Follow up to the European Parliament resolution of 17 May 2017 on the situation in Hungary

2017/2656 (RSP)

1. **Resolution tabled pursuant to Rule 123(2) of the Rules of Procedure by the S&D, ALDE, GUE/NGL and the Verts/ALE Groups**

2. **EP reference number:** B8-0295/2017 / P8_TA-PROV(2017)0216

3. **Date of adoption of the resolution**: 17 May 2017

4. **Subject:** Situation in Hungary

5. **Brief analysis/ assessment of the resolution and requests made in it:**

The resolution regrets that the developments in Hungary have led to a serious deterioration of the rule of law, democracy and fundamental rights over the past few years, and refers to, inter alia, the situation of freedom of expression, academic freedom, the human rights of migrants, asylum seekers and refugees, freedom of assembly and association, restrictions and obstructions to the activities of civil society organisations, the right to equal treatment, the rights of people belonging to minorities, including Roma, Jews and LGBTI people, social rights, the functioning of the constitutional system, the independence of the judiciary and of other institutions, and many worrying allegations of corruption and conflicts of interest, which taken together could represent an emerging systemic threat to the rule of law.

The Parliament calls on the Hungarian Government to engage in a dialogue with the Commission on all the issues mentioned in the resolution and requests the Commission to keep the Parliament informed of its assessment of the issues concerned.

The Parliament expresses concerns that the latest declarations and initiatives by the Hungarian Government do not demonstrate a clear commitment by the Hungarian authorities to fully ensuring that its actions comply with EU primary and secondary law. The Parliament in particular calls on the Hungarian Government to repeal the act amending certain acts related to increasing the strictness of procedures carried out in the areas of border management and asylum and the act amending the National Higher Education Act, and to withdraw the proposed Act on the Transparency of Organisations Receiving Support from Abroad. The resolution also urges the Hungarian Government to immediately suspend all deadlines in the act amending the National Higher Education Act, to start immediate dialogue with the relevant US authorities in order to guarantee the future operations of the Central European University issuing US-accredited degrees, and to make a public commitment that the university can remain in Budapest as a free institution.

The Parliament requests the Commission to strictly monitor the use of EU funds by the Hungarian Government, in particular in the fields of asylum and migration, public communication, education, social inclusion, and economic development, so as to ensure that any co-financed project is fully compliant with both EU primary and secondary law.

The Parliament regrets that the Commission did not respond to the Parliament's call to activate the EU framework to strengthen the rule of law. The Parliament takes the view that the current approach taken by the Commission focuses mainly on marginal, technical aspects of the legislation while ignoring the trends, patterns and combined effect of measures on the rule of law and fundamental rights. The Parliament believes that

infringement proceedings, in particular, have failed in most cases to lead to real changes and to address the situation more broadly.

The Parliament takes the view that the current situation in Hungary represents a clear risk of a serious breach of the values referred to in Article 2 of the Treaty on European Union (TEU) and warrants the launch of the Article 7(1) TEU procedure. On this ground, the Parliament instructs the Committee on Civil Liberties, Justice and Home Affairs to initiate the proceedings and draw up a specific report with a view to holding a plenary vote on a reasoned proposal calling on the Council to act pursuant to Article 7(1) TEU.

6. Response to requests and overview of action taken, or intended to be taken, by the Commission:

The Commission is grateful for the engagement of the European Parliament to uphold the values on which the Union is founded.

As set out during the Parliament's plenary debate on 26 April 2017, the Commission is following closely the recent developments in Hungary and has taken action to address specific concerns. The Commission is committed to use all the means at its disposal to ensure that Hungary – as well as any other Member State – complies with its obligations under Union law and respects the values of the Union enshrined in Article 2 TEU.

The Commission decided on 26 April 2017 to launch infringement proceedings by sending a letter of formal notice to the Hungarian Government on the Hungarian Higher Education Law, which raises concerns with regard to its compatibility with internal market freedoms, the Charter of Fundamental Rights and the Union's obligations under international trade law (GATS). As the reply of the Hungarian authorities did not address the concerns raised, the Commission decided on 13 July 2017 to send a reasoned opinion.

The Commission decided on 16 June 2016 to refer Hungary to the Court of Justice of the EU (CJEU)[1] concerning the ex lege termination of usufruct rights and other use rights in rem held by EU and domestic investors without compensation. The deprivation of the affected parties of their acquired rights and the devaluation of their investments in a way which does not ensure legal certainty constitute, in the Commission’s view, a violation to the free movement of capital and freedom of establishment as well as the fundamental right to property under the Charter of Fundamental Rights.

In addition, a preliminary reference procedure (joined cases C-52/16, Segro and C-113/16, Horváth) concerning the same subject is pending before the CJEU. The Advocate General has issued his Opinion on 31/05/2017[2], taking a similar position to the one in the Commission’s submissions. The judgment is expected in the next few months.

On 27 April 2017 the Commission called on Hungary to correctly and completely implement EU law on equal treatment of men and women in employment and occupation as well as the Maternity Leave Directive, and sent a Reasoned Opinion to that extent.

After a series of exchanges with the Hungarian authorities both at political and technical level, the Commission also decided to react to other concerns, including in the field of asylum and migration. On 17 May 2017 the Commission decided to extend the already pending infringement procedure against Hungary concerning its asylum legislation by sending a complementary letter of formal notice in particular on not allowing effective access to the asylum procedure as well as on unlawfully detaining all asylum applicants and returning all illegally staying migrants without respecting the relevant EU rules. In addition,

---

[1] The case is currently pending before the Court – case C-235/17.

[2] http://curia.europa.eu/juris/document/document.jsf?text=&docid=191225&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=540284

on 13 June 2017 the Commission decided to launch infringement proceedings against Hungary for its failure to implement correctly the Council Decision of 22 September 2015 on relocation.

Furthermore, on 13 July 2017 the Commission sent to the Hungarian authorities a letter of formal notice concerning the law of 13 June 2017 on foreign-funded civil society organisations, which raises concerns with regard to the free movement of capitals and the Charter of Fundamental Rights. The Commission underlined that civil society is the very fabric of democratic societies.

In addition, the Commission published its response to the Hungarian Government's "Stop Brussels" national consultation which was launched in April. The Commission considers that the consultation is based on several factually incorrect or highly misleading claims and allegations, and has therefore set the record straight in its response based on hard facts.

As regards the implementation of EU funds, Hungary must respect the principle of sound financial management. When the Commission, in the execution of its Regulatory obligations, identifies irregularities or the misuse of EU funds, appropriate remedial actions including financial corrections can be applied. Hungary is under shared management obliged to take care that EU rules and EU law are respected in implementing EU co-financed projects. The Commission is monitoring this obligation, as well as the joint commitment to zero tolerance towards fraud.

The Commission has at this stage not activated the Rule of Law Framework as regards Hungary. The Commission recalls that the Rule of Law Framework is established for situations where there are clear indications of a systemic threat to the rule of law in a Member State, in cases which cannot be addressed effectively by infringement procedures, and if the "rule of law safeguards" which exist at national level no longer seem capable of effectively addressing these threats. At this stage, as explained above, current concerns are addressed by a range of infringement procedures and pre-infringement procedures. Also the Hungarian justice system has a role to play in order to uphold fundamental values.

Given the wider situation, including the spirit of Article 2 TEU, the Commission considers that a broader political dialogue between the Hungarian authorities, other Member States, and the European Parliament and the Commission should take place. That is why the Commission welcomed the debate on the situation in Hungary in the plenary on 26 April 2017, with participation of the Hungarian authorities at the highest level.

The Commission notes that the Parliament believes that the current situation in Hungary represents a clear risk of a serious breach of the values referred to in Article 2 of the TEU and warrants the launch of the Article 7(1) TEU procedure, and that the Parliament has instructed its Committee on Civil Liberties, Justice and Home Affairs to initiate the proceedings and draw up a specific report with a view to holding a plenary vote on a reasoned proposal calling on the Council to act pursuant to Article 7(1) TEU. The Commission will closely follow the works of the European Parliament in that respect.

With regard to the establishment of an EU mechanism on democracy, the rule of law and fundamental rights, the Commission refers to its position set out during the plenary debate on 25 October 2016[3]. The Commission underlines that it is continuously assessing how existing instruments can best be used to promote and uphold the rule of law, democracy and fundamental rights, and stands ready to continue the dialogue with the European Parliament in this regard.

The Commission remains strongly committed to upholding EU law and the values on which the EU is founded, and will continue to follow the developments in Hungary in this respect.

---

[3] http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?lang=en&reference=2015/2254%28INL%29#tab-0