

# The Migration Referendum in Hungary

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## What is the referendum about?

The referendum is formally a reaction to a package of proposals concerning the reformation of the European Union's policies in the area of migration and asylum.<sup>1</sup> One of the suggested measures included in the package is a relocation scheme for refugees, setting up mandatory quotas for each Member State.<sup>2</sup> The scheme was adopted through a couple of Council Decisions launched in September last year. As a response to this, the Hungarian PM Viktor Orbán announced the referendum in February this year.

The question reads as follows; "Do you want the European Union to be entitled to prescribe the mandatory settlement of non-Hungarian citizens in Hungary without the consent of the parliament?"

The formal understanding of the question is that the country basically seeks the Hungarian population's approval for a governmental attempt in trying to oppose recent EU policy in the area of migration and asylum. However, the relevant Council Decisions stipulates the relocation of asylum seekers who have the right to have their application for international protection examined, which is not the same thing as mandatory settlement of these individuals.

For all that, it is ultimately a question that concerns the Unions legislative competence and ability to act without having received explicit consent on every issue. The Unions competence to adopt acts, like the mandatory quota scheme, is inherent in the EU Treaties, in this case Art. 78(3) TFEU. Hungary's referendum



will therefore have little impact in terms of strengthening its parliament vis-à-vis the EU. To do so would need Treaty-amendment, a process that needs all the other Member States to be on board.

Since the referendum has no bearing on current EU decisions, it should rather be seen more as a symbolic and political gesture. Hungary's Viktor Orbán has been keen to take on a leadership role in the resistance against the EU establishment and the refugee policies championed by Germany's Angela Merkel. Furthermore, the issue has domestic implications: the implied protection of national sovereignty is an efficient way to gain internal support for a leader that has been increasingly contested. Highlighting the issue of migration also shifts focus from other domestic problems such as corruption and sluggish growth.

### **How will this impact on EU migration policy?**

Judging by current European discussions – for example at the summit in Bratislava on the 27th of September- the EU is not about to move in the direction of major mandatory relocation schemes. As the President of the Commission, Jean-Claude Juncker, said in his State of the Union speech on the 14th of September – “solidarity must be voluntary, it must come from the heart, it cannot be forced, it cannot be imposed.”<sup>3</sup> Seeing that this is the core issue of the question posed by the Hungarian government, the answer might not have much effect outside the country's borders.

Even though the referendum itself will not have much effect, Orbán's offensive approach on this topic, despite being rejected as a populist attempt in trying to strengthen his own position, has attracted

support in some quarters of Europe. The fact that European leaders seem to welcome the concept of “flexible solidarity”, launched by the Visegrad group at the Bratislava summit, further shows how the perspective on migration has turned the last year.<sup>4</sup>

While the effect on the actual policy field might be negligible, Hungary's referendum illustrates a broader trend of populist resistance towards European integration. Policy making within the EU often takes the form of large package-deals which includes tradeoffs between member state interests. The tactic of isolating, and politicizing, a specific part of a larger package is successfully practised by EU-critical parties to stall cooperation. The Dutch referendum on the Ukraine–European Union Association Agreement was a case in point and the coming TTIP agreement with the US as well as any future Brexit arrangement might very well fall victim to the same tactic. This illustrates the fragility of negotiated international cooperation when encountered with direct democracy.

### **What does this mean for Hungary and Viktor Orbán?**

As long as the referendum will reach the needed amount of participation, i.e. 50% of the population of age, it looks as though the ‘no-side’ will win by a landslide. This is a fact that could further boost Orbán's popularity inside Hungary and strengthen his influence in the national parliament.

As for the consequences for Hungary's international relations, any consequence would be dependent on how the Hungarian government decides to act upon the outcome of the referendum.

The domestic legislation does not call for a direct legislative obligation but it

prescribes that the results will be binding for three years following the referendum. This means that a ‘no’-vote would bind the Parliament to oppose any quota being proposed within the following three consecutive years.

This puts Hungary in a difficult position, since it is bound by EU law to follow legislation emanating from Brussels and could thus lead to a breach of EU law with accompanying consequences.

The price of posing this rather vague and leading question to the population is to be found in Hungary’s international credibility and thus, how it will affect its future part in international negotiations. Clearly, this is a price Viktor Orbán is willing to pay for more pressing political reasons.

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## Endnotes

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<sup>1</sup> Press release concerning the package proposal:

[http://europa.eu/rapid/press-release\\_IP-15-5596\\_en.htm](http://europa.eu/rapid/press-release_IP-15-5596_en.htm) (accessed: 2016-09-30)

<sup>2</sup> Council Decision (EU) 2015/1601:

[http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:JOL\\_2015\\_239\\_R\\_0011](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:JOL_2015_239_R_0011) and Council Decision (EU)

2015/1523: [http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1443182569923&uri=OJ:JOL\\_2015\\_248\\_R\\_0014#ntr2-L\\_2015248EN.01008001-E0002](http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1443182569923&uri=OJ:JOL_2015_248_R_0014#ntr2-L_2015248EN.01008001-E0002)

(accessed: 2016-09-30)

<sup>3</sup> Speech available at:

[http://europa.eu/rapid/press-release\\_SPEECH-16-3043\\_en.htm](http://europa.eu/rapid/press-release_SPEECH-16-3043_en.htm)

(accessed: 2016-09-30)

<sup>4</sup> Joint statement by the Visegrad group

available at: <http://www.euractiv.com/wp-content/uploads/sites/2/2016/09/Bratislava-V4-Joint-Statement-final.docx.pdf>

(accessed: 2016-09-30)

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