

POLICY PROPOSAL - 2023 No.1

HOW SHOULD THE SYSTEM OF CHECKS AND BALANCES BE RECALIBRATED?

The policy proposals of the Equilibrium
Institute on the reform of the
constitutional institutions in Hungary



Equilibrium
Institute



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be recalibrated?**

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EXECUTIVE SUMMARY

01

Declining public trust in politics, extreme political polarisation, weakening constitutional institutions and social cohesion, or deteriorating quality of policy-making are problems that undermine the sustainability of democracies around the world. However, there is still a way out of democratic decline.

02

Constitutional democracy is based on a balance between two elements in tension: the majority principle (rule of the people) and constitutionalism (rule of law). If the balance is tipped in favour of the first, the tyranny of the majority, if in favour of the second, elitist technocracy undermines the stability of democracy. In order to create a new system of checks and balances, the limits of each are to be clarified, i.e. where more democracy is needed and where less democracy is needed.

03

The competitiveness and sustainability of democracies are today threatened by three trends: democratic deficit, extreme political polarisation and growing doubts about the viability and sustainability of democracy. At the same time, technological progress is providing solutions to a number of problems related to democracy that previously seemed insurmountable.

04

Let's have more trust in the electorate to create a new system of checks and balances! Enable smooth and secure e-voting by 2030! Let citizens decide on 2% of the budget in every city and Budapest districts through participatory budgeting! Involve citizens in the legislative process through Wikidemocracy!

05

Let's trust the voters less to create a new system of checks and balances! The volatility of the majority will have already been counterbalanced by a number of meritocratic institutions (above all the courts and central banks). In many other policy fields, professional competence is clearly better, while political considerations and dependencies generally lead to worse decisions. While respecting the powers of popular sovereignty, let's increase the number of meritocratic institutions!

06

Let's open up the state's top offices to the world's best professionals! Let elected politicians have the right to set the main policy directions, but let's strengthen the independency of constitutional institutions that limit their power! Let the leaders of these institutions be selected by independent professional nomination committees rather than

by politics, based as much as possible on measurable professional excellence and as little as possible on political affiliations!

07

Let's leave the detailed rules of the tax system to an independent „tax council” and the management of public procurement to bureaucrats independent of politics!

08






Let's make our flagship constitutional institutions 'inflexible'! Instead of a two-thirds majority, make the adoption and amendment of laws governing fundamental constitutional rights and democratic competition subject to a three-quarters majority! From 2024, democratic civic education should be an independent, competency-based and experiential subject taught at least two hours a week in primary and secondary education!

1. WHAT IS THE PROBLEM?

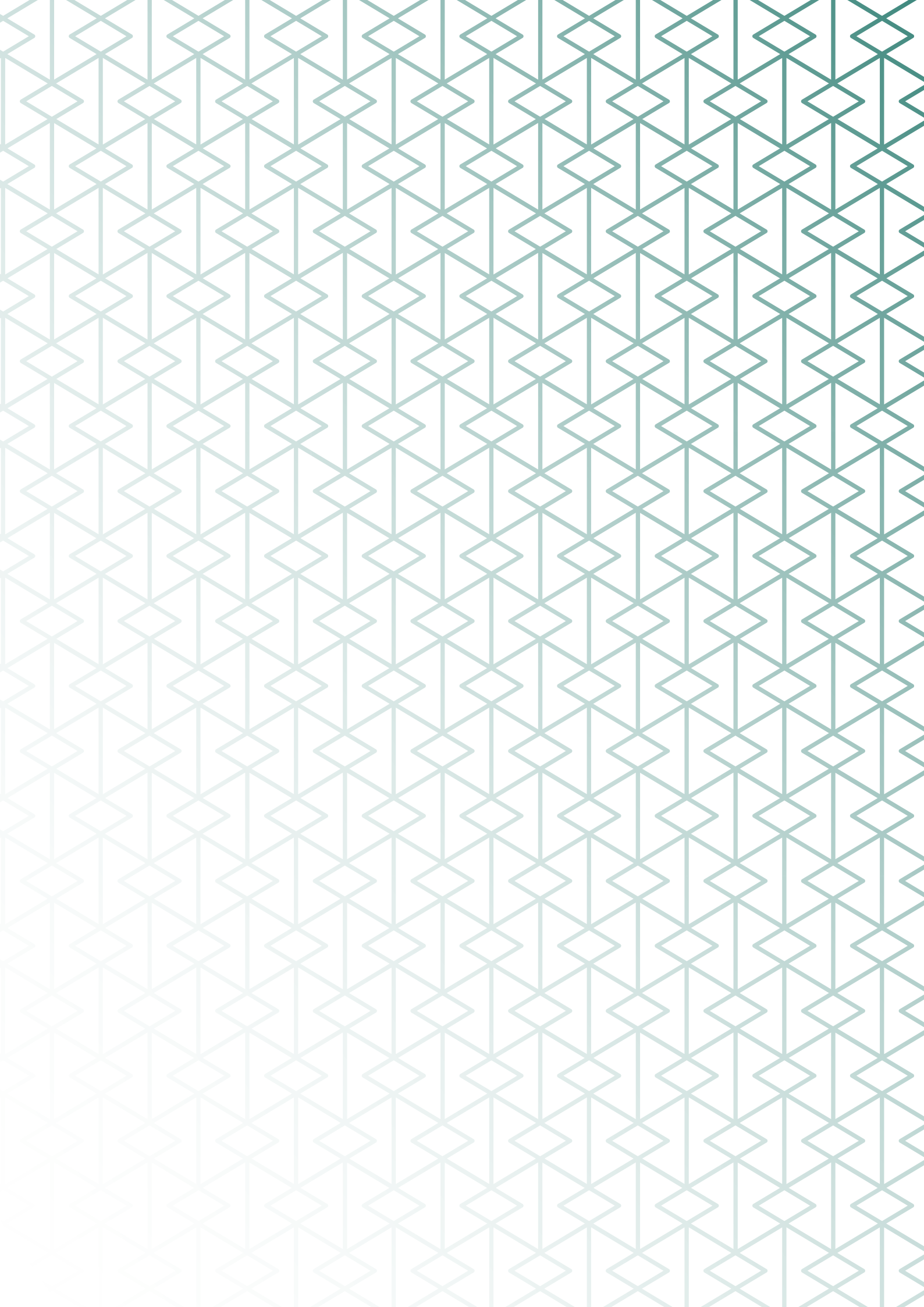
Declining public trust in politics, extreme political polarisation, weakening constitutional institutions or the deterioration of the quality of policy-making undermine the sustainability of democracies around the world.

In the meantime, technological progress has opened up new opportunities for improving democracies and breaking down long-standing barriers to participation. The internet, the proliferation of smartphones and the development of blockchain technology have broken down barriers to participation and decision-making that were previously thought insurmountable, and will in the near future also affect the way we think about checks and balances, the principle of representation and lawmaking. **One of the great lessons of the millennium is precisely that democratic development is not a one-way street: there is still a way back from democratic decline.**

The following discussion will focus on the challenges facing democracy as a system of government in the twenty-first century and the new opportunities for its renewal and technological development. In doing so, we will seek answers to the following questions:

-  How the system of checks and balances in Hungary should be redefined and strengthened?
-  How could both democratic participation and the quality of policy-making be increased?
-  How the legitimacy of democracy can be strengthened in Hungary?
-  How the extreme political polarisation that undermines democracy can be reduced?
-  How can we harness the potential of the technological revolution in the development of our democratic institutions?

We offer solutions to three fundamental challenges facing democracies around the world and Hungary at the beginning of the twenty-first century: 1. the **deficit of democratic participation**; 2. the **deterioration in the quality of policy-making** resulting from the unclarified relationship between democracy and the rule of law; and 3. extreme **political polarisation**.



2. FIVE CHALLENGES

I 2.1. LACK OF DEMOCRACY AND LEGITIMACY

There is a worldwide perception that democracy serves the interests of a narrow elite, not the majority, and that voters have no meaningful influence on the development of their common affairs. In other words, **democracy is threatened above all by democratic deficit and voter disenchantment with politics**. People are less and less confident that the rule of the people is really their rule, especially when the exercise of popular sovereignty is limited to elections at fixed intervals.

The growing uncertainties of our century, i. e. global terrorism, pandemics, successive financial and economic crises have led to a significant decline in faith in the effectiveness of democracy. Increasingly, it is hypothesised that centralised authoritarian regimes are better able to respond to unexpected crises and will therefore inevitably prevail over democracies. Empirical research suggests that **it is too early to bury democracies, but improving the quality of democratic decision-making is essential** for the long-term stability of these systems.

I 2.2. THE UNCLEAR RELATIONSHIP BETWEEN DEMOCRACY AND CONSTITUTIONALISM – THE DECLINING QUALITY OF POLICY-MAKING

The constitutional democracy is based on a delicate balance between two elements in tension: **the majority principle** (rule of the people) and **constitutionalism** (rule of law), which limits the will of the majority. The predominance of the first leads to **tyranny of the majority**, while the dominance of the second leads to **elitist technocracy**. Both are incompatible with the foundations of democracy, and therefore the clear jurisdictional boundaries between the two main elements must be drawn.

Our most important political choices are often determined not by mere facts, but by beliefs, personal values, and beliefs. Elitist technocracy is a dangerous temptation not only because it ultimately undermines the legitimacy of democracies, but also because it is in fact an illusion: it is based on the false assumption that politics can be depoliticised, that politics is just the matter of ‘profession’.

However, there are many policy fields where **facts and professional considerations are not only important but can be objectively assessed**. In these areas, specific professional competences are needed, and decisions that often go against the short-term will of the majority must be made. The example of the judiciary or of central banks that manage monetary policy independently of governments and the will of the electorate illustrate that, paradoxically, **the long-term competitiveness of democracies can in some cases be ensured by less democracy**.

Meritocracy has so far proved superior in areas that have two important distinguishing features: a) unlike most political decision situations, **a clear distinction can be made between decisions that serve and do not serve the goals that everyone believes to be right**; b) **political influence and the majority principle consistently bias towards ,bad' decisions** rather than ,good' decisions. The simultaneous fulfillment of these two conditions is typically observed in two areas: public administration and the functioning of institutions that apply norms that influence the fairness of political competition and the enforcement of fundamental rights.

I 2.3. EXTREME POLITICAL POLARIZATION AND THE LACK OF TRUST

In recent decades, extreme political polarisation in many of the world's oldest democracies has reached threatening proportions. **Extreme polarisation reduces the quality of policy-making, weakens social cohesion, undermines the legitimacy of the constitutional order and hurts economic growth**. A certain degree of mistrust between citizens divided on fundamental issues is natural, but the consequences can be unpredictable if this mistrust also destroys faith in the democratic system.

The degree of political polarisation in Hungary has increased significantly over the last two decades. Recent surveys show that the divisions that have been straining society are not only the result of spontaneous processes, but also of extremely divisive political discourses between competing elite groups. **The long-term sustainability of Hungarian democracy depends highly on the solution of this problem**.

3. THE POLICY PROPOSALS OF THE EQUILIBRIUM INSTITUTE ON THE RENEWING OF THE HUNGARIAN CONSTITUTIONAL INSTITUTIONS AND A NEW SYSTEM OF CHECKS AND BALANCES

I 3.1. ADDRESSING DEMOCRATIC DEFICIT

The main policy tool for increasing trust in democracy and avoiding elitist technocracy is to **involve citizens in the political processes**: creating as many opportunities as possible for them to have a direct say in the issues that affect them.

▶ E-VOTING FOR 2030!

In order to increase democratic participation, by 2030 all Hungarian voters should be able to vote electronically (online or via smartphone)! The introduction of e-voting, which ensures secure and equal opportunities for all, can only be achieved gradually, step by step. Voters need to be prepared for new ways of voting through targeted development of digital competences and experience-gathering. In the next decade, we should therefore **‘experiment’ with local referendums, electronic citizens’ consultations or even ‘parallel voting’ (i.e. electronic voting at the polling station on an experimental basis, provisionally without legal consequences).**

From the 2024 European Parliamentary elections onwards, all polling stations should be equipped with electronic voting machines, so-called e-voting kiosks. This device provides each citizen with a unique identifier (authentication token), which will be scanned by the

voting machine to allow them to cast their vote. The vote cast cannot be linked to the voter’s name in any register, but the voter can check afterwards that his/her vote was indeed recorded for the candidate or list of his/her choice. In countries that use voting machines (including many US states), there is now a wealth of experience with e-voting, so electoral authorities have ample opportunity to learn from the mistakes and successes of others.

▶ FROM 2024, LET THE CITIZENS DECIDE DIRECTLY ON 2 PERCENT OF THE BUDGET OF CITIES AND BUDAPEST DISTRICTS!

The legitimacy of democracy, as well as the quality of participation could be increased if citizens were given more opportunities to participate in shaping the meaningful development of their immediate environment. The most obvious place to do this is **at local government level**, where the decisions that most affect citizens’ daily lives and on which they have the most information are taken. **On issues such as urban development, land use planning or traffic regulation, citizens are best placed to assess what would best serve their well-being and safety.**

From 2024, in all cities and Budapest districts, local people should decide on at least 2% of the main budget through participatory budgeting! Empirical evidence has shown that this institution has positive effects beyond its own: it strengthens trust in politics and emotional attachment to the municipality, and develops the community's capacity to organize, cooperate and better understand the political process.

It is vital that participatory budgeting should be a **systematic mechanism that delivers meaningful results**. The 2% of the budgets of cities and Budapest districts is already a sufficiently large amount of resources for citizens to achieve meaningful, tangible results through the use of these resources, while it doesn't radically reduce the amount of resources that can be spent by municipal governments at their discretion.

LET'S ESTABLISH WIKIDEMOCRACY!

Nowadays, voters can have a direct say not only in the allocation of budgetary resources, but also in the process of legislation. **The internet offers the opportunity for masses of people who are complete strangers to each other to work together to create content.** There are many ways of channelling opinions and dispersed knowledge,

from defining the principles of legislation to drafting or evaluating a specific piece of legislation, to approving or correcting the text. New Zealand allowed citizens to participate in the drafting of a new law on policing as early as 2007, and in Brazil, a pioneer of participatory and e-budgeting, 30 percent of the text of a new law on youth rights was written by stakeholders on the e-Democracia Wikilegis platform in 2010.

Wikidemocracy, or collaborative e-democracy, can be utilized in working out the specific details of how to achieve some or all of the clearly defined objectives, or in channeling the views of the widest possible range of citizens (and experts) involved. This also presupposes that the conditions for participation are clearly defined, as are the deadlines for drafting or commenting on the legislation in question and the way in which changes to be put to the vote are to be filtered. **Although this process would significantly affect the role of MEPs, the final bill would still be voted on by democratically empowered politicians.**

Once the necessary infrastructure is in place and voters are trained, **let's start experimenting with this method in Hungary from 2024.** Here, too, it is worth involving citizens in decisions at local level first, so that the experience gained here can be used as a basis for national decision-making.

I 3.2. IMPROVING THE QUALITY OF POLICY-MAKING

Our proposals to strengthen direct participation were designed to avoid the trap of an elitist technocracy disconnected from the people and to increase the trust in the democratic system.

LET'S CREATE INDEPENDENT EXPERT BODIES!

It seems far from rational that today, for example, the judges and the president of the Constitutional Court, the Prosecutor General, the head of the State Audit Office, or the members of the National Electoral Commission are elected by politicians who compete for power and depend on

the sympathy of the electorate – especially when taken into consideration that, given a sufficiently large mandate, the government majority can pursue its own interests without limit. In addition to these, from the Curia and the President of the National Office of the Judiciary to the National Media and Communications Authority and the Office of Economic Competition, the Central Bank or the President of the Public Procurement Authority, there are many other bodies and positions where professionalism and political independence should be paramount.

These offices should be filled by professional nomination committees rather than by elected politicians. These

bodies could be composed of delegates or elected representatives from university departments, professional interest groups or the most eminent representatives of the profession concerned – **the point being that their selection should be determined as much as possible by measurable professional excellence and as little as possible by political affiliations.** The depoliticisation and genuine independence of our constitutional control institutions could improve both their professionalism and the general public trust in them.

LET'S SEPARATE THE JURISDICTION OF POLITICS AND PROFESSIONALISM!

The clear distinction between professionalism and practical political considerations is also vital in the optimal implementation of policy tasks. To use the example of the tax system: elected politicians should determine whether the tax system should be progressive or single-rate, whether it should support certain groups for social policy purposes, whether it should place greater emphasis on reducing inequality or on stimulating economic growth. But how the detailed rules of the tax system best and most simply serve these objectives is better understood by economists. Moreover, compared to politicians, economists are less likely to be distracted by political considerations from consistently pursuing these goals.

This is why, in the late 1990s, a prominent US economist suggested that **an independent meritocratic body in the US, the 'Federal Fiscal Council', should be modelled on the Federal Reserve to ensure that the tax priorities set by Congress are professionally enforced.** Politicians would set the general parameters of taxation: for example, what percentage of GDP should be taxed, what percentage should go to the top 10 percent, or which major social groups should be prioritized. However, it would be up to an independent meritocratic tax council, operating on the same principle as the central banks, to design the tax system in line with these parameters.

Similar bodies, independent of political considerations, could be set up in many areas in Hungary. Above all **in areas where the effectiveness of decisions can be assessed on the basis of objective indicators and where political considerations clearly hinder the achievement of declared objectives.** In these areas, the professional implementation of politically determined objectives could be more effectively

pursued by non-politically mandated officials. In addition to taxation, one such decision-making area is that of **public procurement**, where inefficiency and corruption cause serious financial damage to the Hungarian economy year after year, and also undermine the legitimacy of the whole political system.

OPEN UP THE HUNGARIAN STATE TO THE WORLD'S BEST PROFESSIONALS!

The best professionals are not always necessarily citizens of the State. It is for this reason that **many countries have decided to open up certain offices to the best professionals in the world, regardless of their nationality.** In the UK, for example, a Canadian economist was appointed to head the Federal Reserve in 2013; in the US, if not the chairman of the Federal Reserve, many of its key officials can be of any nationality; and Hong Kong and Botswana regularly employ foreign judges in the judiciary.

There would be no reason why Hungary should not be able to choose from the whole range of professionals from all over the world to fill positions requiring clear professional competences – but only in areas where speaking Hungarian is not a prerequisite for effective work. Let's select the world's best professionals for the management of the Hungarian National Bank, the State Audit Office, the Economic Competition Office, the National Public Health Centre or even the Budapest Transport Centre through an open competition! Of course, the competition would also require candidates to demonstrate their knowledge of the Hungarian legal environment, so even in this system Hungarian candidates (or candidates of Hungarian origin) would have an advantage. **Such a move would not only enhance the professionalism and innovation potential of these organisations, by drawing on other countries and organisational cultures, but also their impartiality and thus their credibility:** professionals from abroad would, by definition, at least be less likely to be suspected of local political bias.

The basic principle is not, of course, that a professional of Hungarian nationality cannot be the best in the world in his or her field, but that professional excellence is not determined by nationality, and the world as a whole simply offers greater choice than Hungary.

I 3.3. FORTIFYING DEMOCRACY

One of the greatest threats to constitutional democracy is **when the current electoral majority is used to shape the rules of the game of constitutional democracy**. Therefore, it is a key challenge to address the trap of the ‘tyranny of the majority’.

▶ LET'S INTRODUCE A FOUR-FIFTHS MAJORITY RULE!

The government majority should have the right to shape key policies as it sees fit – but **should not be suspected of using its power to destroy fundamental constitutional rights or manipulate the rules of democratic competition!** Let's not leave the constitutional system to the vagaries of electoral luck: let's make our key constitutional institutions inflexible and difficult to manipulate!

In view of the extreme and deepening polarisation of Hungarian politics, the possibility of a single party or political side being able to modify fundamental constitutional rights to suit its own power interests must be minimised, as this directly affects the balance of power in the political contest. Typically, **this concerns the Fundamental Law and laws regulating fundamental rights and basic constitutional institutions**, such as:

- ▶ drafting a new constitution, amending the Constitution
- ▶ freedom of speech, thought, conscience and religion, freedom of the press, expression and information, freedom of assembly and association etc.
- ▶ the procedure and detailed rules for the election of members of parliament and local government, the operation and management of political parties
- ▶ the method of election, the powers, the rules of organisation and operation, the status and remuneration of the members of the key constitutional institutions, in particular the President of the Republic, the Constitutional Court, the Supreme Court and the courts, the Public Prosecutor's Office, the National Bank of Hungary, the State Audit Office, the Media Supervisory Authority

Amendments to these laws today require a vote of all Members or two-thirds of the Members present. However, since in the Hungarian electoral system even a relatively small advantage in popularity can easily result in a two-thirds majority, **a two-thirds majority is a much weaker constraint than the protection of fundamental constitutional rights and democratic rules of the game deserves**. The need for consensus (above all between the government side and the opposition) on amendments to these subjects would be ensured if **the adoption or amendment of the relevant legislation were subject to a majority of at least three quarters (or, in the case of the most important constitutional institutions, a four-year delay in entry into force) rather than a two-thirds majority**.

Such inflexibility would not only protect the constitutional order more effectively, but **would also counteract the deepening of extreme political polarisation**. Bargaining and the need to work out compromises is often an unpleasant and difficult process, but it is essential if politics is not to turn into a total political war. It would also improve the predictability and quality of lawmaking.

▶ LET'S PREVENT GERRYMANDERING!

Elections in Hungary are basically decided in single-member districts, therefore, it is important that when changing electoral district boundaries, there should be no suspicion of party political influence. Demographic trends, however, make it necessary from time to time to redraw the boundaries in order to maintain the equality of votes.

In order to prevent gerrymandering, two aspects must be kept in mind: **1) the legitimacy of the outcome of the necessary redistricting and 2) the impartiality of the process**. The criteria for redistricting should be defined by clear rules (e.g. number of seats to be allocated, maximum relative difference between the population of each district, how to align with administrative boundaries, etc.). These can still be determined by the legislature, but **the enforcement of these criteria should no longer be in the hands of politicians**.

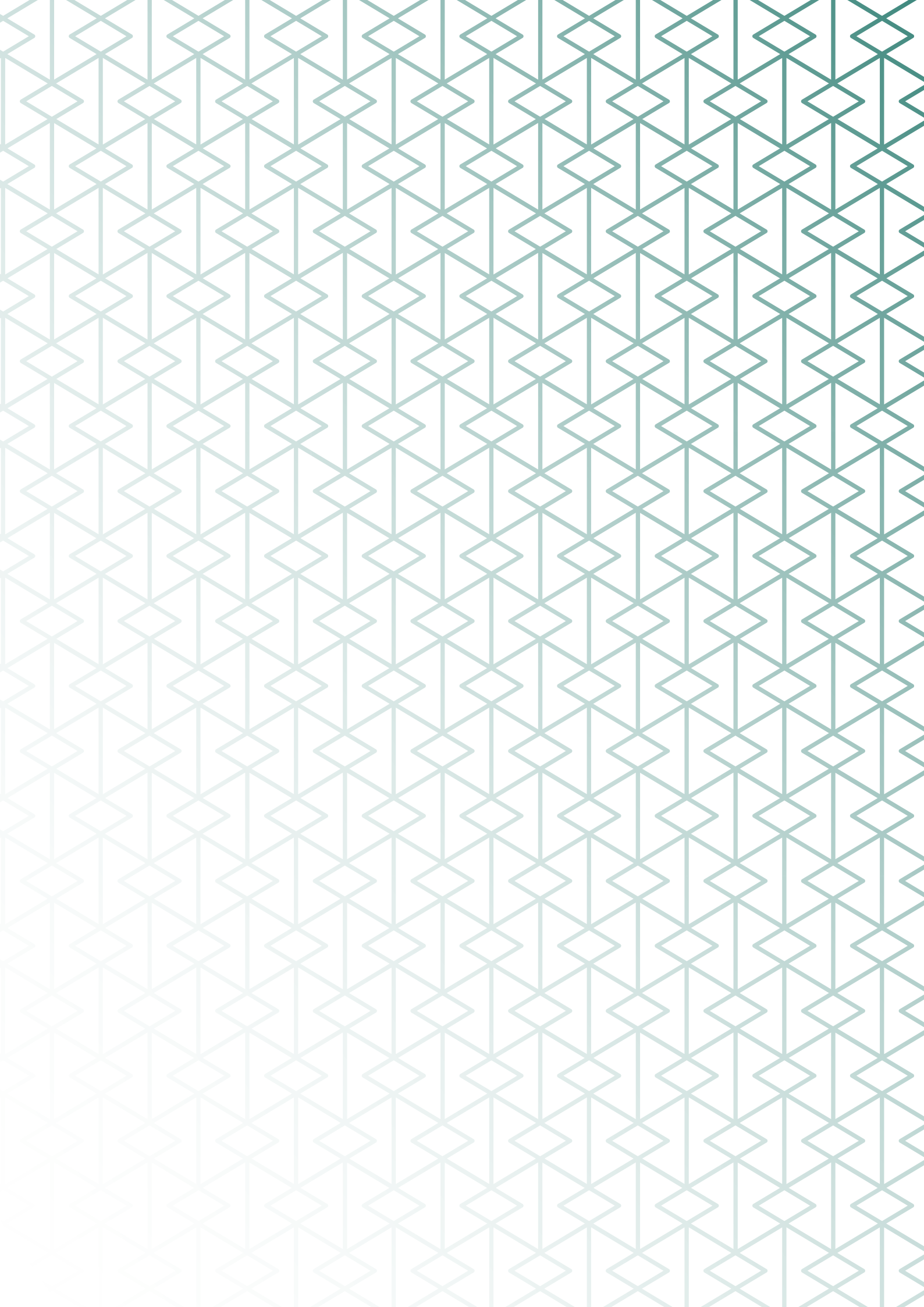
One option is for a **non-partisan body to automatically redraw the districts following each national census**, on the basis of the criteria laid down in the law. Suspicions of partisanship would probably not be completely removed for all members in this case, but it would certainly be closer to the ideal than the current procedure. **Algorithmic redistricting would be even more effective in ensuring impartiality** and optimal enforcement of the criteria set by politicians: in many countries around the world (for example, in several states in Mexico), computers already redraw district boundaries on the basis of criteria set by the legislature.

▶ **LET THE HUNGARIAN CITIZENS BE THE STRONGEST COUNTERWEIGHT! – DEMOCRATIC CIVIC EDUCATION IN SCHOOLS**

Democracy is based on specific norms, rules and skills, just like any other ‘game’: critical thinking, critical analysis of sources, the ability to interpret complex problems in a nuanced way, the ability to consider short and long-term

consequences, the ability to reason and debate in a civilised way, the tolerance of disagreement. This is why **in many democracies around the world, public education places great emphasis on the practical, experiential acquisition of civic awareness and democratic competences from an early age**. By contrast, more than three decades after the fall of communism, **the majority of young Hungarians are becoming voters without such educational experience**. As a result, young people’s political socialisation is almost exclusively influenced by political parties, in addition to their families, making them particularly vulnerable to manipulation and tribal thinking.

From 2024, civic education and democratic skills should be a stand-alone, competency-based and experiential subject in primary and secondary education, from the first primary school class to the school leaving certificate, for at least two hours a week! The subject should give young people the opportunity to experience what rights and responsibilities mean in practice, through classroom debates or the introduction of a school ‘participatory budget’ with limited resources!



THE POLICY PROPOSALS OF THE EQUILIBRIUM INSTITUTE

AREA	PROPOSAL
DEMOCRATIC DEFICIT	<p>E-voting for 2030!</p> <hr/> <p>From 2024, let the citizens decide directly on 2 percent of the total budget of Hungarian cities and Budapest districts!</p>
LEGITIMACY DEFICIT	<p>Let's establish Wikidemocracy!</p>
IMPROVING THE QUALITY OF DECISION-MAKING	<p>Let's create independent expert bodies!</p> <hr/> <p>Let's separate the jurisdiction of politics and professionalism: the detailed rules of tax policy and public procurement should be worked out by experts who work independently from politics!</p> <hr/> <p>Let's open up the Hungarian state to the world's best experts!</p>

ON THE REFORM OF THE CONSTITUTIONAL INSTITUTIONS IN HUNGARY

AREA	PROPOSAL
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**FORTIFYING
DEMOCRACY**

- **Let's protect the ground rules of democracy by a four-fifths majority rule!**
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- **Let's prevent gerrymandering - leave the redrawing of electoral district boundaries to algorithms!**
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- **Starting in 2024, education aimed at promoting civic consciousness and the acquisition of the skills needed for democratic participation should be taught as a distinct, competency and experience-centered subject with at least two class hours a week!**
-

ABOUT US

The Equilibrium Institute is Hungary's largest independent, future-oriented policy think tank.

In line with the vision of Hungary's future presented in our publication entitled Hungary 2030, the Equilibrium Institute works on creating a smart and environmentally cleaner nation rooted in a strong community. To this end, we write widely appealing and practical policy proposals that serve the development of our country, and we discuss these jointly with the best domestic and international experts.

Our goal is to ensure that the current and future political, economic, and cultural decision-makers learn about our recommendations, come to agree with them and implement them.

The staff members of the Equilibrium Institute and the members of its Advisory Board are renowned experts in Hungary who are considered to be among the best researchers and analysts in their respective fields. The work of the Institute is helped by more than 30 experts, including economists, sociologists, political scientists, lawyers, urbanists, and climate researchers.

OUR EXPERTS



TAMÁS BOROS

Executive director and co-founder of the Equilibrium Institute

He serves as a member of the Scientific Council of a leading European think tank, the Brussels-based Foundation for European Progressive Studies (FEPS). He is the co-founder and co-owner of Policy Solutions, a consultancy and research institute. He is a recurring guest on a variety of political talk shows and often comments about public affairs for leading international media. He previously worked for the European Commission and the Hungarian Ministry of Foreign Affairs as an expert on communication and EU affairs. His research focuses on Hungarian and EU political communication and populism.



GÁBOR FILIPPOV

Director of Research

Previously he worked as an expert advisor in the Hungarian National Assembly and then as a political analyst and senior analyst at the Hungarian Progressive Institute. His analyses and op-eds have been published by numerous domestic and international media outlets, and he is frequently invited to talk about politics on television and radio shows. His research focuses on the European and the Hungarian far-right, on the histories of anti-Semitism and Islamophobia and their present-day manifestations, as well as the workings of contemporary authoritarian regimes.



DÓRA CSERNUS

Senior Climate and Environmental Policy Expert

As an expert in environmental issues, she has worked for the Ministry of Environment and Water, the Office of the Parliamentary Commissioner for Future Generations and the Ministry of Public Administration and Justice, representing the Hungarian position in different EU, UN, and OECD fora. She later worked as Director for International Policy Development at Klímapolitika Research and Consultancy Ltd, and as an independent expert in climate and environmental issues. Her main focus is on climate policy, air-quality control and water policy.



ZSOLT BECSEY

Senior Economist

Zsolt Becsey started his career as an economic planner at the Ministry for National Economy, then worked as an economic analyst and later as a modeller at the Central Bank of Hungary. His areas of interest are industrial policy, input-output analysis, macroeconomics, SME policy, and competitiveness.



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