

CHAPTER 3

HUNGARY



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Abstract

The aim of the current study is to elaborate on certain country-specific issues and the retrospective thoughts of those who participated actively in the accession negotiations from the Hungarian side and who recall the process as important and decisive. Thus, reaching the final compromise was the result of hard negotiation and the agreement marked a milestone. Therefore, the author first elaborates on the initial steps, with special attention to the Europe Agreement, the institutions set up by the agreement for the negotiations, and parts of the Agreement that required legislative harmonisation. Then, in the second part of the work, the author elaborates on the actual negotiations that commenced on 31 March 1998 and the Association Partnership, as well as the requirements Hungary had to meet. In the third part, the author elaborates on the legal and economic support that Hungary received before, throughout, and shortly after the accession process. Finally, the author introduces the derogations that were allowed for Hungary under the Accession Treaty.

Keywords: enlargement, Hungary, Europe Agreement, free movement of capital, free movement of workers, agricultural land

1. Initial Requirements for Candidate Countries

The first section is concerned with the requirements laid upon the candidate countries before the accession process commenced and before they joined the

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European Union (EU). The text should cover the following questions but may be more extensive when necessary.

Question No. 1

What Conditions Did Your Country Need to Satisfy Before Formally Applying to Join EU? To Your Knowledge, Were These Conditions Different From Those Applied to Countries in a Comparable Position?

Question No. 2

When Did Your Member State Formally Apply to Join the EU?

As Endre Juhász – who, among his other assignments related to the integration process,¹ was the Chief Negotiator for the accession of the Republic of Hungary to the EU (1998–2003) and Minister without portfolio for the coordination of matters of European integration right before the accession (2003–2004) – recalled in his retrospective speech, for the future membership of Hungary in the then European Communities, the negotiations on the Association Agreement between the European Communities and Hungary² (hereinafter, Europe Agreement) had to be concluded. However, the negotiators on the European Communities' side refused to include the words 'accession' or 'membership' into the text. Instead, the parties agreed to include a sentence in the preamble, which can be deemed as a compromise: 'Having in mind that the final objective of Hungary is to become a member of the community and that this association, in the view of the parties, will help to achieve this objective [...]'.³

The request for application was submitted by the Boross government on the 31 March 1994 based on authorisation from the Hungarian National Assembly (Országgyűlés) by Resolution No. 16/1994 (III.31.).³

Question No. 3

What Conditions Did Your Country Need to Satisfy Before Joining the EU? To Your Knowledge, Were These Conditions Different From Those Applied to Countries in a Comparable Position?

The 1993 Copenhagen European Council decided on the possibility of enlarging the EU eastwards, and at the same time, defined the basic political, economic and legal criteria that the applicant countries of Central and Eastern Europe had to fulfil

- 1 Based on the bibliography available at the CJEU's website. See: Court of Justice of the European Union, no date.
- 2 Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Hungary, of the other part. See: EC – Hungary Association Agreement, 1991; Resolution of the National Assembly 10/1993 (III.5.) on the implementation of the Europe Agreement.
- 3 8002/1999. (IK.10.) sz. IM tájékoztató a jogharmonizációs ügyek intézéséről (hereafter, IM, 1999), p. 4.

to join the EU.⁴ On 31 March 1994 – that is, shortly after the entry into force of the Europe Agreement on 1 February 1994 – the Government submitted Hungary's application for accession to the EU on the basis of the mandate given by the National Assembly in Resolution 16/1994 (III.31.). The European Commission's opinion called 'Agenda 2000 – Vol. I: For a stronger and wider Union'⁵ published in July 1997 hit a positive tone and stated that Hungary fulfilled the political criteria set by the Copenhagen European Council and that it would be able to meet the economic, institutional, and legal criteria for membership in the medium term by continuing the processes already underway. In its communication, the Commission evaluated how the different candidate states implemented the *acquis* based on three criteria: (a) the obligations set out in the Europe Agreement, particularly those relating to the right of establishment, national treatment, free circulation of goods, intellectual property, and public procurement; (b) the progress in transposition and effective implementation of the measures set out in the White Paper,⁶ particularly key Single Market directives in areas such as taxation, public procurement, and banking; (c) the progressive transposition and implementation of the other parts of the *acquis* – for example, the environment, energy, agriculture, industry, telecommunications, transport, social affairs, customs administration, and justice and home affairs.

Based on the assessment of the Central and Eastern European (CEE) candidate states, the Commission ranked the members states in the following order (starting with the best performer): Hungary, Poland, Romania, Slovakia, Latvia, Estonia, Lithuania, Bulgaria, the Czech Republic, and Slovenia.⁷

At its meeting in Luxembourg in December 1997,⁸ the European Council decided to launch the enlargement of the EU to the east and open accession negotiations with Hungary, Poland, the Czech Republic, Estonia, Slovenia, and Cyprus in spring 1998.

- 4 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. Presidency Conclusions of the Copenhagen European Council, 21–22 June 1993, point 7/A (III).
- 5 The Commission Agenda 2000 – Vol. I: For a stronger and wider Union. Brussels, 15.07.1997 COM (97) 2000 final.
- 6 European Commission, White Paper: Preparation of the Associated Countries of Central and Eastern Europe for Integration into the Internal Market of the Union, Brussels, 03.05.1995 (COM (95) 163 final).
- 7 This fact is also mentioned in the report of the Foreign Minister, 1999, para. 1.3.
- 8 European Council, 1997.

Question No. 4

Were There Any Specific Features of Your Member State's Accession to the EU, Compared to Other Countries in a Comparable Position?

These issues are introduced in part 4 of the country report, when the author introduces the derogations granted for Hungary.

2. Institutions and Procedures of Accession

The second section is concerned with legal aspects of the procedure of accession, including institutions set up for that purpose, legislative changes at the national level, and monitoring of the process by EU institutions.

Question No. 5

What Was the Legal Framework of the Accession Procedure (From the Application to Join the EU Until Accession)? What Agreements Were Signed With the EU?

What Legal Measures Adopted by the EU Governed the Proceedings?

Were There Any National Rules Specifically Governing the Procedure of Accession?

Question No. 6

What Institutions Were Set Up for the Purposes of Accession at Both EU and National Level?

Question No. 7

What Legal Criteria Was Your Country Obligated to Satisfy Before Joining the EU? To Your Knowledge, Were These Criteria Different From Those Applied to Countries in Comparable Position?

Question No. 8

What Procedures on EU Level Were There in Place to Monitor the Fulfilment of the Accession Criteria? Were There any Comparable Specific Domestic Monitoring Procedures?

2.1. Legal and Institutional Framework Based on the Europe Agreement, Before the Actual Accession Negotiations Commenced

Before the negotiations on accession started in 1998, the Europe Agreement regulated the institutional framework of dialogue with the states that wished to become a candidate. According to Art. 3(2) of the Europe Agreement, the political dialogue took place within the Association Council at the ministerial level. The Association

Council served as a general discussion forum for every matter that the Parties wished to address. Based on Art. 4, other procedures and mechanisms for political dialogue could be set up by the Parties in the following forms: (a) meetings at the level of political directors between Hungarian officials, on the one hand, and the Presidency of the Council of the European Communities and the Commission of the European Communities, on the other; (b) taking full advantage of all diplomatic channels between the parties, including appropriate contacts in the bilateral as well as the multilateral field, such as the United Nations, Conference on Security and Co-operation in Europe meetings, and elsewhere; (c) providing regular information to Hungary on European political cooperation, which shall be reciprocated as appropriate; (d) any other means that would contribute to consolidating, developing, and stepping up political dialogue.

Arts. 104–112 of the Agreement contained rules on the Association Council, Association Committee, and the Parliamentary Association Committee.

Arts. 7–66 of the Agreement contained provisions for the gradual lifting of all barriers in the way of the four basic freedoms.

Chapter III of Title V of the Europe Agreement contained explicit rules on the approximation of legislation. Under Art. 67 of the Europe Agreement, Hungary was obliged to a unilateral and full implementation of Community law to the possible extent. The obligation was unilateral, because the progressive alignment of the two legal systems meant alignment of Hungarian law with Community law. It was also unilateral, because the Europe Agreement has not established an institutional and procedural framework under which Hungary could have participated in the preparation and adoption of the Community legislation to which it had to adapt its own legislation. It was a full implementation, as it covered the Hungarian legal system as a whole: it covered all the legislation in force at the time of the signature or entry into force of the Europe Agreement and all the legislation adopted afterwards by the European Coal and Steel Community (ECSC), European Economic Community (EEC), and Euratom. The fact that Art. 68 contained an explanatory list of certain community regulations did not change this fact. As was mentioned above, legislative harmonisation had to take place to the possible extent. This expression allowed Hungarian decision makers to take account of the country's economic, financial, and other interests in the timing and implementation of harmonisation. However, the room for manoeuvre was not without limitations. As the Europe Agreement was an international treaty, the assessment of the 'extent to which approximation of laws is possible', in the absence of a specific definition, was not the sole responsibility of one of the parties. A possible dispute could even have led to the application of Art. 107(2) or (4) of the Agreement, that is, the referral of the dispute to the Association Council or other platforms of arbitration.⁹

⁹ IM 1999, pp. 2–3.

The European Council meeting in Cannes in June 1995¹⁰ approved the European Commission's White Paper¹¹ on the preparation of CEE countries for integration into the internal market of the Union. The White Paper was part of the pre-accession strategy for the associated CEE countries adopted by the Essen European Council in December 1994.¹² Its aim was to guide these countries in their adaptation to the requirements of the Single Internal Market. The White Paper therefore did not affect the bilateral contractual relationship of association established by the Europe Agreement; it served as a useful guide – without any legally binding force – to the implementation of the rights provided for in the Europe Agreement. The White Paper established – the still functioning – ‘Technical Assistance and Information Exchange’ (TAIEX) instrument of the European Commission to support public administration regarding the approximation, application, and enforcement of EU legislation, as well as facilitating the sharing of EU best practices. On the Hungarian side, the State Secretariat for Integration of the Ministry of Foreign Affairs was appointed as the contact for the TAIEX.

2.2. Institutional Framework After Negotiations on the Accession Commenced

The opening event of the enlargement process was the European Conference on Pan-European Issues on 12 March 1998. Accession negotiations started in Brussels on 31 March 1998 in the framework of bilateral intergovernmental conferences with the ‘5+1’ countries, including Hungary.

On the EU side, the Commission ‘Agenda 2000 – Vol. I: For a stronger and wider Union, Vol. II: The challenge of enlargement’ set the criteria for the candidate countries: they had to take on the rights and obligations of membership arising from the *acquis* as it existed at the time of accession; they were expected to apply, implement, and enforce the *acquis* upon accession; in particular, the measures necessary for the extension of the Single Market had to be applied immediately.¹³

In line with the vision outlined in the Commission's Communication ‘Agenda 2000’, the Council adopted a Regulation on assistance to the applicant countries in the framework of the pre-accession strategy, including the establishment of Accession Partnerships. Art. 1 of Council Regulation (EC) No 622/98¹⁴ stated that as part of the enhanced pre-accession strategy, Accession Partnerships shall be established for CEE

10 European Council, 1995a.

11 European Commission, White Paper: Preparation of the Associated Countries of Central and Eastern Europe for Integration into the Internal Market of the Union, Brussels, 03.05.1995 (COM (95) 163 final).

12 European Council, 1994.

13 The Commission ‘Agenda 2000 – Vol. I: For a stronger and wider Union’. Brussels, 15.07.1997 COM (97) 2000 final.

14 Council Regulation (EC) No 622/98 of 16 March 1998 on assistance to the applicant States in the framework of the pre-accession strategy, and in particular on the establishment of Accession Partnerships (OJ L 85, 20.3.1998, pp. 1–2).

applicant states. Each Accession Partnership provided a single framework. Under Art. 2, based on the proposal by the European Commission, the Council of the European Union was empowered to decide by qualified majority on the principles, priorities, intermediate objectives and conditions contained in the individual Accession Partnerships.

In line with the said Regulation, the Council Adopted Decision 98/259/EC, which in its Annex specific to Hungary set out the objectives, principles, priorities and intermediate objectives, programming and conditionality of financial aids, and monitoring of the execution of the Accession Partnership for Hungary. The latter two were performed within the framework of the Europe Agreement. The Accession Partnership was revised twice by the Council of the EU in Decision 1999/850/EC¹⁵ and Decision 2002/87/EC.¹⁶

The screening of the Hungarian legal system through the lens of the *acquis* started on 27 April 1998 and lasted until 2 July 1999. Before substantive negotiations on the chapters could have begun, three criteria had to be met: (a) the screening of the chapter in question; (b) the adoption and transmission of the negotiating position of the candidate country for the chapter in question; and (c) the establishment of a common position of the Member States of the EU.

Hungary consistently took the view that the substantive phase of accession negotiations should not wait for the full completion of the screening process; instead, it should have been initiated parallel with the screening process, regarding chapters that had already been screened. Having succeeded in winning the support of the vast majority of EU Member States, including Austria – the then president of the Council of the EU – in the second half of 1998, the transition to the substantive phase of accession negotiations became possible in the case of seven screened chapters. Consequently, by March 1999, 15 negotiating proposals were sent to the EU.¹⁷ By the end of the year, 23 chapters were placed on the agenda of the inter-governmental conference.¹⁸

To briefly summarise the practice of the negotiations, the chief negotiators prepared draft agreements for each chapter, which could be provisionally closed at the ministerial level by the representatives of the two sides. Chapters were provisionally closed, because no agreement was considered final until the accession negotiations were fully concluded, which required a decision of the Intergovernmental Conference – consisting of the heads of states and governments of the Member States and

15 1999/850/EC: Council Decision of 6 December 1999 on the principles, priorities, intermediate objectives and conditions contained in the Accession Partnership with the Republic of Hungary (OJ L 335, 28.12.1999, pp. 1–7).

16 2002/87/EC: Council Decision of 28 January 2002 on the principles, priorities, intermediate objectives and conditions contained in the Accession Partnership with Hungary (OJ L 44, 14.2.2002, pp. 37–44).

17 Report of the Minister of Foreign Affairs Report of the Minister of Foreign Affairs on the Accession Negotiations 1999 (hereafter: Report of the Minister of Foreign Affairs 1999).

18 Report of the Minister of Foreign Affairs, 2000.

the candidate states and representatives of the EU institutions in December 2002. The chief negotiator's work was supported by a permanent negotiating delegation, including the head of the State Secretariat for Integration of the Ministry of Foreign Affairs and expert representatives of the most relevant ministries. The negotiator for the EU was the permanent representative of the Member State fulfilling the role of president of the Council of the EU. The members of his delegation were the permanent representatives of the Member States. The negotiation rounds always took place in Brussels. The negotiations at the ministerial level took place under the aegis of the General Affairs Council of the EU. During the negotiations, the Member States were represented by their foreign ministers. At the end of the EU Presidency of a Member State, the negotiations always took place in the capital of the country that was to pass on the Presidency.

As Egon Dienes-Oehm – the then deputy of the head of the State Secretariat for Integration of the Ministry of Foreign Affairs¹⁹ – recalled, the negotiations on the individual chapters of the accession negotiations were closed in the following pace: (a) 1998 (Austrian Presidency): three chapters; (b) 1999 (German and Finnish Presidencies): five chapters; (c) 2000 (Portuguese and French Presidencies): five chapters; (d) 2001 (Swedish and Belgian Presidencies): 11 chapters; (e) 2002 (Danish Presidency): seven chapters.

The latter took place at the level of the Intergovernmental Conference, at which the then prime minister Péter Medgyessy led the Hungarian delegation.²⁰ The Treaty of Accession was signed in Athens on 16 April 2003 by Péter Medgyessy and the then minister of foreign affairs, László Kovács.

At this point, however, one must step back in time, until 1998, the starting of the negotiations, to examine how the Hungarian State created its institutional order responsible for the accession and how legislative harmonisation was achieved. In the case of Hungary – where general parliamentary elections took place in May 1998 – this meant that the newly formed Orbán I. cabinet²¹ was in place to determine the legal and institutional framework of the accession negotiations on the Hungarian side and enforce the above requirements set by the EU. This job was executed during the summer and early autumn months of 1998.

The inauguration of the new government brought new internal working groups:

- (a) In the National Assembly, the Committee for European Integration Issues (*Európai Integrációs Ügyek Bizottsága*) was established as a standing Committee according to Resolution No. 39/1998 (VI.29.) of the National Assembly. Some standing committees have set up subcommittees on European integration issues.
- (b) The Cabinet for European Integration (*Európai Integrációs Kabinet*) was abolished according to Resolution 1108/1998 (VIII.13.) of the Government.

19 In office: 1998–2003.

20 Orbán, 2014.

21 In office: 1998–2002.

However, the system of government responsibility for the management of European integration-related matters created by Government Resolution No. 1093/1994 (X.7.) remained in force with modifications. According to the said decision, the Government regularly reviewed the state of the integration process at least once a year and was to identify the main tasks to be performed. In doing so, the Government approved the negotiating directives for the Hungarian delegation to the EU.

- (c) The governmental management of accession negotiations was governed by Government Resolution No. 2084/1998 (8 April 1998), as amended by Government Resolution No. 2211/1998 (30 September 1998) and No. 2093/1998 (IV.22.). Government Resolution 2084/1998. (IV.8.) laid down the principles and main objectives to be pursued in the accession negotiations. In accordance with the abovementioned three resolutions, the position to be taken during the negotiations in the screening process was determined in the form of a government resolution after administrative consultation: the proposal was submitted to the Government by the person in charge of the relevant negotiating chapter, the Minister of Justice, together with the Minister of Foreign Affairs, Minister of Finance, and Minister of Economy.²²
- (d) Government Decree 152/1994 (XI.17.) as amended by Government Decree No. 160/1998 laid down the integration-related functions and powers of the Minister for Foreign Affairs.²³ Section 6 of the decree stated that to promote Hungary's accession to the EU and unify the preparatory works, the Minister for Foreign Affairs had to direct and coordinate relations between Hungary and the EU based on the integration strategy and policy defined by the Government in the form of resolutions. Within this framework, the minister managed the entire accession process, representing the Government in the Association Council.
- (e) In the Parliamentary Association Committee, the country was represented by the Head of the State Secretariat for Integration of the Ministry of Foreign Affairs (*Külgügyminisztérium Integrációs Államtitkársága vezetője*).²⁴ The minister was responsible for the uniform implementation of integration policy in external relations via the State Secretariat for Integration of the Ministry of Foreign Affairs (*Külgügyminisztérium Integrációs Államtitkársága*), as well as for coordinating government activities and the integration-related activities of the ministries aimed at the uniform preparation for accession negotiations and membership. Government Decree No. 64/1996 (V.3.) specified these tasks of the State Secretariat for Integration of the Ministry of Foreign Affairs. The State Secretariat was established to promote accession and coordinate

²² Report of the Minister of Foreign Affairs, 1999, Point 3.1.

²³ During the first Orbán government: János Martonyi (1998–2002).

²⁴ During the first Orbán government: Péter Gottfried (1998–2002), his deputy was Egon Dienes-Oehm (1998–2003).

the preparation for EU membership. It was under the authority of the Minister for Foreign Affairs.

- (f) Another important forum for government coordination was the Interministerial Committee on European Integration (*Európai Integrációs Tárcaközi Bizottság*, EITB) established by Government Resolution 1093/1994 (X.7.). The EITB's tasks were to coordinate the decision-making process of the government related to the implementation of the Europe Agreement, support the preparation of Hungary for accession to the EU, ensure the continuity of government intentions, coordinate the integration activities of the ministries, and discuss technical issues related to the PHARE programme. To carry out these tasks, the EITB has set up inter-ministerial working groups to deal with specific aspects of the preparation for accession and develop comprehensive proposals on cross-ministerial issues.
- (g) Coordination of the PHARE programme – to be introduced in part 3 of the country report – was carried out by a Minister without portfolio according to Government Decree No. 164/1998 (IX.30.).
- (h) Mention should also be made of Section 8 of the Government Decree No. 152/1994 (XI. 17.) as amended by Government Decree No. 160/1998 (IX. 30.) and point '3a' of the Government Resolution 1093/1994 (X.7.) – also amended – and point 2 of the latter, which further stipulated that the Minister and the heads of the bodies with national competence are responsible – in their respective areas of responsibility and competence – for the implementation of the tasks arising from European integration and for the organisation and management of their professional relations in the field of integration.

The inauguration of the new government also brought new order for the harmonisation of legal regulations: the abovementioned three government resolutions, namely No. 2084/1998 (8 April 1998), as amended by Government Resolution No. 2211/1998 (30 September 1998) and No. 2093/1998 (IV.22.), covered the field of legislative harmonisation as well.

The legislative harmonisation programme for the period up to the presumed date of accession to the EU – that is, 31 December 2001²⁵ – was set out in the Annex to Government Resolution No. 2212/1998 (IX.30.). This comprehensive legislative harmonisation programme was adopted by the Government as the basic document of the pre-accession legislative harmonisation activities, as stated in point 1 of the Decision.²⁶ The said decision repealed the previous government decisions on legislative harmonisation. Consequently, the programme of domestic legislative harmonisation and the reporting obligations and other tasks related to the implementation of the programme were comprehensively and uniformly laid down in Government

25 The Presidency Conclusions of the Helsinki European Council (10 and 11 December 1999) postponed it to somewhere between 1 January 2002 and 1 January 2003.

26 The said decision repealed the previous government decisions on legislative harmonisation.

Resolution 2212/1998 (IX.30.). The new legislative harmonisation programme was structured according to the themes of the working groups of the EITB and within them, by years from the second half of 1998 to 31 December 2001. The latter date was the original target date set by the Government to the accession. The legislative harmonisation programme contributed to the planning of domestic legislation. However, every derogation from the legislative harmonisation programme had to be well reasoned; it was neither a concrete legislative plan nor a government agenda. In contributing to the planning of legislative harmonisation – as the tasks of approximation of legislation and institution building should be coordinated – the legislative harmonisation programme in the Annex to the Government Resolution 2212/1998 (IX.30.) referred to whether the task to be implemented is included in the National Programme for the Adoption of the *acquis communautaire* – approved in Point 3 of Government Resolution 2084/1998 (IV.8.) – and whether it is identified there as a short or medium-term priority.²⁷

Legislative harmonisation was also covered by point 2 of Government Resolution No. 1093/1994 (X.7.) that was applicable to legislative harmonisation as well. Ministers and the heads of national authorities were responsible for the implementation of the tasks arising from European integration within their respective areas of responsibility and competence. As the Community institutional and legislative system did not reflect – and still does not reflect – the traditional structure, organisation, and functioning of the national government and legal system, Hungarian decision makers had to take particular care for when they assigned a minister responsible for preparing national legislation, to ensure conformity with Community law.²⁸ It was set in Government Decision No. 2212/1998 (IX.30.). If a harmonisation task fell outside the programme, the responsible persons were to be determined by inter-ministerial agreement, involving the State Secretariat for Integration and the Ministry of Justice, preferably within the EITB.²⁹

According to Section 8(1) of Government Decree No. 157/1998 (IX.30.), the Minister of Justice was responsible for the coordination of the preparation of the Hungarian legal system for accession to the EU. This task involved drawing up a programme for legislative harmonisation in preparation for accession to the EU – with the involvement of the ministers concerned – and monitoring and promoting the implementation of this programme, as well as ensuring the coherence of the harmonisation activity in principle and methodology. Points 3, 4, 6, and 7 of Government Resolution No. 2212/1998 (IX. 30.) contained related tasks. According to Section 8(2)(3), the Minister of Justice had to give an opinion on the draft law – submitted by either the government or members of the Parliament – and international treaties to be signed, as to their compatibility with the *acquis*.

27 IM, 1999, pp. 6–8.

28 It was set in Government Decision No. 2212/1998 (IX.30.).

29 IM, 1999, pp. 11–13.

Question No. 9

To What Extent Was Your Country Involved in the Work of EU Institutions (e.g. Participation in the Commission's or Council's Working Groups, Participation of Your Representatives at the Commission's or Council's Meetings etc.)?

The Europe Agreement did not establish any institutional and procedural arrangement under which Hungary could contribute to the preparation and adoption of Community legislation to which it would have to adapt its own legislation.³⁰ The situation remained unchanged based on the Association Partnership: it was only after the closing of the Accession Negotiations – more precisely, from April 2003 – that the representatives of the candidate states could participate in the work of the European institutions as observers, without voting rights.³¹

The cooperation on the field of Common Foreign and Security Policy (CFSP) between Hungary and the EU was institutionalised in 1994. Cooperation took the form of contacts through Political Directors and European Correspondents meetings, CFSP working groups, participation in EU external actions offered, and diplomatic missions accredited in third countries and international organisations. In October 1998, a decision was taken to establish a CFSP communication system directly linking the EU Council Secretariat in Brussels and the Ministries of Foreign Affairs of the associated countries. This deepened the cooperation and helped to better understand the requirements for cooperation from the date of membership.

Hungary cooperated with the EU in several financial programs early on, but this did not mean participation in the decision-making process leading to the adoption of those programs. The programmes are introduced in point 3 of the current country report.

Question No. 10

Has Your Country Experienced any Particular Difficulty in Meeting Some of the Accession Criteria?

Transition to the market economy according to the Copenhagen criteria was a demanding procedure after 30 years of remaining in a 'comfortable' socialist economy, which provided everybody with a job and certain goods and services were available under fixed price – due to intensive state dotation – and it proved to be challenging for the Hungarian population and economic operators. In this regard, it is worth mentioning the so-called Bokros package³² – named after the then minister of finance – which was aimed at saving the country from bankruptcy, and which imposed serious

30 IM, 1999, p. 2.

31 Report of the Minister Responsible for European Affairs Without Portfolio on Integration related matters 2005 (hereafter: Report of the Minister Responsible for European Affairs) para. III/2.

32 Government Resolution 1023/1995 (III. 22.) on the 1995 adjustment measures for economic stabilisation; for a detailed analysis in Hungarian language, please see: Molnár, 1995.

restrictions on state budget and at the same time supported the restructuring of the economy. While the Bokros package was necessary for the accession as well, as it contributed to the creation of a well-functioning market economy – the process which was started earlier by the Antall government³³ – the official communication of the measures did not mention this. This connection was only established subsequently and only in a vague manner by scientific literature.³⁴ The most probable reason was that the decision makers did not want to ‘taint’ the awaited accession to the EU – seen as a land of promise back then – by making connections with the hardships and struggles ordinary citizens had to endure because of the Bokros package.³⁵

Question No. 11

In What Way Was the Constitution of Your Country Changed in Order to Accede the EU? Was the Accession Legally Challenged (e.g. Constitutional Court)?

With a view to accession, Section 1 of Act LXI of 2002³⁶ inserted Art. 2/A to the then Hungarian Constitution – Act XX of 1949³⁷ – which read as follows:

The Republic of Hungary may, in order to participate in the European Union as a Member State, based on international treaty, exercise some of its powers arising from the Constitution – to the extent necessary for exercising the rights and fulfilling the obligations stemming from the treaties founding the European Union and the European Communities (hereinafter called the European Union) – jointly with the other Member States; the exercise of these powers may take place individually, via the institutions of the European Union.³⁸

Certain findings of the Hungarian Constitutional Court (*Alkotmánybíróság*, HCC) in Decision No. 30/1998³⁹ surely served as a reference point for the drafters of the abovementioned EU clause of the then Hungarian Constitution – namely that in the absence of an explicit constitutional mandate, the National Assembly is not entitled to extend the principle of territoriality beyond the exclusive jurisdiction of the supreme sovereign; furthermore, the State is not entitled to make constitutional amendments via international treaties.⁴⁰ As a conclusion, the HCC stated the following:

33 Szabó, 2015.

34 Várhegyi, 2000; Köves, 1995, pp. 249–266.

35 As an acquaintance of mine demonstrated it with a witty example: ‘We were seeking to join the regatta as soon as possible, just first had to pump out water from our sinking ship’ – Dr. Zoltán Nagy (currently, financial planning and analysis manager at Zealand Pharma).

36 Act LXI of 2002 amending Act XX of 1949 on the Constitution of the Republic of Hungary.

37 Ineffective since 31 December 2011.

38 Translation by András Jakab. See: Jakab, 2010, p. 7.

39 HCC, Decision No. 30/1998 (VI.25.).

40 HCC Decision No. 30/1998 para. V/2 (The authors own translation and summary of the content).

[...] the sovereignty of the people the constitutional rights deriving from the principle of the rule of law and the democratic constitutional requirement that public authority in the Republic of Hungary may be exercised only on the basis of democratic legitimacy.⁴¹

It is worth mentioning that the activism⁴² of the HCC in the first years – in other words, during the ‘Sólyom era’⁴³ – contributed to the fulfilment of the Copenhagen criteria relating to democracy and the rule of law.⁴⁴

As the 1999 IM summary on legislative harmonisation⁴⁵ stated, HCC Decision No. 30/1998 meant that Hungarian law enforcement authorities were not allowed to directly apply Community law before Hungary’s accession to the EU. The decision of the HCC also implied that it would have been inappropriate, and constitutionally questionable, to attempt to approximate Community law by merely listing – by title or otherwise – the Community legislation ‘applicable’ in the Republic of Hungary. While this harmonisation technique was used in certain Member States after the accession, it was not considered appropriate there either, due to the issues this technique implied. Thus, prior to accession, approximation to Community law could not be achieved by this solution, which would have been based on a reference approach (i.e. a simple reference to the applicable EU law).⁴⁶ Similarly, it was not held appropriate for a Member State to rely solely on administrative practice (and its documents; e.g. circulars, transcripts). Such a practice would not have provided the legal certainty necessary for the fulfilment of harmonisation obligations, as it could have been changed at the mere discretion of the public authority and would not have been sufficiently known by the public. This type of practice has also been condemned by the HCC in its Decision No. 60/1992 (XI.17.) based on Art. 2(1) of the Constitution containing the principle of legal certainty, which is part of the principle of the rule of law declared in Art. 2(2) of the Constitution. Further, based on the case-law of the Court of Justice of the European Union (CJEU), Member States can usually fulfil their harmonisation obligations through binding national rules: all binding national rules, which do not suffer from the shortcomings listed above, may be an appropriate form of harmonisation. According to the Hungarian legal conception, every central legislative act met these requirements: therefore, the question of the choice between a law, a government decree, and a ministerial decree had to be made based on

41 HCC Decision No. 30/1998, para. VII/1.

42 In his concurring opinion to Decision No. 23/1990 (X.31.), László Sólyom introduced the notion of the ‘láthatatlan alkotmány’ (‘invisible constitution’), which served as a sure measure of constitutionality above the Constitution, which at that time was amended often for daily political ends and was regarded as temporary.

43 László Sólyom was the first president of the newly established HCC between 1990 and 1998.

44 For details, see the written version of László Sólyom’s academic address delivered on 10 December 2013. See: Sólyom, 2013.

45 IM, 1999.

46 IM, 1999, p. 13.

internal law, with special regard to the Hungarian hierarchy of sources of law, and the appropriate level of legal act for harmonisation.⁴⁷

As for the primacy of EU law – something that new Member States had to accept upon accession – the HCC tried to avoid the confrontation with the CJEU both before and after the country's accession⁴⁸ to the EU.⁴⁹ In Decision No. 1053/E/2005, the HCC marked its chosen path related to primacy when it stated that '[...] despite their treaty origin, [the HCC]⁵⁰ does not intend to treat the founding and amending treaties of the European Union as international treaties'.⁵¹ Not much later, in another decision, the HCC added the following:

[...] these Treaties, as primary sources of law, and the Directive, as a secondary source of law, are part of internal law as Community law, since the Republic of Hungary has been a member of the European Union since 1 May 2004. For the purposes of the jurisdiction of the Constitutional Court, Community law does not constitute international law within the meaning of Art. 7(1) of the Constitution.⁵²

The approach described above, as Nóra Chronowski named it, is the 'two-pronged' system, in which community law is part of domestic law, while international law is a distinct system, which is subject to a differentiated constitutional approach. The nature of the Founding Treaties as an international treaty was never called into question. They are international treaties of course, and their 'reclassification' was only technical in nature.⁵³

Question No. 12.

Was There a Referendum in any Stage of the Accession Procedure?

The referendum on acceding to the EU was held on 12 April 2003 based on Section 10 of Act LXI of 2002, the same act that enacted the 'Europe clause' into the Hungarian constitution. While the voter turnout was only 45.6%, those who attended the vote approved the accession with an 83.8% majority.⁵⁴

Based on the reports of the minister of foreign affairs (1999, 2000, 2001), preparing the citizens and the economic operators to accession was an important issue

47 IM, 1999, p. 15.

48 For an analysis of the early case law, please see: Sajó, 2004, pp. 171–190

49 As Chronowski writes between 2004 (accession to the EU) and 2012 (the entry into force of the Fundamental Law), the HCC mostly stated that it lacks the competence to judge the question. Chronowski, 2019, para. 8

50 Interpretative insertion by the author.

51 HCC, Decision, No. 1053/E/2005 (2006.06.16), para. III/2

52 HCC, Decision, No. 72/2006. (XII.15.), para. 11

53 Chronowski, 2019, para. 20.

54 Nohlen and Stöver, 2010, p. 912.

throughout the pre-accession stage. These campaigns were financed mainly from PHARE sources (see below).

Question No. 13.

In Addition to the Above, Were There any Noteworthy Legal Aspects Concerning the Negotiation and Ratification of the EU Accession Agreement in Your Country?

While not country-specific, it is worth mentioning that at its meeting in Madrid, the European Council⁵⁵ stressed the need for the candidate countries to adjust their administrative structures to ensure the harmonious operation of Community policies after accession and at Luxembourg,⁵⁶ it stressed that, ‘Incorporation of the *acquis* into legislation is necessary but is not in itself sufficient; it will also be necessary to ensure that it is actually applied’. That is, as Péter Gottfried emphasised, for the first time ever, not only was legislative harmonisation checked but its practical implementation too.⁵⁷

One may also have to mention the regional cooperation: to avoid pointless and unnecessary rivalry, the members of the 5+1 group have continuously assessed among themselves, in the conciliation meetings held in their countries, the progress of the accession negotiations and have coordinated the positions to be taken therein.⁵⁸ The smaller Visegrád (V4) group also played a part in coordinating how these countries would represent their interests.⁵⁹

3. Legal and Economic Support for Candidate Countries

The third section concentrates on the support provided to the candidate countries by the EU.

Question No. 14.

Before the Accession, Was There Any Institutionalised Support for the Approximation of the Legal Order of Your Country From the EU?

Question No. 15.

Did Your Country Benefit From Any Funds Providing Financial Support in Relation to EU Accession Immediately After the EU Accession?

55 European Council, 1995b.

56 European Council, 1997.

57 Becsky, 2004, p. 14.

58 Orbán, 2014.

59 Martonyi, 2021, p. 142.

Before the Partnership Associations were established between the EU and candidate countries, the programme 'Poland and Hungary: Assistance for Restructuring their Economies', abbreviated as PHARE – meaning lighthouse in French – was in place. The programme was later expanded to cover the other candidate countries too. Between 1990 and 1999, Hungary gained 1 billion € from the PHARE, that is, 100 million € per year. From 1997 onwards, PHARE's primary objective in the candidate countries has been to support preparation for accession. By the end of the programme, assistance focused on the following main areas: (a) institutional development for the adoption of the *acquis* (including the so called twinning⁶⁰ programme): 40%–50%; (b) regional development model programmes: 20%–30%; (c) cross-border cooperation programmes: 20%; (d) support for participation in EU Community programmes: 10%–15%.

After the accession negotiations started, new programmes were launched by the EU based on the decision of the Berlin European Council.⁶¹ Both the 1999 and 2000 reports⁶² of the Hungarian minister of foreign affairs placed an emphasis on participating in the newly launched Special Accession Programme for Agriculture and Rural Development (SAPARD)⁶³ and Instrument for Structural Policies for Pre-Accession (ISPA)⁶⁴ initiatives.⁶⁵ The monetary assets of the abovementioned two novel programmes became available from 2000. According to the decision of the Berlin summit, the 10 candidate countries received approximately 520 million € in the form of non-reimbursable aid from the EU through the SAPARD for the period 2000–2006 to help them adopt the Common Agricultural Policy (CAP) and improve the adaptability of their rural areas. Hungary received 38.04 million € annually.⁶⁶ SAPARD was the first EU pre-accession fund for which the European Commission delegated the management of the entire fund to the candidate countries, including the project selection phase and the payment of aid to the beneficiaries. In turn, the EU wished to obtain guarantees that Community funds were used and disbursed in accordance

60 Twinning (inter-institutional cooperation), whereby the Member State concerned sends at least one long-term expert to Hungary to assist the institution in preparing for EU accession for at least one year in the implementation of a legal and institutional harmonisation project.

61 European Council, 1999.

62 Report of the Minister of Foreign Affairs, 1999; Report of the Minister of Foreign Affairs, 2000.

63 Council Regulation (EC) No 1268/1999, OJ L 161, 26.6.1999, p. 87.

64 Council Regulation (EC) No 1267/1999, OJ L 161, 26.6.1999, p. 73.

65 Report of the Minister of Foreign Affairs, 1999, para. 2; Report of the Minister of Foreign Affairs, 1999; para. I.

66 Based on the 2005 report of the Report of the Minister Responsible for European Affairs, without portfolios, a total of 8827 applications were received under the SAPARD Programme, with the total aid requested amounting to HUF 217.5 billion. The MVH decided on 2761 applications and the total amount of aid granted was HUF 65.5 billion. The remaining applications were rejected due to a lack of available funds or ineligibility. By the deadline of 30 September 2004, a total of 2750 contracts had been signed. In terms of payments, the SAPARD Programme has made ex-post payments; 15.8 billion forints had been paid out by the MVH by 31 December 2004 and successful payments for the winning projects were made by the end of 2006; para. III/5.

with EU standards. As one element of these guarantees, Hungary established the 'SAPARD Agency'.⁶⁷

For the 10 candidate countries, ISPA⁶⁸ offered a yearly amount of 1 billion € between 2000 and 2006. The ISPA assistance for each country was determined by the European Commission on the basis of the country's population, GDP per capita in purchasing power parity, and the size of its territory. The average annual amount of assistance for Hungary was 7%–10% of the total allocation, which translates to 72–108 million €. ⁶⁹ Gaining finance from the abovementioned programmes was conditional on fulfilling the obligations under the Europe Agreement, meeting the Copenhagen criteria, and the specific priorities of this Accession Partnership.

As part of its preparation for accession to the EU, Hungary had to prepare and submit a National Development Plan (NDP) to the EU to receive assets from the Structural and Cohesion Funds. NDP preparation and implementation were financed by ministries, social and economic partners, organisations, and regional institutions.⁷⁰

It is worth noting that while these sums seem to be high, if one compares them to sums allocated to the earlier 'cohesion countries' – Greece, Spain, and Portugal – it becomes clear that the 2004 countries received significantly lower amounts of financial support, as noted by Egon Dienes-Oehm.⁷¹

Other programmes were launched by the EU in which Hungary tried to participate actively, because Hungarian decision makers saw the participation in Community programmes as an important part of preparing for the accession and therefore aimed to participate in the programmes in as many domains and as early as possible. Around half of the costs of participation in these programmes needed to be financed from the national budget, whereas the rest was covered by PHARE funds.

Based on the Additional Protocol to the Europe Agreement,⁷² in 1997, Hungary was the first to join the human resources programmes for education and vocational training (Leonardo, Socrates, Youth for Europe) with success: the willingness of Hungarian educational institutions to apply for funding and their success rate was close to the average among Member States. Towards the end of 1998, Hungary was allowed to access the public health and social policy programmes, the SME programme to support small and medium-sized enterprises, and the cultural programmes to promote artistic and cultural cooperation (Raphael, Ariane, Kaleidoscope). In the first half of 1999, the SAVE II programme for rational energy management, the Karolus and Fiscalis, Mattheus for upstream market preparation, Média II for the audiovisual sector, and the R&D Framework Programme V providing a framework for Community research and technological development, were in the process of being

67 Government Resolution No. 2188/2000 (VIII.31.) ordered the establishment of the SAPARD Agency within the organisational framework of the Ministry of Agriculture and Rural Development.

68 The domestic rules for the ISPA were laid down in Government Resolution 2034/2001 (II.23.).

69 Report of the Minister of Foreign Affairs, 2001, para. I.7.

70 Report of the Minister of Foreign Affairs, 2001, para. II.3.

71 Orbán, 2014.

72 Agreement signed on 13 July 1995.

opened; as such, Hungarian researchers were able to participate from the first calls under the same conditions as applicants from other Member States.⁷³

Question No. 16

Were There Any Other Noteworthy Aspects of EU Support Provided to Your Country Before the Accession?

As Juhász Endre recalled in his 2019 writing, at the time, Hungarian farmers received approximately 70,000 HUF per hectare of arable land from the EU budget annually. While this seems natural today, when the negotiations started, a key question was whether Hungarian farmers – and farmers of the newcomer countries – would be eligible for any financial aid, as the EU's initial position was that new Member States should be excluded from the budget. To understand the EU's position, it is necessary to recall that some of these were so-called compensatory payments in the EU, which compensated the farmers for the losses arising from the reduction of guide prices under the common agricultural policy. As it was to be expected that these prices would not fall in Hungary, but rise instead, compensation was not deemed necessary. According to the Hungarian delegation, it was true that these payments were originally introduced for compensation, but they have gradually become a permanent feature of the common agricultural policy. Thus, their absence in the new Member States would have resulted in a serious and unjustified competitiveness gap in the short and long term. Furthermore, as the Hungarian Chief Negotiator emphasised to Franz Fischler – the then Austrian Commissioner responsible for agricultural policy – the rejection of the direct payments system probably resulted in the end of the common agricultural policy: if the system was not introduced, and Hungarian agriculture survived, those Member States that persistently wanted to abolish the common agricultural policy – the UK and Sweden – would have used this fact to prove their right. Namely, if certain Member States' agriculture was proved to be viable without subsidies, what would have justified the subsidies for France or Italy? Juhász believed that these arguments have had an impact, as the Commission subsequently proposed the introduction of a transitional period on direct payments.⁷⁴

On the basis of the possibility provided for in the Accession Treaty,⁷⁵ Hungary opted to join the so-called Single Area Payment Scheme (SAPS), which was supplemented from the national budget (top-up).⁷⁶ In practice, Hungary could only introduce

73 Report of the minister of foreign affairs, Point 5.4.

74 Which, in proportion to the aid to the old Member States, was as follows: 2004: 25%, 2005: 30%, 2006: 35%, 2007: 40%, 2008: 50%, 2009: 60%, 2010: 70%, 2011: 80%, 2012: 90%, 2013: 100%. See Juhász, 2019, pp. 4–7.

75 Treaty of Accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia, and Slovakia (OJ L 236, 23.9.2003, p. 17–930 (BG, ES, CS, DA, DE, ET, EL, EN, FR, GA, IT, LV, LT, HU, MT, NL, PL, PT, RO, SK, SL, FI, SV)).

76 Report of the Minister Responsible for European Affairs without portfolio, 2005, para. III/5.

it in 2009 due to the non-conformity of the information and control system.⁷⁷ While the SAPS and its successor, the Basic Payment Scheme (BPS), had a ‘legitimate aim’ – namely, to ensure greater income stability for farmers and to let them better adopt to market demand – a 2018 report of the European Court of Auditors highlighted that a standard amount of support per hectare, by its very nature, does not take account of the specific conditions of the farm (e.g. operational costs, income, profitability) – and what is worse, the BPS tends to favour larger farms regardless of the productivity. Putting it bluntly, the system encourages hoarding of arable land instead of enhancing productivity. As such, the area-based payments are not linked to real socio-economic needs.⁷⁸

4. Specific Rules Applicable to Candidate Countries Before and After Their Accession

The final section is concerned with any country-specific exemptions from the general approach, adopted by the candidate countries, both during the pre-accession period and after the actual accession.

Question No. 17

After the Formal Application to Join the EU, Was Your Country Willing or Able to Negotiate Any Specific Exemption From the Accession Procedure (e.g. Areas of Law Not to Be Approximated, Limits to the Approximation etc.)?

Yes, see below for details.

Question No. 18

What Country-Specific Provisions Were Contained in the EU Accession Agreement of Your Country?

In multiple areas, the most important aspect was the free movement of persons and the free movement of capital (see below for details).

⁷⁷ See Csák and Olajos, 2008, p. 31; Szilágyi, 2007, p. 719.

⁷⁸ European Court of Auditors, Basic Payment Scheme for farmers – operationally on track, but limited impact on simplification, targeting, and the convergence of aid levels. Special Report No.10/2018., paras. 70, 72; see also: Rude, 2008, pp. 457–471.

Question No. 19

Were There Any Country-Specific Transitory Provisions?

Yes, for example, in the sector of wine production (alcohol volume and names). The Annex on Hungary contains this information.

Question No. 20

Was Your Country Able to Negotiate Any Permanent Exemptions From the EU Law?

No.

Question No. 21

To Your Knowledge, Were There Any Notable Differences in the Content of Your Country's EU Accession Treaty From Other Countries in a Comparable Position?

The free movement of persons and the free movement of capital (secondary residence, agricultural lands) were regulated very similarly in the CEE region.

Question No. 22

Are There Any Other Noteworthy Exemptions From the Application of the EU Law in Your Country?

The European Council decided to launch the negotiation process with the CEE countries at the December 1997 Luxembourg summit.⁷⁹ To conduct successful negotiations resulting in agreements that served the national interest of Hungary, it was important to determine what exactly the national interest was.

After the national interest was identified, it was time to enforce it during the negotiations. Endre Juhász identified six plus one fields – that is, seven out of the 31 chapters of the negotiation process – in which differences between the delegation of Hungary and the EU came to light and the negotiations proved to be tougher than in other fields, namely: (a) free movement of persons; (b) free movement of capital (the acquisition of agricultural land by nationals or legal entities domiciled in the EU Member States); (c) issues related to agricultural dotation; (d) structural and cohesion politics; (e) competition; and (f) the implementation of the ‘Schengen acquis’ and the exact determination of Hungary’s external and internal borders (that is, which neighbouring countries will enter the Schengen area with Hungary).⁸⁰

⁷⁹ Presidency Conclusions of the Luxembourg European Council, 12 and 13 December 1997.

⁸⁰ Juhász, 2019, pp. 4–8.

The additional issue was the conformity of the existing nuclear power plant (Paks I) with the safety rules of the Community.⁸¹

Ultimately, Hungary was allowed to temporarily derogate from EU law requirements in nine fields, namely: (1) Freedom of Movement for Persons; (2) Freedom to Provide Services; (3) Free Movement of Capital (agricultural lands); (4) Competition Policy; (5) Agriculture; (6) Transport policy; (7) Taxation; (8) Environment; and (9) Customs Union.

While derogation ‘No. 1’ was in favour of the old Member States, derogation ‘3’ was in favour of Hungary. The author introduces these derogations in a more detailed way, as in his view, these were the most important derogations related to the country.

According to the former Hungarian chief negotiator, the initial Hungarian position regarding the free movement of workers was that Hungarian citizens should have been granted complete freedom of movement without restrictions. While the first responses from the ‘old’ Member States were only aimed at ‘cooling the heat’ – by stating that this being a sensitive issue, it should be discussed later – they subsequently gave a straightforward answer: in a speech in November 2000, German Chancellor Gerhard Schröder stated that a seven-year, EU-wide transition period was needed. The Hungarian delegation did not oppose the derogations as Hungary had very substantial requests for a transition period in the area of free movement of capital; however, the Hungarian delegation tried to reduce the time limit and scope of the derogations applicable to the free movement of persons as much as possible. The so-called 2+3+2 formula was the compromise: Member States were allowed to maintain restrictions for two years, to extend them for a further three years, and even for an ‘extra’ two years, but only if a serious disturbance in the labour market or a threat thereof were present. The obligatory review and the review that could have been requested by new Member States allowed earlier liberalisation. Further, the possibility of the voluntary liberalisation by ‘old’ Member States was granted and the United Kingdom, Ireland, and Sweden immediately applied this – ensuring immediate access to their labour market – to the new Member States. Restrictions were maintained for the full seven years – that is, until 2011 – in Germany and Austria.⁸² Here, it is worth mentioning the Martin Meat case,⁸³ which concerned these derogations allowed for Germany and Austria and which concerned Hungarian workers,

81 Fortunately, Hungary – unlike Slovakia and Lithuania – did not have to undertake to shut down its nuclear power plant. See: European Commission, Comprehensive monitoring report of the European Commission on the state of preparedness for EU membership of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia, and Slovakia. (COM (2003) 675 final, Brussels, 5.11.2003).

82 Juhász, 2019, pp. 4–5.

83 C-586/13, Martin Meat, Judgment 18 June 2015.

and in which the CJEU provided a wide interpretation of the derogation.⁸⁴ Turning our attention from workers to the free movement of capital, one must ask, why was the exemption under the free movement of capital so important for Hungary? The applicable interpretation of the EU law nowadays is – just like it was back then – that agricultural lands fall under Art. 63 of the Treaty on the Functioning of the European Union (TFEU), which guarantees the free movement of capital. This is advocated by the European Commission⁸⁵ and supported by the case-law of the Court of Justice of the EU.⁸⁶ At the time of the accession negotiations, Hungarian decision makers foresaw a situation where the relatively cheap Hungarian agricultural lands may be bought up by western investors – which happened in a neighbouring Member State.⁸⁷ According to Juhász, the Hungarian delegation successfully avoided this situation by reaching a favourable compromise with the possibility of a 7+3 year-long derogation period. The derogation was enacted into Act LV of 1994 on Agricultural Land by Act XXXVI of 2004.⁸⁸ The derogation period provided the Hungarian legislation enough time to elaborate a regulation, which ensures the Hungarian interest of keeping the agricultural land in Hungarian hands and also conforms to EU law.⁸⁹ However, there is still a debate between Hungary and the European Commission: while the Hungarian legislator seeks to maintain certain restrictions mainly on the acquisition of arable land by foreign legal persons, which is not acceptable in the Commission's view, the sustainability of the current market-oriented regulation of the EU is also questioned in scientific literature:⁹⁰ many argue that it would be better if the Member States had a larger space to manoeuvre, so that they can decide on

84 The operative part of the judgment reads as follows: 'Chapter 1, para. 2, and para. 13, of Annex X to the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded, must be interpreted as meaning that the Republic of Austria is entitled to restrict the hiring-out of workers on its territory, in accordance with Chapter 1, para. 2 of that annex, even though that provision does not concern a sensitive sector, within the meaning of Chapter 1, para. 13, thereof'.

85 European Commission Interpretative Communication on the Acquisition of Farmland and European Union Law (2017/C 350/05).

86 C-370/05, *Festersen*, Judgment, 25 January 2007, paras. 21-23, C-452/01, *Ospelt*, Judgment, 23 September 2003, para. 24.

87 Anghel, 2017, pp. 77–104.

88 According to the new wording of Section 7 of the 1994 Law: '(1) Foreign individuals and legal persons may not acquire ownership of agricultural land, except as provided in para. (2). (2) The rules applicable to a domestic individual shall apply to a national of a Member State who wishes to establish himself/herself in Hungary as a self-employed farmer and who has been continuously and legally resident and engaged in agricultural activity in Hungary for at least three years'.

89 Juhász, 2019, pp. 5–6.

90 Szilágyi and Szinek-Csütörtöki, 2023, pp. 318–334; Szilágyi, 2018, pp. 189–212; Szilágyi, 2017, pp. 1055–1072.

the conditions of trading in their arable lands,⁹¹ because the significant differences in the price of arable land among Member States still causes a problem that is worth the attention of decision makers.⁹²

‘There was a bright optimism’ – as Ferenc Bartha⁹³ recalled regarding professionals’ opinion around the Millennium on the possibility of introducing the Euro soon after Hungary’s EU accession.⁹⁴ However, as Péter Gottfried reiterated, the issue was soon surpassed, as it became clear that Hungary was far from fulfilling the Maastricht criteria around the proposed date of accession to the EU – originally in 2002; thus, the country was scheduled to enter as a Member State with a derogation under the Founding Treaties – currently Art. 139(1) of the TFEU.⁹⁵

As Endre Juhász recalled, the implementation of the Schengen system was a delicate and difficult task, both politically and technically, not because of the Schengen rules in general: rather, the issue of external borders was hard to predict. In its official positions, the EU repeatedly demanded that Hungary reinforce its external borders; however, at that moment, nobody knew where they will be at the time of accession. As the chief negotiator did not receive an answer from the EU partners, he decided to prepare a written proposal, a working hypothesis, to which the Union would respond. The dilemma was the issue of Slovakia’s and Romania’s entry into the Schengen system. At that time, Slovakia was lagging behind in the negotiations compared with Hungary and other CEE candidate countries and it was an open question whether it would be included in the first group of accession. If one looks at the map, a single Schengen area in the CEE region could not have been created without Slovakia. The situation was different for Romania. The official and unofficial Hungarian aspiration, both from the government and – one could say – the citizens, was to ensure that relations with Hungarians living in neighbouring countries were maintained to the maximum.⁹⁶ However, it became clear that Romania was not prepared to fulfil the Schengen obligations at that time and it was predicted that it will take a long time for the country to comply.⁹⁷ The working hypothesis suggested that Hungary would have external borders with Croatia, Serbia, Romania, and Ukraine,

91 ECOSOC, NAT/632, Brussels, 21 January 2015; Directorate-General for Internal Policies of the Union: Extent of Farmland Grabbing in the EU, 2015; EP: Report on the state of play of farmland concentration in the EU: how to facilitate the access to land for farmers; Szilágyi, 2015, pp. 96–102.

92 See for details: Marinkás, 2022, pp. 25–53.

93 The last governor of the HCB prior to the change of regime (1988–1990) and the member of the Medgyessy Government’s governmental working group mandated to prepare the introduction of the Euro.

94 Kenessey, 2022.

95 Consolidated version of the Treaty on the Functioning of the European Union (OJ C 326, 26.10.2012, pp. 47–390).

96 As the former Minister of Foreign Affairs emphasised in his ‘Memoires’ – however, the book is called in ‘*Lieu of Memoirs*’ – it is a peculiar Hungarian and one may say CEE characteristic that the notion of nation and country do not coincide. Martonyi, 2021, p. 31.

97 These predictions were proven right by life: the country became a full member of the Schengen area only on 1 January 2025.

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while maintaining internal borders with Austria, Slovakia, and Slovenia. The EU did not react to this at first, but then gradually made it known to the Hungarian delegation that it had accepted this arrangement.

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