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UNION FOR
EUROPE



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Berlin, Brussels, Budapest
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Dear Vice-President Jourová,
Dear Commissioner Reynders,

The undersigned civil society organisations would like to draw your attention to the Hungarian Government Decree (Decree) suspending the application of certain rights provided for under the General Data Protection Regulation (GDPR) and other measures adopted by Hungary as part of the implementation of Act XII of 2020 on the [Containment of the Coronavirus](#) (30 March 2020) the so called 'Act enabling rule by decree'. We believe that these steps taken by the Hungarian government - which purports are in response to the Covid19 outbreak - are incompatible with Hungary's obligations under the EU Treaties and EU law and are part of a broader systematic attack against the rule of law and fundamental rights in Hungary. This clearly shows that extraordinary measures taken by the Hungarian government, under the state of danger are incompatible not only with basic European values but also with specific legal acts of the European Union. We call the Commission to take strong and immediate action.

A power grab eroding the rule of law

The Hungarian government has been using the COVID19 pandemic and the accompanying emergency situation as an excuse to dismantle the democratic system of checks and balances. The Hungarian government sustains further possible derogation of the checks and balances by eliminating Parliamentary debates and safeguards set out in the Fundamental Law of Hungary.

The 'Act enabling rule by decree' gave the Hungarian government a *carte blanche* (without any sunset clause) to: suspend, by decrees, the application of Acts of Parliament; derogate from the provisions of Acts; and take other extraordinary measures until the government maintains the "state of danger" declared in relation to the Covid19 pandemic. 'The Act enabling rule by decree' fails to comply with criteria set by national law for special legal order and allows the government to introduce significant rights restrictions without effective guarantees for the swift constitutional review of its decrees.

The 'Act enabling rule by decree' was criticized by among others [President Von der Leyen](#), by the [CoE Secretary General](#), the [CoE Commissioner for Human Rights](#), the [UN High Commissioner for Human Rights](#), and [OSCE/ODIHR](#).

How this is allowing the Hungarian government to put in place abusive surveillance in violation of EU data protection rules

Using the power grabbed through the 'Act enabling rule by decree', the Hungarian government issued a [decree on 4 May 2020](#). This government Decree limits the exercise of certain rights and safeguards under the GDPR. More specifically, the Decree limits the application of data subjects' rights safeguarded under Articles 15 to 22 of the GDPR in relation to the processing of data conducted by both public and private entities for the purported purpose of addressing the COVID-19 crisis. It further establishes time limits for the exercise of the right to a remedy, including the right to lodge a

complaint and the right to an effective judicial remedy, guaranteed by Articles 77 to 79 of the GDPR.

The decision by the Hungarian government to limit the application of data subjects' rights is disproportionate, unjustified, and potentially harmful to the public's response to fight the pandemic.

The Decree refers to Hungary's state of danger law and the GDPR in general as the legal basis for the derogations. The Decree, however, does not make any references to specific Articles under the GDPR to justify such derogations, including Article 23(1). What is more, Article 23 of the GDPR allows a Member State to derogate from certain articles only "by way of a legislative measure". An executive decree may have the force of law but does not equal a legislative measure which involves higher levels of scrutiny, oversight, and transparency. The Decree derogating from the GDPR was passed without the involvement of the Parliament or any other democratic safeguards in the legislative process.

Finally, the Decree provides no information as to how the measures "respect the essence of the fundamental rights and freedoms and is a necessary and proportionate measure in a democratic society to safeguard public health" as required by Article 23(1) of the GDPR.

It follows that the suspension by Hungary by means of the above mentioned Decree of the application of data subjects' rights safeguarded under Articles 15 to 22 of the GDPR is an unjustified and disproportionate derogation of EU rules which may lead to an abusive surveillance system contrary to the principles and standards enshrined in the GDPR.

Another step towards dismantling media freedom

Suspending fundamental rights in violation of the GDPR is one aspect of a much broader erosion of the rule of law and fundamental rights, which the

Hungarian government has been pursuing, and is now furthering under the pretext of addressing the COVID19 pandemic.

The above-mentioned 'Act enabling rule by decree', also introduced limitations on freedom of expression and access to information. The new criminal code provision introduced by this Act is as follows:

“Anyone who, during the period of special legal order and in front of a large audience, states or disseminates false or distorted facts in such a way that is capable of hindering or obstructing the efficiency of the protection efforts is guilty of a felony and shall be punishable by imprisonment for one to five years.”

This new provision has been applied against citizens [publishing critical Facebook posts](#) about the measures introduced by the Hungarian government or being critical of the Prime Minister. The law is a further step in silencing and dismantling independent media in the country. Independent media outlets are hindered from carrying out their duty by various tools used by the Hungarian government. Although these media outlets are not subject to traditional forms of censorship, the chilling effect is tangible. This is supported by evidence collected by the Hungarian Civil Liberties Union which recently conducted research on the [obstruction of the work of journalists before and during the coronavirus pandemic in Hungary](#). The research revealed systemic obstruction of the work of the independent media in the form of ignoring press inquiries, open rejection, physical distancing of journalists, discrediting journalists, stigmatization, and intimidating of their sources. The outcome of this research shows that the rules and measures introduced to limit the work of journalists conflict with obligations stemming from Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law (Whistleblower protection Directive). The Hungarian government is violating its duty of sincere cooperation by undermining the effectiveness of national provisions meant to transpose this Directive - an EU flagship initiative to

ensure the effective exercise of the fundamental right to access and to receive information in the EU (Article 11 of the EU Charter of Fundamental Rights) and thus support the work of independent watchdogs, including the media. The rules are also likely to have a chilling effect by dissuading foreign broadcasters to transmit into Hungary. This conflict with Article 56 of the Treaty on the Functioning of the EU (TFEU) on the freedom to provide services as well as relevant provisions of 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), read in conjunction with the fundamental right to freedom of expression and of information (Article 11 of the Charter).

Our call for action

We call on the Commission to make meaningful use of its enforcement powers and immediately launch infringement proceedings because of these abusive measures and practices which, as illustrated above, violate EU rules and conflict with fundamental rights and the rule of law in Hungary.

We also call on the Commission to take a firm position and support, with evidence-based analysis, the European Parliament's proposal to trigger the Article 7 procedure and induce the Hungarian government to follow European norms, on account of all the measures and practices by which the Hungarian government is eroding democracy, the rule of law and fundamental rights in the country - including attacks on privacy and on watchdogs such as independent media.

The European Commission should also provide adequate financial support to actors that help grow grassroots support for democracy, rule of law and fundamental rights at national and local level, in Hungary and across the EU. These include rights and democracy groups as well as balanced, informed and

high quality private media. To that effect, the Commission should facilitate an agreement by the Council on the future Rights and Values programme which will make sure that adequate funding is allocated to this priority in line with the budget envelope proposed by the European Parliament.

Strong rule of law and fundamental rights safeguards are essential components of national governments' legitimacy and a core element of the EU's strength and unity. Disproportionate and unnecessary limitations on these safeguards infringe EU laws and values and undermine trust in the EU's and governments' responses to the COVID19 pandemic. We hope that you will ensure that the Commission fully plays its role in protecting these essential safeguards.

Yours sincerely,

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