the European continent, upholding respect for human rights, democracy and the rule of law within the EU remains a priority.

In the case of Hungary, it is an **EU institutional responsibility** because the Council has yet to respond to the updated European Parliament Article 7(1) report adopted two months ago that confirmed the “clear risk of a serious breach of EU values” in the country. It is a **legal enforcement responsibility** as the Council is currently faced with important decisions to make on rule of law procedures that are related to its assessment under Article 7 (1) TEU. It is a **Treaty-based political responsibility** that concerns the essence of the EU project as a value-based union.

We call on your government to seize the opportunity of the Article 7 (1) TEU hearing on Hungary to deliver a strong statement on its commitment to continuing and further engaging in holding the Hungarian government to account for eroding EU values. We urge you to lead in supporting a vote in the Council acknowledging the structural and persistent threat to EU values in Hungary, under qualified majority vote, as provided by the Treaties.

- 1) Institutional responsibility: the Council must act after the European Parliament’s renewed call for results in the Article 7 process.

On **15 September, the European Parliament**, the key institution representing **European citizens**, spoke with a strong voice. Its conclusion was clear: the situation of human rights, the rule of law and democracy in Hungary has deteriorated to such an extent that Hungary is no longer a democracy. The Parliament further warned that a continued lack of progress in the Article 7 process in the face of these conclusions would amount to a rule of law breach by the Council.¹

We hereby reiterate our long-standing recommendations and call on your government to:

- Fully involve the European Parliament, in particular its Rapporteur on Hungary, which triggered the Article 7 procedure back in 2018, in the Council’s processing of Article 7, and ensure there is a public record of the progress and the commitments of the member states to act under the procedure.
- Pave the way for the four-fifth vote required to determine that there is a clear risk of a serious breach of the values protected by the EU treaties, as reiterated by the European Parliament in September, and/or address time-bound specific recommendations to the Hungarian government under the same voting procedure, as set out in Article 7(1) TEU.

¹ <https://www.europarl.europa.eu/news/en/press-room/20220909IPR40137/meps-hungary-can-no-longer-be-considered-a-full-democracy>

- 2) Legal enforcement responsibility: continued lack of enforcement of the Treaties, in the face of defiance by the government of Hungary, is undermining the credibility of EU law. The Council needs to act to ensure that rule of law procedures related to the Article 7 process are enforced, including the rule of law conditionality of EU funding.

The upcoming Article 7 hearing comes at a critical moment as the Council is due to vote by the end of the year on the implementation decision proposed in September by the European Commission under the Regulation on a general regime of rule of law conditionality, to suspend the allocation of EU funds to Hungary to protect the Union budget.

Expert independent analysis by Hungarian non-governmental groups shows² that there are shortcomings and loopholes in the government's proposed new anti-corruption reforms, as well as practical difficulties in implementing them, that pertain to persistent failures to uphold the rule of law and fundamental rights in Hungary, including deeply rooted issues of corruption and a continued lack of transparency and democratic accountability.

We call on your government to:

- Give full and careful consideration to the Article 7 assessment of the European Parliament when considering the adequacy of any remedial measures proposed in haste by the Hungarian government to avoid the enforcement of EU budget protection measures recommended by the Commission.
 - Send a strong message during the upcoming General Affairs Council that the issues considered during the hearing will inform the Council's assessment under the rule of law budget conditionality mechanism at the upcoming Economic and Financial Affairs Council (ECOFIN).
- 3) Treaty based responsibility: it is time for the Council to take positive action to uphold EU values within the European Union.

Speaking before the European Parliament in a debate on the rule of law crisis in Poland, the President of the Commission had stated: *"We cannot and we will not allow our common values to be put at risk. (...) the options are all known. (...) The (third) option is the Article 7 procedure. This is the powerful tool in the Treaty. And we must come back to it."*³

The failure of the Council to act decisively, more than four years after the European Parliament rightly triggered scrutiny of Hungary under Article 7 TEU, is undermining the Treaty based mechanism that can guarantee EU members respect the principles and values defined in Article 2 of the Treaty. Other instruments are important tools in the hands of the EU to react to breaches of EU law but cannot replace Article 7 as the only mechanism by which the Union can hold member states politically accountable for systemic Treaty violations and restore respect for the rule of law and other EU principles.

At a time when rule of law, human rights and democratic values are under threat, both globally and in Europe, the Council should make it clear, by acting firmly towards Hungary, that these principles cannot be rendered mere objects of transaction and negotiation with member states but should be upheld and reinforced as foundational to the EU project.

² <https://k.blog.hu/>; <https://helsinki.hu/en/fall-of-commitments/>

³ https://ec.europa.eu/commission/presscorner/detail/en/speech_21_5361

For the EU to remain credible and be consistent in its opposition to growing authoritarianism such as that in the Russian Federation and its calls for justice for atrocities committed in Ukraine, it is crucial that it also demonstrates its ability and political will to protect these values among its own membership.

We stand ready to provide any further information you may require.

Yours sincerely,

Amnesty International

Human Rights Watch

International Commission of Jurists

International Federation for Human Rights

Open Society European Policy Institute

Reporters Without Borders

Transparency International EU