



EUROPEAN COMMISSION - PRESS RELEASE

European Commission launches accelerated infringement proceedings against Hungary over the independence of its central bank and data protection authorities as well as over measures affecting the judiciary

Strasbourg, 17 January 2012 - The European Commission has today started legal action against Hungary over new legislation that came into force at the beginning of the year under Hungary's new constitution. Following several exchanges with the Hungarian authorities on the drafts of the new legislation – notably letters sent by President José Manuel Barroso, Vice-President Viviane Reding (EU Commissioner for Justice, Fundamental Rights and Citizenship) and Vice-President Olli Rehn (EU Commissioner for Economic and Monetary Affairs and the Euro) – the Commission has now concluded a detailed legal assessment of the new legislation adopted at the beginning of January. For the Commission, the Hungarian legislation conflicts with EU law by putting into question the independence of the country's central bank and data protection authorities and by the measures affecting its judiciary.

The Commission therefore decided today to send three Letters of Formal Notice to Hungary – the first stage in the EU's infringement procedure – and to raise further related issues with the Hungarian authorities to identify whether further action may be warranted under EU law, notably regarding the independence of the judiciary. The Hungarian authorities now have one month to respond to the Commission's concerns.

President José Manuel Barroso said: "*Hungary, like all Member States, is obliged by the EU Treaties to guarantee the independence of its National Central Bank and its Data Protection Authority and the non discrimination of its judges. The Commission is determined to take any legal steps necessary to ensure that the compatibility with European Union legislation is maintained.*"

Vice-President Viviane Reding, EU Justice Commissioner, said: "*I have already raised serious legal concerns regarding potential violations of the independence of Hungary's judiciary and the Hungarian data protection authority when I first saw drafts of laws in early December. Now that the laws have been passed without taking into account the Commission's legal concerns, it is the Commission's responsibility as guardian of the Treaties to ensure that EU law is upheld. I expect the Hungarian authorities to address the Commission's legal concerns swiftly. Only actual changes to the legislation in question, or their immediate suspension, will be able to accommodate the Commission's legal concerns.*"

Vice-President Olli Rehn, responsible for Economic and Monetary Affairs and the Euro, said: “The *independence of the central bank is one of the cornerstones of the Treaty. Governments must refrain from seeking to influence their central bank. The new MNB law and certain provisions in the new Constitution are in breach of these principles. I urge the Hungarian Government to ensure full independence of the central bank. This implies reviewing all relevant legislation, including the Constitution. This needs to be addressed before we can start formal negotiations on the requested EU/IMF financial assistance.*”

Three main legal grounds

Under new Hungarian legislation, also 274 judges (including judges at the Supreme Court) are being compulsorily retired in contradiction to EU rules. The government also receives powers over the data protection authority that contradict the EU Treaties, which require the independence of national data protection authorities (Articles 16 of the Treaty on the Functioning of the European Union/TFEU, Article 8(3) of the Charter of Fundamental Rights) and the independence of the national central bank (Articles 130 and 127 TFEU, Article 14 of the Statute of the European System of Central Banks and of the European Central Bank). Hungary's central bank is part of the European System of Central Banks (ESCB) and the Hungarian Central Bank Governor has a seat in the General Council of the European Central Bank, which is the ECB's third decision-making body.

1) Independence of the national central bank

The Commission has identified several breaches of primary law, notably breaches of Article 130 TFEU stipulating full independence of the central bank and of Article 127(4) TFEU requiring consultation with the ECB "on any draft legislative provision in its field of competence".

- Article 130 TFEU states that: “neither the ECB, nor national central bodies, from bank ... shall seek or take instructions from Community institutions or any government of a Member State or from any other body”.
- Article 127(4) TFEU stipulates that "the ECB shall be consulted [...] on any draft legislative provision in its field of competence"

Moreover, 14.2 of the Statute of the European System of Central Banks and of the ECB as well as Article 4 of Council decision (98/415/EC) on timely consultation of the ECB were not respected. On a number of elements, the Commission has invited the Hungarian authorities to provide clarification.

The infringements identified in the letter of formal notice concern both the MNB law ('Magyar Nemzeti Bank') but also the new constitution.

Under the MNB law, the Minister can participate directly in the meetings of the Monetary Council, offering to the government the possibility to influence the MNB from the inside. Similarly, the agenda of MNB meetings needs to be sent to the government in advance, thus impeding its capacity to hold confidential discussions.

Also, changes in the remuneration scheme for the Governor are made again immediately applicable to the incumbent, while they should apply only as of a new term to avoid using salaries to put pressure on the MNB. Finally, the Governor and the members of the Monetary Council have to take an oath (of fidelity to the country and its interests) whose text is problematic given that the Governor of the MNB is also a member of the General Council of the ECB.

The Commission has doubts on the rules of dismissal for the Governor and the members of the Monetary Council which are prone to political interference (even the Parliament can propose to dismiss a member of the Monetary Council) and possible misuse. Also the frequent changes of the institutional framework of the MNB raise doubts, for instance via the increase in the number of Monetary Council members together with the possibility of increasing the number of deputy governors without due consideration of the MNB's needs.

Moreover, a constitutional provision regulates the possible merger of the MNB with the financial supervisory authority. While the merger is not a problem as such, the MNB Governor would become a simple deputy chairman of the new structure, which would structurally encroach on his independence.

2) Independence of the judiciary

The infringement case affecting the judiciary focuses on the new retirement age for judges and prosecutors and relates to Hungary's decision to lower the mandatory retirement age for judges, prosecutors and public notaries from 70 years to the general pensionable age (62 years) as of 1 January 2012.

EU rules on equal treatment in employment ([Directive 2000/78/EC](#)) prohibit discrimination at the workplace on grounds of age. Under the case-law of the Court of Justice of the EU, an objective and proportionate justification is needed if a government decides to reduce the retirement age for one group of people and not for others. This principle was affirmed when the Court [ruled](#) on 13 September 2011 that prohibiting airline pilots from working after the age of 60 constitutes discrimination on grounds of age.

In Hungary's case, the Commission has not found any objective justification for treating judges and prosecutors differently than other groups, notably at a time when retirement ages across Europe are being progressively increased and not lowered. The situation is even more legally questionable because the government has already communicated to the Commission that it intends to raise the general retirement age to 65.

As regards the independence of the judiciary, the Commission is also asking Hungary for more information regarding new legislation on the organisation of the courts. Under the law, the president of a new National Judicial Office concentrates powers concerning the operational management of the courts, human resources, budget and allocation of cases. There is no longer collegial decision-making of the operational management of the courts or other appropriate safeguards. One person alone now makes all important decision on the judiciary, including as regards the appointment of judges. In addition, the mandate of the former president of the Supreme Court, who was elected for six years in June 2009, was prematurely terminated at the end of 2011.

In contrast, other former judges of the Supreme Court continue their mandate as judges of the new Curia, which has replaced the Supreme Court. The Commission expects detailed answers of the Hungarian authorities to be able to decide whether further infringement proceedings are needed.

3) Independence of the data protection supervisory authority

The case on the data protection supervisor relates to Hungary's recent decision to create a new National Agency for Data Protection, replacing the current Data Protection Commissioner's Office as of 1 January 2012. As a result, the six-year term of the Data Protection Commissioner currently in office, who was appointed in 2008, will be prematurely put to an end. There are no interim measures until the term of the current Commissioner's term ends in 2014. The new rules also create the possibility that the prime minister and president could dismiss the new supervisor on arbitrary grounds.

The independence of data protection supervisors is guaranteed under Article 16 of the Treaty on the Functioning of the EU and Article 8 of the Charter of Fundamental Rights. In addition, EU rules on data protection ([Directive 95/46/EC](#)) require Member States to establish a supervisory body to monitor the application of the Directive acting in complete independence. This has been confirmed by the Court of Justice. In its ruling in a case concerning Germany ([C-518/07](#) of 9 March 2010), the Court underlined that data protection supervisory authorities have to remain free from any external influence, including the direct or indirect influence of the state. The mere risk of political influence through state scrutiny is sufficient to hinder the independent performance of the supervisory authority's tasks, the Court ruled.

Background

The European Commission committed in 2011 to closely monitor developments related to Hungary's new constitution following a number of concerns expressed by the Council of Europe, Members of the European Parliament and others. In recent months, the Commission has been in close contact with Hungarian authorities regarding the preparation of draft cardinal laws implementing the constitution. The Commission has raised a number of concerns on the compatibility of these laws with EU law (see [Memo/12/9](#)). President Barroso and Vice-Presidents Reding and Rhen sent letters in December expressing these concerns. In addition, Vice-President Kroes has repeatedly been in contact with the Hungarian authorities throughout 2011. In January 2011 the Commission already intervened to amend four aspects of the Hungarian Media Law which did not respect EU law.

For more information

Homepage of President José Manuel Barroso:

<http://ec.europa.eu/president>

Homepage of Vice-President Viviane Reding, Commissioner for Justice:

<http://ec.europa.eu/reding>

Homepage of Vice-President Olli Rehn, Commissioner for Economic Affairs and the Euro:

http://ec.europa.eu/commission_2010-2014/rehn/index_en.htm

See also: [MEMO/12/12](#)

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