

**THE NATIONAL INTEREST IN EU LAW AND GOVERNANCE: THE HUNGARIAN
PERSPECTIVE 3**

FINDINGS OF THE

MUTUAL LEARNING EXPERIMENTS (MLEs)

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Introduction

The MLEs were conducted with two purposes in mind. Firstly, we aimed to collect insights from officials working in the Hungarian and the European Union administrations at the expert level concerning how they understand the national interest in the policy development and decision-making processes in which they participate. Secondly, we wanted to share with them different interpretations and perspectives of formulating and representing the national interest/position in the EU political and legal context, as presented in academic work. The MLEs were not conducted as formal research interviews and their results are not used directly in our research. This is an overview of what we –as academic researchers – learned from the events. Therefore, the following account is not an exact report of the discussions.

Summary of findings

- For the national interest to have a meaning in the EU context, Member State governments must have the capacity to formulate, present and realise local interests;
- the success of EU policies, from the perspective of both the Union and the Member States, requires competent Member State administrations which have experience both in local (Hungarian) and European policy making;
- complacent national administrations, which lack initiative and which are content with implementing EU requirements instead of pursuing genuine policies based on local interests, damage policy opportunities not only at the national but also at the European level;
- there can be genuine conflicts of interest between the Union and the Member States, especially when European and local policies have different ideational bases;
- another cause of conflict between the Union and the Member States may follow from circumstances when considerations promoted by the Member State concerned are not given sufficient recognition under the common policy framework;
- further conflicts of interest between the Union and the Member States may arise when EU policies are influenced by political or geopolitical considerations which favour some and disadvantage other Member States, or they are based on a false assumption of equal Member State performance or capacities;
- the internal contradictions or hiatuses of EU policies could also lead to the Member States being determined to protect their interests and question their EU commitments;
- there are also instances when the Member States would be more likely to prefer local as opposed to European governance, especially when the matter in question has heightened local relevance and immediate local impact;
- local governance is most likely to be preferred by the Member States when responsibility for potential failures in EU policies are not addressed at the European level or when the European administration will be unable to react to local level development as efficiently as national administrations;
- some of the conflicts between the Union and the Member States may follow from when the Member State concerned is unable to explain at the European level controversial national policies, which could be an indication of a faulty, inappropriate local policy adopted in breach of EU requirements;
- misunderstandings at the European level concerning controversial local policies can be avoided by means of clear and effective communication at expert and political level;

- the Member States are likely to favour increased flexibility under common EU policy frameworks, especially when they had made long-term (financial, political or other) commitments in contradiction to the main obligations of the common policy, or when short-term political pledges distort the local policy agenda and put national policies on a collision course with EU policies;
- in defence of certain interests, practices of Member State non-compliance can involve neglecting the obligation of sincere cooperation and continuing to pursue policies breaching EU obligations until the latest possible date (when non-compliance is formally established and/or a fine is imposed);
- securing EU financial resources and ad hoc subsidies for the national administration in the execution of EU policies is often regarded as an indication of a successful defence of the national interests, and Member State efforts in the EU can be reduced to achieving this end;
- in other circumstances, especially when effective national implementation would assume considerable effort and expenditure for the Member States, the priority for Member State governments may be to keep the costs of compliance as low as possible and to avoid any further increases in the burdens of the Member States;
- in the EU political process, when a Member State finds itself on the same platform with an Eurosceptic minority, its ability to influence the formulation of EU policies may be greatly reduced;
- Member States may be more successful promoting their interests when in the EU political process they are able to negotiate their way into the majority platform;
- in the case of EU redistributive policies which are designed and implemented having regard to locally formulated interests and priorities, it is difficult to determine whether those policies have in fact been implemented by national administrations in the national interest;
- local distortions or local policy hiatuses may also prevent such EU policies from being able to achieve their in part locally determined objectives.

1. The national interest in the context of EU social policy

The MLE discussed predominantly the prerequisites of developing, representing and pursuing the national interest in domestic and EU social policy. The main argument raised was that adhering to EU social policy instruments – automatically and regarding them as compulsory notwithstanding their actual legal status (i.e., implementing soft EU instruments into domestic policy-making and law as they were legally binding) – does not replace genuine domestic efforts to develop a social policy for communities at the local and national level. It was discussed that domestic social policy, which is likely to deliver results at the Member State level and which will be recognised as successfully implemented within the EU social policy framework, requires an understanding of local needs and possibilities by the national administration and assumes that national governments have the capacity – intellectual, expert, budgetary etc. – to set priorities on this basis and develop genuine policies for the achievement of those priorities. In the current state of central administration in Hungary, in terms of the availability of expertise, knowledge, dedication, experience, leadership and initiative in the civil service, this is not guaranteed, and instead of pursuing genuine national interest in Hungarian social policy, EU policy initiatives are implemented as an excuse for locally developed social policies. This could lead to damaging results as the central administration would be prepared to place serious regulatory burdens on economic and social stakeholders by implementing otherwise legally non-binding EU instruments – which in their implementation could accept local gradation and differentiation – as compulsory EU requirements allowing no accommodation of local particularities.

In general, the preparation of social policies is weak and lacks sufficient expertise in Hungary. This damages Hungary not only through bad policy design and bad policy implementation, but also by preventing the clear and robust formulation of the national interest in social policy, interests which could be implemented in a coherent national policy framework and presented within the EU social policy superstructure as the cornerstones of Hungarian social policy. Policy-making in this domain requires the integration of sociological, statistical and other data and knowledge, the development of targeted, balanced and adequately tuned strategies based on that data and knowledge, and sufficient political empowerment to implement those strategies, ideally undistorted by political short-termism and badly judged politics. There are, indeed, numerous strategies and programmes (e.g., the National Youth Strategy, the National Drug Strategy) in social policy in Hungary which could be interpreted as adequate operationalised definitions of the national interest in the relevant policy domains. Nevertheless, these are of rather varied quality and they may have differing degrees of attachment to social and economic reality. Often, the cause for the weakness of these instruments can be found in the risk diverting attitude of public administration, which avoids making nationally relevant and implementable policies and which would prefer merely following the policy directions developed at the EU level. Politics also has a

responsibility in this. The 'lazy' politics of consequent Hungarian governments – pursuing very often short-term political interests – has never been keen on hammering out genuinely local social policies and it has often resorted, instead, to top-down or horizontal policy borrowing from the EU or from other states.

Because EU social policy is formulated – mainly – through general principles, with the production of detailed legal instruments either lagging behind or with deep-cutting legal instruments not being produced owing to the lack of competences, EU social policy and the Hungarian national interest can, in general terms, be regarded as compatible and as following similar directions. The grounding of legally binding EU instruments also makes policy coherence, by-and-large, easy to achieve. They implement general principles – basic rights, such as equality – which are also protected in Hungarian law and pursued by national policies. The situation may be different in areas where EU legal obligations interfere with the redistributive powers of the Hungarian state or influence domestic social transfers. In such instances, because of the cost implications of EU obligations, the actual implementation of EU obligations – while on paper compliance has been achieved – could meet the resistance of the government (e.g., working time rules). This, however, depends on the government and administration actually being capable of identifying and caring about the social and economic burdens of implementing EU obligations in a process which – since the pre-accession period – has been geared towards achieving near full legal compliance, predominantly on paper. As a rule, it seems that the Hungarian state is particularly aware of its interests when the EU exercises its limited redistributive powers or interferes with those of Hungary.

The applied political and social philosophy of the new Hungarian Fundamental Law and of what could be called the new Hungarian socio-economic order created under the Fundamental Law – irrespective of its crudeness and haziness – could be a source of conflict between the European Union and Hungary. The idea of a European Social Model is difficult to interpret as representing a single, absolute standard for domestic social policy – mainly because it has to accommodate at least five different European social models (e.g., the Scandinavian, the Anglo-Saxon, the German, the Southern and the Eastern European) and because it builds on the current policy-mix of the European Union which keeps the Single Market in its focus, and for this reason it is unlikely to provide a European standard which would contradict the interests of the Member States. Conversely, the dominance of a Rawlsian understanding of liberty and social citizenship in EU social policy could raise fundamental incompatibilities between EU obligations and the supposedly contractual/reciprocity based understanding of welfare and social solidarity in post-2010 Hungary. For example, the treatment of individuals in the Hungarian *közmunka* (public works) program seems to violate their dignity and equality in a Rawlsian interpretation, but seems justifiable – especially on grounds of effectiveness and policy utility – in a contractual, less value-influenced interpretation. In this context, the principle of subsidiarity may have increased relevance – provided that the Hungarian administration has the capacity to understand its meanings and to rely on it as a policy tool *vis-à-vis* the EU policy-maker, and Hungary may insist – in defence of

its interests – on the more confined use of EU competences and, more importantly, a more confined use of benchmark-based assessments and criticisms of domestic policy in softer EU governance processes.

There is a suspicion in the Hungarian public administration that because of the serious conflicts between 2010 and 2014 between the Commission and Hungary, Hungarian social policy, as well as other national policies, receives more stringent scrutiny and more serious criticisms from the Union than those of other Member States. It is felt that these criticisms were often based on contestable grounds and were pursued despite a clear cut legal basis for contesting Hungarian policy instruments not being available. For instance, the Commission would rely on academic studies which claim that the Hungarian *közmunka* (public works) program is ineffective in addressing unemployment but which do not offer actual alternative policy solutions to deal with unemployment in the years after the global economic and financial crisis, or the Commission would insist on measuring Hungary's performance on the basis of pre-2006 benchmarks on poverty reduction which were left unmodified after the financial and economic crisis.

As a result of the nature and design of EU social policy, legally expressed conflicts between the Union and the Hungarian interest have been limited to areas where there were concrete EU legal instruments containing a general legal principle and/or basic rights. This does not mean, however, that in the OMC or in the annual reporting governance frameworks discrepancies would not be identified and conflicts arising from domestic priorities and/or inactivity and/or complacency would not be brought to the fore. Their treatment and resolution are, however, different from those investigated in formal infringement procedures by the Commission, as in the case of, for instance, Roma school segregation in Hungary. The bringing of formalised procedures on the basis of legally enforceable rights against Hungary may be more damaging for the Hungarian government and may necessitate more immediate and more concrete responses. In comparison, under the soft governance frameworks of EU social policy the Hungarian government will *only* be put under pressures of transparency, regular reporting and peer review, which could leave more room for dialogue and policy manoeuvring. Obviously, this is how soft governance frameworks in the EU are supposed to operate, and provided that their relevance for aiding domestic governance is adequately recognised they could be rather effective in making Member States observe their commitments. Their influence could also be amplified by allowing the EU administration to raise criticisms or to identify shortcomings which – rather controversially – may not follow from the applicable legal instruments and may not be pursued in formalised legal procedures at the EU level (e.g., the effectiveness of Hungarian solutions for addressing unemployment (the *közmunka* (public works) program)). The MLE raised the point that it is in the interest of Hungary to take its participation in EU soft governance frameworks seriously, as it may be able to compensate for the significant hiatuses of the national policy process and could keep social policy issues on the political agenda in the right way (i.e., by insisting on relying on expert knowledge and assessment instead of

crude political judgement, introducing and sustaining transparency, continuity and cyclicity, or by cooperating with stakeholders and maintaining a dialogue with them). The other main benefit is that they could force Hungary to identify, formulate and defend its interests, request the EU to modify its position when Hungarian policies are misunderstood or badly assessed, and allow shortcomings, narrow-mindedness, or even failures in EU social policy to be pointed out.

Regarding the question whether non-compliance in soft frameworks of EU governance would register politically in the same way as the infringement of concrete EU legal obligations, the MLE raised that failing to meet policy-specific benchmarks established at the expert level is rarely noticed by politicians both in Hungary and the EU. It is never discussed at the level of the Council of Ministers and it seldom reaches ministerial level discussions in Hungary. It is considered to be a matter for secretaries of state (junior ministers) with a specialised portfolio and for experts in lower level public administration. On the one hand, this is unfortunate as it is difficult to convince the political level that formulating, representing and defending national positions in such frameworks is of political importance, even though the relevance of the policy area itself would be recognised. On the other, this enables the development, implementation and monitoring of policies without undue political intervention, and it ensures that policy issues are negotiated and decided on the basis of policy specific expertise. For government experts, it is highly inconvenient when they are unable to participate effectively in expert negotiations and, in general, in the process of EU governance. The Commission and its experts take their tasks seriously, and they are willing to put pressure on underperforming Member States at the expert level. The importance of being able to participate well in these processes requires, as stated earlier, clear national priorities based on the national interest, the availability of adequate expertise in national administrations, and a clear political mandate for the administration to develop and deliver policies. In consequence, the Hungarian government should realise that despite the informality of policy processes and the reduced relevance of legal obligations it needs to ensure that there are actual domestic policies which can be represented and that these policies are adequately presented to the Commission and the other Member States in order to avoid misunderstandings and misrepresented judgements regarding Hungarian policies and legislation. Therefore, representing the national position (interest) in the EU is not only an isolated question of policy expertise, but it must also be recognised as having clear political importance and must receive a corresponding political treatment. Ministers should take EU governance seriously and they should be able to identify and represent the national interest in the special frameworks available at EU level. This, however, necessitates reconsidering how the policy process is organised in Hungary. Without transparency, adequately designed and delivered (e.g., inclusive, dialogue-driven) policy processes, policy specific expertise and without assuming political responsibility and accountability, Hungary's interests will be damaged in policy processes organised at the European level. The Hungarian government, thus, faces the dilemma that what may be beneficial from its perspective in

governance at the national level (e.g., secrecy, lack of clarity, over-emphasised political flexibility) could undermine its opportunities (the national interest) in EU frameworks of governance.

From the EU's perspective, the assessment of what may be called regression in Hungarian social policy could be particularly difficult. Criticisms based on the protection of vested rights and social standards need to take into account that Hungarian social policy – which is often subject to rather manipulative political considerations – has always suffered from immense targeting problems (e.g., the benefit system not supporting the finding of employment, or that the 1990s rationale for taking a larger segment of the population off the labour market through disability allowance may not be valid today). The reform of the systems for social protection in Hungary under the pressure of the financial and economic crisis is equally difficult to assess. On the one hand, some of the developments could indeed be justified on policy, and sometimes on moral grounds. On the other, there remain doubts as to whether policy changes were implemented on the basis of sufficient expert evidence. It is also unclear whether these social policy changes were actually executed in the national interest in the sense that the current reformed system of social transfers and current fiscal and economic policy priorities may represent the interests of the few and their effect may be the augmentation of the social inequalities brought to light and further increased by the crisis. In case it is accepted that the reform of social policy was inevitable, the Hungarian government should have made a much better effort at representing, communicating and defending its policies and their rationales at the European level.

Contrary to expectations, the MLE was unsuccessful in revealing that Hungarian social policy would understand the complexities or would appreciate the tension and drama of EU intervention – through instruments of economic governance and regulation – in the social domain, as made visible in the critical literature on the EU's social deficit. Although the period after 2004 was not free of open conflicts between the Hungarian government and the EU in the social policy domain (e.g., working hours and remuneration of civil servants, or age discrimination and dismissal of civil servants), the narrative of grand Member State resistance – as the cases of the sex equality and the working time directives adequately showed earlier in the history of European integration – is not present or may be underplayed in the Hungarian context. The potential damaging impact of EU economic regulation produced by an EU polity suffering from a social policy hiatus – as revealed in *Laval* and *Viking* – does not seem to influence government policy in Hungary. Neither does – as suggested earlier in connection with working time rules – the EU's standard reaction to its social deficit of assuming more and more competences to regulate the social aspect of the Single Market using its market building competences. The MLE was unable to provide evidence that the Hungarian policy-maker has understood that with regression in domestic social policy it damages Hungarian society not only by engaging in a potentially harmful social reform, but also by failing to compensate through social policy action the negative social consequences of European market integration. When the unwelcome social impact of

European market integration is further enhanced by Hungarian economic policy trying to find its place in the integrated European market (for instance, by keeping wages low, allowing currency devaluation to support exports, or by deregulating labour standards), failures in local social policy could be even more damaging. Finally, without paying sufficient attention to these cross-dependencies between EU economic policies and national social policy, it is not excluded that the EU financial resources available for regional development and social cohesion will be exhausted by Hungary without actually alleviating the damages which may be caused by market integration to Member State societies.

It seems, therefore, that political laziness, complacency in public administration and policy inactivity, which seem to characterise social policy at the national level, double the costs of EU membership for Hungary. Firstly, domestic social policy when driven only by the intention of formal compliance with EU requirements and by top-down policy borrowing will not be based on genuine local interests. Secondly, when it overlooks and fails to integrate the cross-domain effects of EU law affecting not only economic but also social policies at the national level, Hungarian social policy will damage society and will leave the opportunities to compensate that damage unexploited.

As to the ability of EU social policy to prompt national policy action, the MLE raised that there needs to be sufficient synergies between European and national policies for European and national policy action in order to implement genuine changes. The example of the care for the disabled was used to indicate the cumbersomeness of top-down policy change. Originally, there was a substantial temporal gap between the EU formulating official criticism and in 2011 the government deciding on a political strategy. This was followed by delays and even resistance in the implementation of the national policy. The eventual turn in the care of the disabled came almost unexpectedly when after this long gestation period stakeholders engaged in executing the new policy (a similar gestation process characterised the policy reactions to the impact of the free movement of persons in Hungarian labour markets and social security systems: the original resistance and opposition by the government, which manifested in introducing different coercive legal constructions for tying Hungarian graduates to the Hungarian labour market, seem to have changed into a more realistic policy position accepting a compromise between the social costs and benefits of internal migration in the EU). It seems that in difficult policy areas, where a variety of stakeholders engage and represent different interests, transnational policy-making needs to take into account the difficulties and delays characterising local adjustment to new policies, an adjustment period which entails politics, central administration, local administration, local communities, the profession and other stakeholders gradually picking up pace and engaging with the new policy. For the EU level, this supports the idea that policies need to be delivered in mixed, multi-layered and inclusive frameworks. For the Member States, this means that national governments should take their participation in such frameworks seriously. Complex EU policy frameworks enable them to pursue their

interests not only by the acts of representing and safeguarding their national positions, but also by engaging proactively with and contributing to the shaping of common policies. The experience of social policy projects developed and carried out at the national level and financed through EU structural funds shows that the inability of the Hungarian administration to engage adequately could lead to incomplete policy delivery and even policy failure. The obligation to sustain such projects even after the exhaustion of EU resources means that domestic public resources will be tied down unjustifiably and unnecessarily, for which the national government holds the ultimate responsibility.

2. The national interest in the context of EU migration policy

The MLE revealed reluctance, disinterest and some opportunism in formulating and representing the national interest within the framework provided by EU migration policy. In this policy domain, the national interest is defined formally in the Hungarian Migration Strategy's list of priorities. Most of these priorities follow from the system of priorities of the relevant international documents and only a very limited number of these priorities represent genuinely particular national interests. The Strategy's list of priorities includes, for example, the principle of integration, the necessity to address illegal migration, the need to avoid abuses of the system, the protection of stateless persons, or the protection of free movement, the latter indeed representing Hungarian interests as it is aimed at safeguarding the position of Hungarian minorities in neighbouring states and of the Hungarian diaspora elsewhere.

Specific Hungarian positions towards EU migration policy are determined by two core priorities. The first follows from the fact that Hungary is a transit country between the State of origin and the State of destination in the east and south-east migration routes to Europe. In consequence, addressing illegal migration is of particular concern for Hungarian governments, especially considering that Hungary may be the point of entry of migrants into the Schengen area. There is a very high number of illegal entries at the Hungarian border and the majority of migrants leave the country for another Western European destination within a short period of time. The second priority deals with the protection of the interests and rights of Hungarian minorities in the neighbouring countries. This focus of Hungarian migration policy brought with itself the peculiar consequence that nearly two-thirds of migrants residing in Hungary speak Hungarian as their first language. It also means that Hungarian policy addresses as one of its main problems a rather peculiar situation which may be of lesser relevance on a global scale than international migration, and it involves granting a very special status and special entitlements to individuals that may be in a far less desperate situation than other international migrants. As a covert, third core priority, lending a rather myopic and cynical character to the Hungarian policy is to reduce migration to the lowest possible level and to spend the least possible public resources on this problem.

The MLE revealed that there may be considerable gaps between high politics, the state of public policy and reality in this domain. The Hungarian Migration Strategy is a document which was produced to meet EU expectations. It is rarely mentioned in the development of Hungarian policies and political positions, and it is nearly completely ignored at the street level enforcement of immigration law. The main reason for the existence of the Strategy is that access to the relevant EU financial instruments was subject to the condition that Hungary produces such a document. In developing the strategy, the Hungarian administration relied directly and very heavily on the available EU documents, which indicates, on the one hand, a high degree of policy convergence *on*

paper and, on the other, administrative complacency and disinterest in the development of a genuinely national strategy. The attitude of the Hungarian central administration could be explained but not excused by the fact that nearly all areas are regulated by EU measures and that their effective implementation already gives plenty of worries for the responsible authorities. The very limited interest of politicians (ministers and the prime minister) in policy-specific matters – except when short term political advantages are to be gained (e.g., the referendum on giving citizenship to Hungarian minorities in the surrounding states, or the 2015, newly-found tough stance on migration as an attempt to halt the rise of political rivals on the far right) – is a likely cause of migration policy – with the exception of the protection of the rights and interests of Hungarian minorities – being placed nearly permanently on the fringe of domestic political agendas.

Despite its weaknesses, the Hungarian Migration Strategy is a useful document for identifying the potential areas of conflict between the national interest and Union obligations. It revealed, for example, the different burdens placed on individual Member States within the common framework of EU migration policy. It made it clear that Hungary's interests as a transit country and as a point of entry to the Schengen area are different from those of the Western European countries serving as the final destination for the majority of migrants. Within the EU migration policy framework, Hungary is particularly interested in securing the availability of resources for border controls, making sufficient resources available for and developing the standards applicable to the housing, living conditions, general treatment, detention etc. of migrants, and in the rules governing the first instance administration of cases dealing with the status of migrants. The Migration Strategy and subsequent developments have also brought to the fore the tensions between the different limbs of the relevant EU policies, namely, the Schengen obligation to maintain and secure a strict policing of the external borders of the EU and the EU/international migration policy obligation to allow migrants to enter the territory of the EU. The EU was rather slow in recognising these issues which are specific to Hungary and its eastern border, and for some time it was rather reluctant to accommodate these particularly Eastern European implementation problems and policy conflicts.

The MLE raised that Hungary very often follows the German or the Austrian position in this policy area. The V4 has traditionally played a limited role in coordinating Eastern European positions in this domain. This changed during the crisis in Ukraine leading to regular coordination among the participating states focusing on the migration and related security, humanitarian etc. aspects of the Ukrainian situation.

Concerning the question whether Hungarian policy specificities and interests would undermine cross-border solidarity and mutual cooperation as the bases of EU migration policy, the MLE revealed that this has not been identified explicitly as a source of conflict between the Union and Hungary and that Hungary – just as other Member States – has been rather reluctant to challenge the fundamentals of such an important EU policy. It was raised that in this regard the Member States are in a difficult position as

they would be required to defend their particular interests, which are often of a financial character, against a European policy consensus created by a coalition of states under the premise that they would act in a collective manner to address a problem common to all members. Even countries facing grave difficulties in meeting their EU obligations, such as Greece protecting alone the extensive south-eastern border of the EU, have refused to ask for assistance or for the alleviation of its burdens. This also applies to the Member States asking for financial assistance from other Member States, even when that would be beneficial not only for the Member State concerned, but also for the migrants administered. In general, the principles of solidarity and mutual cooperation raise considerable suspicion among the Member States not knowing what they entail exactly and what specific burdens they represent in the execution of migration policy. There are clear examples of the EU policy framework disregarding the principle of solidarity, for instance, with regards to the excessive burdens faced by the countries of entry to the Union, such as Greece or Hungary, in the areas of border controls and the administration of migrants entering the territory of the EU or sent back by another EU Member State to the country of entry. There are also examples of Member States adopting a unilateralist, 'beggar-thy-neighbour' approach willingly inflicting the negative consequences of their complacency or non-compliant behaviour on other Member States (e.g., Italy refusing to enter the data of 17000 migrants into the EURODAC system and allowing them to leave for France).

A potential alternative to a European migration system based on solidarity and mutual cooperation could be the introduction of a quota system which determines the exact burdens of individual Member States in the EU migration regime (i.e., quotas determining the number of migrants to be administered and treated in individual Member States). While a quota system may provide for a more transparent allocation of burdens among the Member States than the current system, its introduction may in fact be hindered by its very purpose of increasing transparency and of laying down quantitatively determined obligations. These proposals, because they decrease the possibilities for the Member States to use the current regime to their individual benefit (e.g., while Hungary faces the challenge of administering a high number of incoming migrants and can claim that it has been disproportionately affected by the EU migration system, the long term treatment of migrants in the large majority of cases will be the responsibility of the western European states of final destination) undermines their interests. The quota system with its limited numbers could be more burdensome as the Member States whose obligations have been lowered on paper may be confronted with inescapable and more pressing obligations (e.g., of actually dealing with the migrants which they previously could allow to leave their territory for other destinations in the EU).

The government's attitude towards the introduction of the quota system is a tell-tale diagnosis of the formulation of its interests by Hungary within the EU migration policy framework. Before the policy change in mid-2015, its position was so flexible that it was nearly impossible to tell whether Hungary actually wanted anything to change in

EU migration policy. It was waiting for the other Member States to make their views known and for the Commission to develop the details of the proposed regime. Currently, it fervently opposes the quota system, although it is difficult to say whether this follows from a reasoned policy position or it is part of the ongoing anti-immigration political communications campaign addressed to the local electorate. The unilateral measures and actions adopted or planned in June 2015 may not change the fact that Hungary may not actually know what it wants to do with the existing EU migration policy framework.

Regarding Hungary's influence on (and intentions to influence) EU migration policy, the MLE found that Hungarian efforts under the EU framework are predominantly restricted to managing the enforcement of the EU policy. In this, it follows the earlier mentioned informal core priority point that the less migrants administered and less resources used, the better for Hungarian interests. Basically, the Hungarian administration is interested in avoiding major scandals or conflicts when executing the EU policy. It is especially interested in keeping an acceptable compliance record. Otherwise, it is reluctant to raise issues, highlight problems, or to influence the shaping of EU policy and law. A fitting indication of the prevalent attitude in the administration is that the securing of EU financial resources and of ad hoc subsidies for the Hungarian administration in the execution of the EU policy is a success for Hungary promoting its interests.

Nonetheless, the generally subsumed attitude of the administration does not mean that Hungary would not be interested in pushing forward reforms of the legal dimension of EU migration policy, especially which enable a more effective operation of the responsible local authorities, and which allow Hungary to sacrifice less public resources on migration issues. For instance, Hungary alongside other Member States supported the reforms of the applicable EU procedural rules in order to reduce the possibilities of system abuse by migrants leading to major inefficiencies in the local administration of migrants. As a more positive development, Hungary – just as other Member States – has always been interested in ensuring that the applicable standards of international law and humanitarian law are observed under the EU policy framework. There are, however, indications that Hungary may be interested in keeping these on paper and it may be less interested in implementing them at street level (e.g., condemnation by NGOs and by the Council of Europe organs of Hungarian treatment of migrants). Generally, in this regard, the Member States may follow different pathways – with some Member States being fully committed and others being less engaged – and their practices may not be entirely consistent – individually or in the Union – in tackling the potential conflicts between EU migration policy and the applicable international legal standards. As stated earlier, the insistence on meeting international obligations at the level of EU policy-making may not always be coupled with the observance of these standards in the domestic application and enforcement of the EU rules. The criticised Hungarian practices could be regarded as the consequences of Hungary pursuing particular local interests (e.g., cutting back on the use of public resources).

The MLE also discussed the ability of the Hungarian administration to acknowledge and accommodate complexities and to act combining the diverse, often overlapping limbs of EU migration policy. It was raised that generally the administration is not prepared to follow and incorporate the numerous interests and positions which the different public and private stakeholders present in this policy domain. This hiatus is further augmented by the lack of sufficient coordination mechanisms within the administration and also by false policy reflexes, such as maintaining that international migration is a question of public security falling within the responsibility of the Minister for Home and Police Affairs. There is a resistance in the administration to mainstreaming international migration and to follow a holistic policy approach. In the available cross-departmental coordination mechanisms (cross-departmental committee on migration (until 2004) and the cross-departmental committee on EU affairs), migration has been regarded as a matter which does not require attention from the broader government, and it has not been considered as an attractive policy area since it does not promise fast and/or attractive results. It was mentioned, nevertheless, that similar coordination and policy-image problems also characterise EU level decision-making. Assumedly, the determination of the Hungarian administration to formulate and represent more robust interests in this domain, and to act more pro-actively in the European arena, could be enhanced by changing the reputation of this policy area and also by developing a more complex and positive understanding of migration and of the possible policy responses (e.g., migration as an asset, as a motor of social development and not a social burden, or instead of taking minimum responsibility, Hungary would actively engage with migrants and the private stakeholders operating in the area).

3. The national interest in the context of EU energy policy

The MLE gave insight into the dilemmas, controversies and complexities which follow from the treatment of Member State and common European interests in the collective EU energy policy framework. It highlighted the pitfalls and hiatuses of both national and EU energy policies from this particular perspective. It was made clear that difficult dilemmas leading to equally difficult compromises characterise this policy domain, which place the national policy-maker – equally interested in and equally conflicted by national and EU energy policy priorities – under a large amount of responsibility without the Union administration perhaps adequately recognising this. This is an area where the interests of individual Member States can sharply collide and where the common policy – because of technological, political and social differences – can serve the interests of certain Member States better than those of others (e.g., EU renewable energy policy favouring Member States that have invested considerably in this domain). This could lead to a fervent criticism, even opposition to the common policy and to Member States jealously safeguarding their position or challenging the position of other Member States in the integrated energy market. Therefore, in EU energy policy, the national interest does not emerge merely as a functional, operationalised concept used by the national administration, and Member State governments are constantly reminded of the cross-border interdependencies and of the pressures of cooperation which shape the understanding and formulation of local energy interests.

The Hungarian national interest in this area would cover the national energy mix, the affordability of energy prices, energy security, or lowering dependence on energy imports and increasing the share of domestically produced energy. The national interest could also emerge when under pressure from EU Commission enforcement procedures the Hungarian government is required to justify national measures infringing EU law (e.g., the protection of a requirement of Hungarian establishment in national legislation on the ground that the interest of security of supply or consumer protection require a locally available representative of the service provider (a justification which is rather likely to fail the applicable legal test)). Most of these would correspond with the priorities of EU energy policy, but some of them – especially their policy framing and domestic implementation – could go against general and specific EU commitments. As in other policy areas, governments would be more interested in fast, short-term solutions, they would be suspicious of top-down (EU) obligations requiring significant private or public investment (e.g., in the area of energy efficiency), and they would be inclined to overlook complexities, contradictions and correlations in energy policy. For Hungarian governments, the dominant limbs of energy policy – certainly, the few of which they could interpret at the political level, such as short-term price or short-term energy security – have always enjoyed priority over the less concrete and in a shorter timeframe less pressing areas. Research and development in energy technology – although handsomely financed through EU R&D monies – has never been pursued

actively by the administration in what is a knowledge- and technology-intensive sector. The Hungarian government following its political priorities may not be particularly inclined to recognise conflicts with parallel policy priorities or with parallel policies (e.g., the impact of fracking on the Hungarian water base, which is recognised as the only genuine natural resource available in the Carpathian Basin), or their elected policy priority could exclude all other priorities and parallel considerations (e.g., *Paks 2*, the planned new nuclear power plant in Hungary will exclude nearly all investment in alternative energy sources as their presence will undermine the efficiency – efficiency being the main political reason for this project – of the government’s controversial flagship energy infrastructure development project). Hungarian governments could also be prepared to regard the Hungarian energy market as isolated from the integrated European energy market and could fail to integrate its impact (e.g., of German renewable energy being available in the Hungarian market, or Hungarian energy being forced to compete with German renewable energy in the European market) on local energy production, prices, security etc.

EU and national energy policy is a highly politicised and politically sensitive area in which expert knowledge on the technologies available or economic evidence promoting marketization and market integration may not be the only driving factors. Because of the influence of politics over energy policy, under the current Hungarian government there are certain issues which will be rejected or which will be pursued regardless of their policy rationality or of their compatibility with EU obligations. These include the gradual abolishment of regulated energy prices as an EU policy priority, as price regulation (regulated decrease in energy prices) was a key element of the election campaign in 2014, and the promotion of alternative sources of energy, such as wind, as the government has just committed Hungary nearly completely to nuclear energy for the remainder of this century. There are areas where resistance from the Hungarian government and the protection of local interests are, in fact, based on policy or other expert considerations. For instance, the Hungarian government is prepared to safeguard national competences within the forming European Energy Union, especially, those of national regulatory agencies. Essentially, Hungary does agree with the European takeover of national regulatory competences when responsibility, or aspects of the responsibility which should come with regulation is not transferred to the European level. In Hungary’s view, the benefits of European centralisation (in regulation through European agencies and in deregulation through legislation or through the EU Court of Justice) are not yet visible, whereas its risks affecting national and European energy governance are already apparent. Essentially, Hungary is very reluctant to transfer powers to deliver energy security and security of supply in the country when the available EU frameworks are not particularly reassuring and in case of an emergency the responsibility will be borne by the national government.

The MLE also discussed whether there would be significant overlaps between the national interest and corporate interests in energy policy, and whether energy policy would be prepared under the direct influence of corporate stakeholders. It was raised

that this may be unavoidable as the information deficit of the administration can only be addressed when it closely cooperates with corporate actors. Also, the administration is under an obligation of public consultation with stakeholders. Fundamentally, it can be rather difficult to separate the interests of corporate stakeholders and of the state in energy policy. On the one hand, the interests of the Member States and of companies – state or privately owned – operating in the energy market can indeed overlap. On the other, it is difficult to exclude that the benefits realised by economic operators will lead to benefits for society at large. The bottom line is whether in energy policy the separation of corporate and state interests holds any public benefits, and whether ending the cosy relationship between corporate stakeholders and the state and introducing more transparency and competition would lead to satisfactory results not only in an ideal world but also in a difficult, highly politicised market such as energy.

The dilemmas faced in this regard are represented in the cases when Hungary was required to protect national measures which safeguarded the interests of domestic corporate entities. For example, in the dispute concerning Hungary's quality standard for fuels, which is higher and more restrictive than in the rest of the EU, Hungary was acting in the interest of *MOL*, the partially Hungarian state-owned regional energy giant, when it decided to protect the legally binding Hungarian standard. In this case, it was not clear whether the Hungarian position linked to the interest of *MOL* was in harmony with the interests of society at large, including Hungarian consumers, and whether Hungary by trying to justify a national legal measure on grounds of the general interest was merely trying to safeguard the position of a commercial enterprise in the domestic market. Because *MOL* is partly state-owned and is one of the few Hungarian companies with regional relevance, it may be difficult to deny that safeguarding its market positions serves the broader Hungarian interest.

The benefits of a transparent and competitive European energy market – which should follow from the European model developed for energy production and supply – will come under sharp scrutiny in the competition case launched by the EU Commission against Gazprom. Whilst the case is conducted, indirectly, in the protection of the interests of European states and European consumers dependent upon the supply agreements concluded with Gazprom, it is not clear that the transparency and competition requirements pursued by the Commission are all that important to some of the Member States which have been drawn into the zone of Russian economic influence. For these governments, the supply agreements could be important as potential components in an economic bargaining process which involves much higher stakes (e.g., access to the Russian market, or access to Russian loans and investment). The insistence of the Member States on keeping the prerogative of determining their energy mix may indicate that the stakes could be much higher than to leave energy to a competitive market. The transparency requirements following from the emergency supply provisions of EU energy law could also be a burden for Member State governments and the companies affected alike. In Hungary, there is a constant flow of litigation against companies failing to provide the requested data claiming, mainly, that business secrets

and other sensitive business information need to be protected. Similarly, increasing the competences of the European regulator in order to gain more insight – through transparency obligations – into the operation of the European energy market could meet the opposition of national governments. In this case, corporate interests to keep business information undisclosed can be comfortably aligned with the national interest, as the Member States may be equally interested in keeping energy transactions hidden from the Commission. Firstly, in the current geopolitical situation in Eastern Europe this information could be politically uncomfortable for national governments. Secondly, the information disclosed could identify hiatuses in the domestic implementation of EU energy policy and lead to more direct political and legal pressure from the Commission to ensure that governments comply (e.g., by diversifying the geographical locations of their energy source).

Although politics plays an important role in developing the national position in energy policy, expert knowledge is not completely discarded. In recent years, however, it was particularly difficult to maintain the influence of energy policy expertise in the Hungarian policy process. Currently, expert knowledge can be used to express legal and other concerns about the directions and instruments of energy policy. This is unlikely to stop decision-makers, although before making their decisions they will want to know about the expert considerations. In general, the Hungarian administration has been finding it difficult to reconcile political priorities with policy complexities. It has also been difficult to present expert arguments in a way that they would not be used solely for the purpose of supporting an earlier political decision. The impact of expert knowledge or the knowledge of best practices is uncertain: while they may be demanded or even specially commissioned by decision-makers, they could be ignored, discarded, noticed, used or even abused.

Regarding the issue of creating an institutional framework at the national level that is capable of addressing the complexity of issues covered by EU and national energy policy, the MLE highlighted that this has posed considerable challenges in Hungary. The fundamental dilemma is that whilst an integrated institutional framework could be desirable from the perspective of maintaining policy coherence, effective governance and the adequate distribution of administrative tasks could indeed require the separation of different policy areas within the government institutional framework (e.g., climate change, energy efficiency, energy regulation, nuclear energy, energy safety and management, European and international affairs). In this dispersed framework, the Hungarian position on EU proposals would be prepared and coordinated by a unit different from the one responsible for the implementation of the policy. This requires constant coordination in every phase between all units involved, and also with the other ministries responsible for the ‘external’ aspects of energy policy, such as environment, public finances or transportation. Maintaining the coherence of the ‘internal’ and ‘external’ aspects of energy policy – as it follows from the EU policy framework – is necessary so as to avoid different policy areas undermining each other’s outputs.

Regarding the issue of the enforcement of EU obligations, it was raised that in matters of economic or social importance, the threat of enforcement may be ignored until the infringement of EU law by the Member State concerned is established and, thus, the room for negotiation or the possibility to escape legal responsibility is reduced to the minimum. The fact whether the infringement of EU law is likely to be/has been established is perhaps the foremost indicator for the national policy-maker of when and how to change the national policy (and political) agenda. The communications approach followed by national governments (e.g., provoking the EU, testing public reactions domestically, or achieving short-term political gains domestically) must be distinguished from the actual governmental reactions to the commencement of enforcement procedures. Generally, at least three different strategies will be followed – one in government communication, another regarding the participation in the procedures, and another one in preparing the governance responses depending on whether and when the government decides to comply. There is a general understanding that enforcement procedures give at least 1 to 2 years for the government to come up with a solution or to continue with the breach of EU obligations, and that avoiding the actual imposition of the fine may be the only genuine concern for government conduct in these procedures (this could mean the government actively engaging in negotiation with the Commission, preparing a strong legal case, hoping to mitigate the negative consequences, or pushing the limits only as far as avoiding the fine). It is not excluded that even this latter consideration could be overwritten by short-term government interests. Within this understanding of EU infringements, there is no guarantee that the government would not be pursuing a ‘scorched earth’ strategy aiming to change market and/or social circumstances so fundamentally that restitution would be excluded even in case the infringement is established and a fine is imposed. This is obviously not without consequences because as a result the general political treatment of Hungary within the Union could become harsher and Hungarian policies could be subjected to a stricter, more critical scrutiny by the Commission or by the Member States. It seems that the advantages gained in one policy area could be levelled out by the general disadvantages of losing trust in the Union, or by the disadvantages suffered in other policy areas.

This approach to compliance and enforcement necessarily raises the question whether in sensitive and complex policy areas, such as energy policy, the Member States can rationally make the choice that in order to secure maximum room for political and policy manoeuvring every potential issue should be regarded as falling within the sphere of the national interest and, when circumstances change, every potential issue can be dropped as damaging the interest of the Member State. This reduced, opportunistic understanding of EU (and domestic) policy arenas and agendas holds in itself the risk that the supposed benchmarks of governance, such as rationality, certainty, predictability, transparency and accountability lose their meaning and relevance. This, eventually, could be detrimental to the quality of governance in the Member States damaging the interests of society at large. Moreover, there is a constant threat that for the sake of realising smaller political gains, the larger, long-term and

socially and economically more relevant public and private benefits of collective action at the state and European levels will fail to materialise. This is particularly problematic in energy policy in the case of Member States which are in desperate need of modernisation and investment, and which are exposed to a large extent to the negative effects of cross-border interdependencies.

The MLE also touched upon the issue that in sensitive and complex policy areas, such as energy policy, decisions by Member States to rely exclusively on the collective frameworks of cooperation and governance at the European level, and to shape their individual conduct so as to support collective action (e.g., trusting mutually other Member States, or cooperating with other Member States for the benefit of the common policy) may contain considerable political, economic and social risks. It is not guaranteed that other Member States will set aside their particular interests which are capable of undermining the aims of collective action, and that they could be trusted with their participation in the common policy framework. The consequences of non-compliance by individual Member States potentially could be much graver than, for example, in the area of trade in goods in the Single Market as energy policy – at least in the long run – is pursued in the more fundamental interest of a sustainable environmental, economic and social future of Europe. The dilemmas of multilateral systems (i.e., that states first need to trust each other mutually to be trusted by others) are evident even in bilateral relations within the EU energy policy framework. Following EU policy on increasing the interconnectedness of national energy systems, Hungary could build cross-border energy connections (e.g., short natural gas pipelines connecting Hungary with Slovakia and Romania) with its neighbours, but there is no guarantee that its neighbours will make the same efforts and will not try to undermine the common efforts for reasons (e.g., budgetary, economic (private/public)) that are particular to that state. This way not only the common policy, but Hungary's individual efforts under the common policy framework will also be put to jeopardy.

In the context of EU energy policy, subsidiarity emerges as a dynamic and effective instrument for the Member States to shape EU policy and to act in the protection of the national interest. Even though the MLE did not reveal such conscious use of subsidiarity by Hungary, it was raised that together with claims for conserving Member State policy and legal autonomy it could be deployed tactically in order to advance economic and social interests formulated locally. This could be of primary importance when centralisation (regulatory and administrative) at the European level threatens local energy interests, interests which could be recognised as forming part of the European policy framework but which have been overruled in a balancing exercise in favour of another, competing consideration forming part of the EU policy agenda (e.g., security of supplies (from a certain source (Russian natural gas)) balanced locally against the European priority of energy source diversification). There can also be a case of potentially damaging interferences between the centralised and the decentralised aspects of EU energy policy (e.g., in the case of supplies in the event of an emergency) where these conflicts could entail that the priorities of each limb of EU energy policy

involved undermine each other and put the corresponding European and national interest in jeopardy (e.g., effective centralised administration interfering with the effective operation of local energy markets). In this regard, it was emphasised that a successful use of subsidiarity and Member State autonomy will lead to the Member State concerned having to assume responsibility for policies and policy failures. Not only will individual Member States lose the opportunity to blame the Union for failures, but their own short-termism uncontrolled by EU action will also be directly responsible for their long-term interests as expressed in both national and Union energy policy frameworks not being realised. As also emphasised earlier, for a Member State government focusing on a 4 to 5 year political period and being in charge of a limited amount of resources, making responsible choices in connection with European energy policy – considering the overlaps between local and collective European interests – involves working with particularly tough dilemmas offering only severely restricted compromises. When formulating these compromises, it is relevant, from the perspective of the democratic legitimacy and accountability of the decisions made, whether they are made by national governments alone or jointly in the Council, or by executive bodies at the European level. When addressing these issues, subsidiarity could offer the guiding principle for policy design.

Concerning the continuous push towards a single European energy market and the tendency towards increasing centralisation in EU energy policy, the MLE raised that the Member States should be reluctant to surrender competences and/or downsize decentralised frameworks for energy governance, unless the European level assumes clear – political, expert, financial or other – responsibility for the areas and competences gained, or it should offer some kind of a compensation to the Member States. It was discussed that losing opportunities for making decisions at the national level and/or being forced into collective decision-making frameworks in ever increasing areas of energy policy – even though that may be justified by regional interdependencies, the need for cooperation, or by the necessity for avoiding local policy failure – should come with some form of relief for the Member States from the responsibility of executing EU energy policy. It seems that in the current governance framework for energy policy the Member States are left with the difficult task of implementing obligations negotiated and accepted at the European level, which involves making the politically, socially and economically controversial choices of European energy policy at the national level. The Member States must also find room for promoting and protecting locally relevant interests (e.g., developing technological solutions locally to protect the national and the interconnected European grid from the negative impact of energy overproduction in other parts of the integrated European energy market), and they may be expected to give effect to political and geopolitical priorities agreed at the European level (e.g., sanctions against Russia or loosening the ties with *Gazprom*) which may be in clear contravention of local energy interests determined, in part, by the geographical position of the Member State concerned. The inclusion of larger geopolitical interests into determining responsibility and obligations at the Member State level could lead to the

interests of certain Member States being treated differently from those of the others, without compensation being offered to remedy this unequal treatment in a policy framework which may no longer be deemed to serve the equal and mutual interests of those involved. This could be particularly damaging to smaller Member States more exposed to shifts in global politics and global markets the interests of which – no matter how adequately they may be prepared in law, in policy or in political terms – could be suppressed by the actual preferences – which could, in fact, be appreciated and supported by every Member State in the Union – of the dominant larger Member States.