

EU Citizenship as a Complementary Rule of Law Instrument to Un-Mute the Hungarian Electorate?

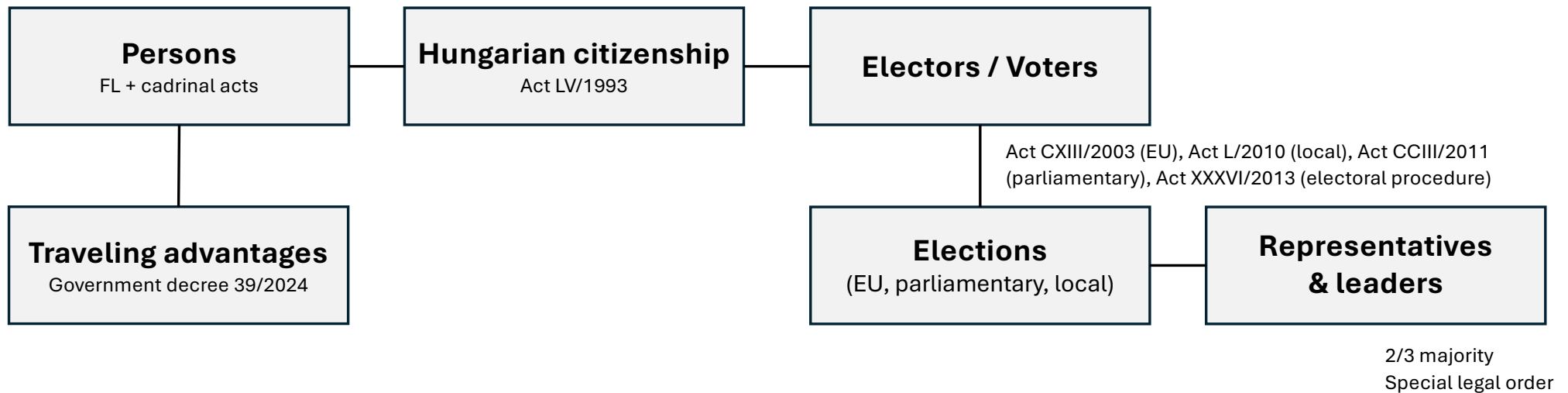
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EUNMUTE Doctoral and Early-Career Scholars Workshop

Standing Up for the Voiceless? Exploring the EU's Capacity for Rights Protection

June 11, 2024



Case study

Creation of categories of persons (Hungarians beyond the borders, Hungarians living abroad)
Granting of EU citizenship within Hungarian citizenship scheme in exchange for votes
Influence on election results (European Parliament, National Assembly)
Consolidation of EU-sceptical leaders and rule of law issues

Muting Dissent, Amplifying Consent: From Technicalities to an Electoral Autocracy

Country of residence	Ethnicity	Citizenship	Status of person	Right to vote upon citizenship		Right to vote upon residence
				EU election	Parliamentary election	Local election
Hungary	Hungarian	Hungarian	Hungarian living in Hungary	Yes	Yes, complete	Yes
Hungary	Foreign	Hungarian	National minority	Yes	Yes, complete with special rights	Yes
Neighbouring EU	Hungarian	Hungarian	Hungarian living beyond the borders	Upon EU/ Hungarian citizenship	Upon Hungarian citizenship, incomplete	No
Neighbouring non-EU	Hungarian	Hungarian				
Neighbouring EU	Hungarian	EU				
Neighbouring non-EU	Hungarian	Non-EU				
Non-neighbouring EU	Hungarian	Hungarian	Hungarian living abroad	Yes	Yes, complete or incomplete	Upon permanent address in Hungary + physical presence on election day
Non-neighbouring non-EU	Hungarian	Hungarian				
Any	Hungarian + other	Hungarian + EU	Dual (multiple) citizen	Yes	Yes, complete or incomplete	Upon permanent address in Hungary + physical presence on election day
Any	Hungarian + other	Hungarian + non-EU				
Non-neighbouring EU => Hungary	Foreign	EU	EU citizen	Yes	No	Yes
Non-neighbouring non-EU => Hungary	Foreign	Non-EU	Foreign national	No	No	Yes
Non-neighbouring non-EU => Hungary	Foreign	Non-EU	Refugee	No	No	Yes
Any => Hungary	Foreign	None	Stateless	No	No	Yes

Muting Dissent, Amplifying Consent: From Technicalities to an Electoral Autocracy

Differential treatment (1)

Local elections

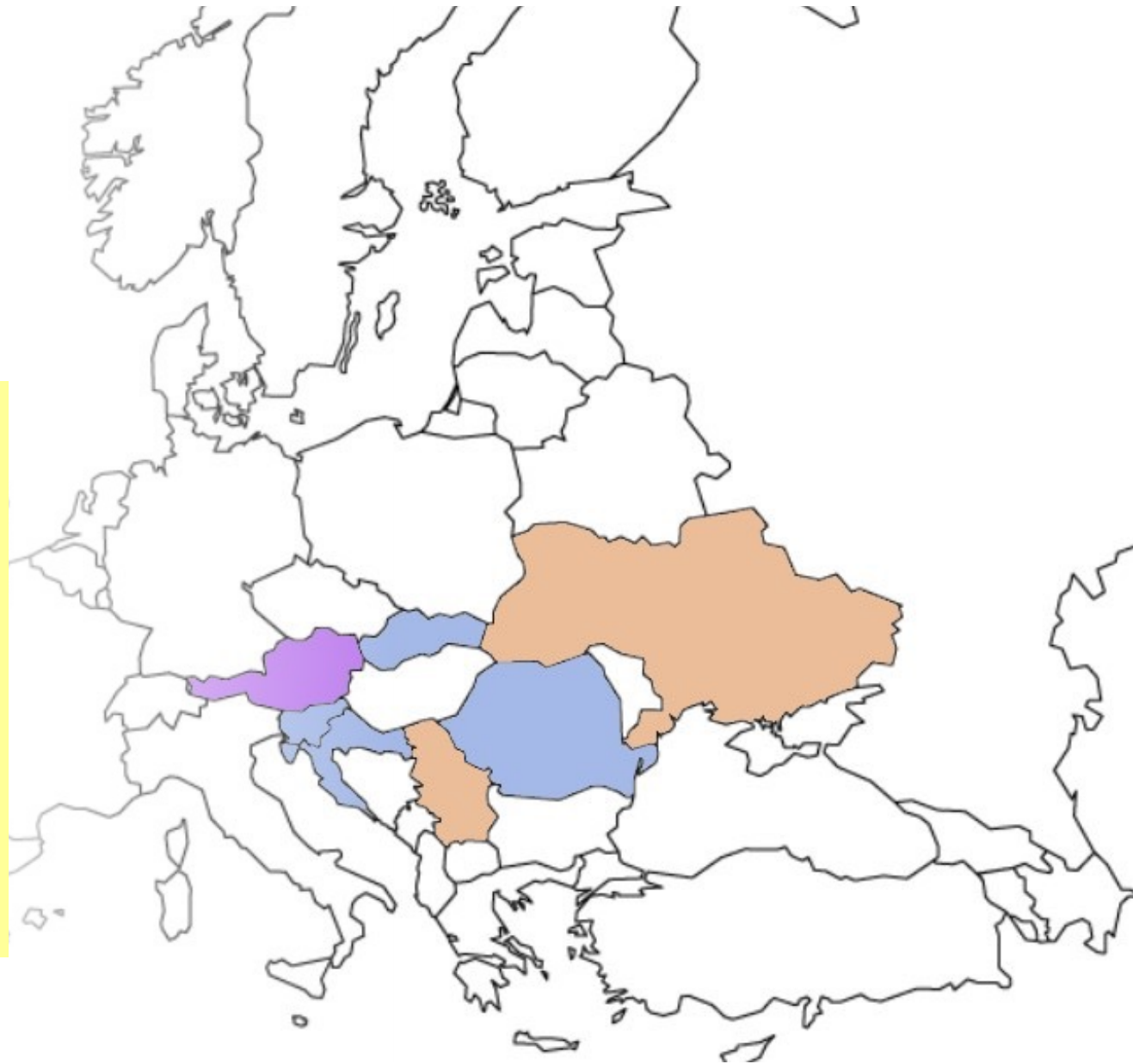
Based on permanent address in
Hungary + physical presence

☑ Hungarian living abroad **with**
permanent address (if **temporary return**
for election day), Hungarian living in
Hungary, national minority

☒ Hungarian living abroad **without**
permanent address, Hungarian beyond
the borders

ECtHR ok, HCC ok

OK



Muting Dissent, Amplifying Consent: From Technicalities to an Electoral Autocracy

Differential treatment (2)

Parliamentary elections

Based on ethnic background

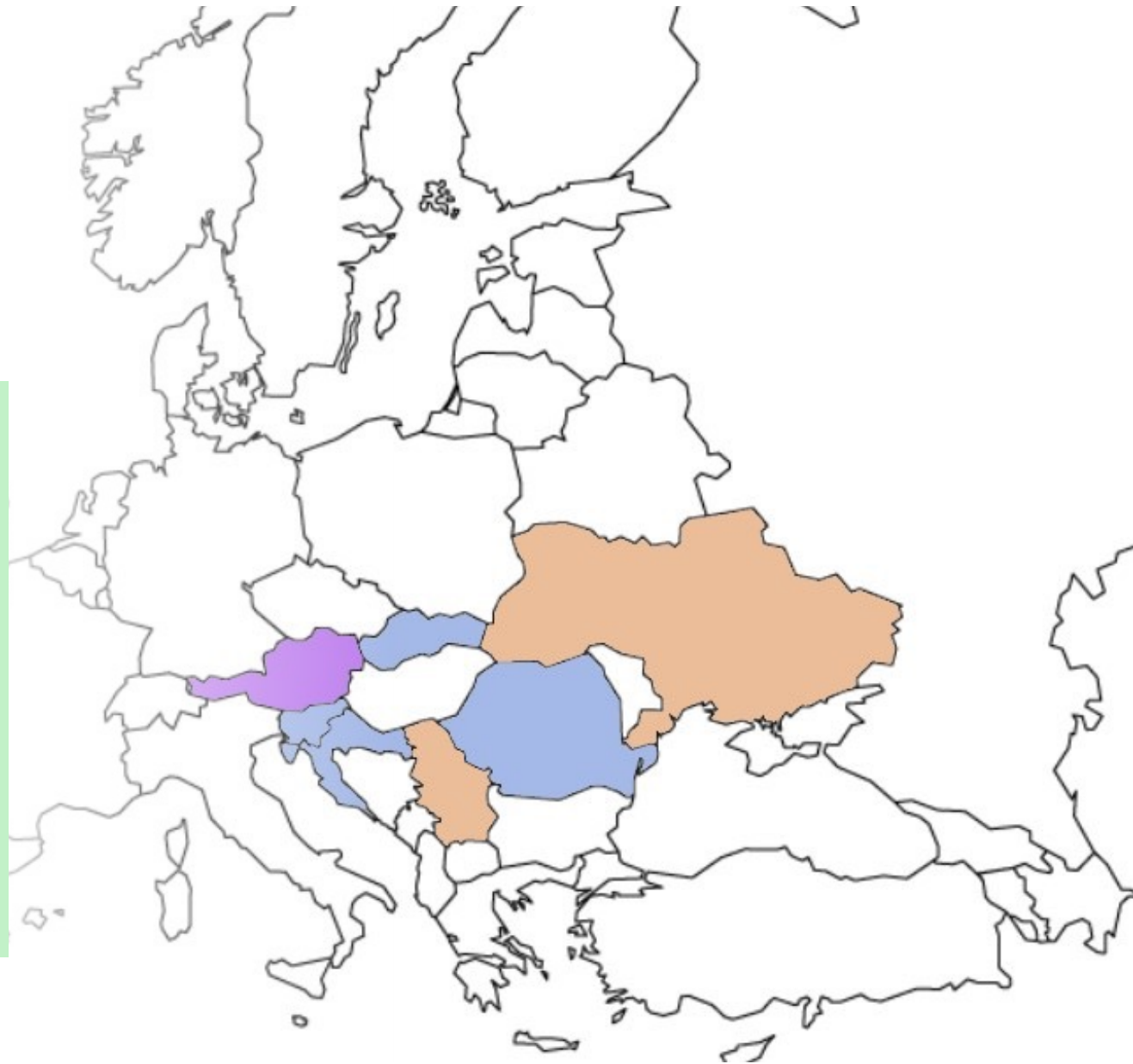
☑ Hungarian living in Hungary on party lists

☑ national minority on party lists
if not declared (no real value of
preferential quota)

☑ national minority on minority list
if declared (not secret)

ECtHR not ok, HCC ok

NOT OK



Muting Dissent, Amplifying Consent: From Technicalities to an Electoral Autocracy

Differential treatment (3)

Parliamentary elections

Based on country of residence

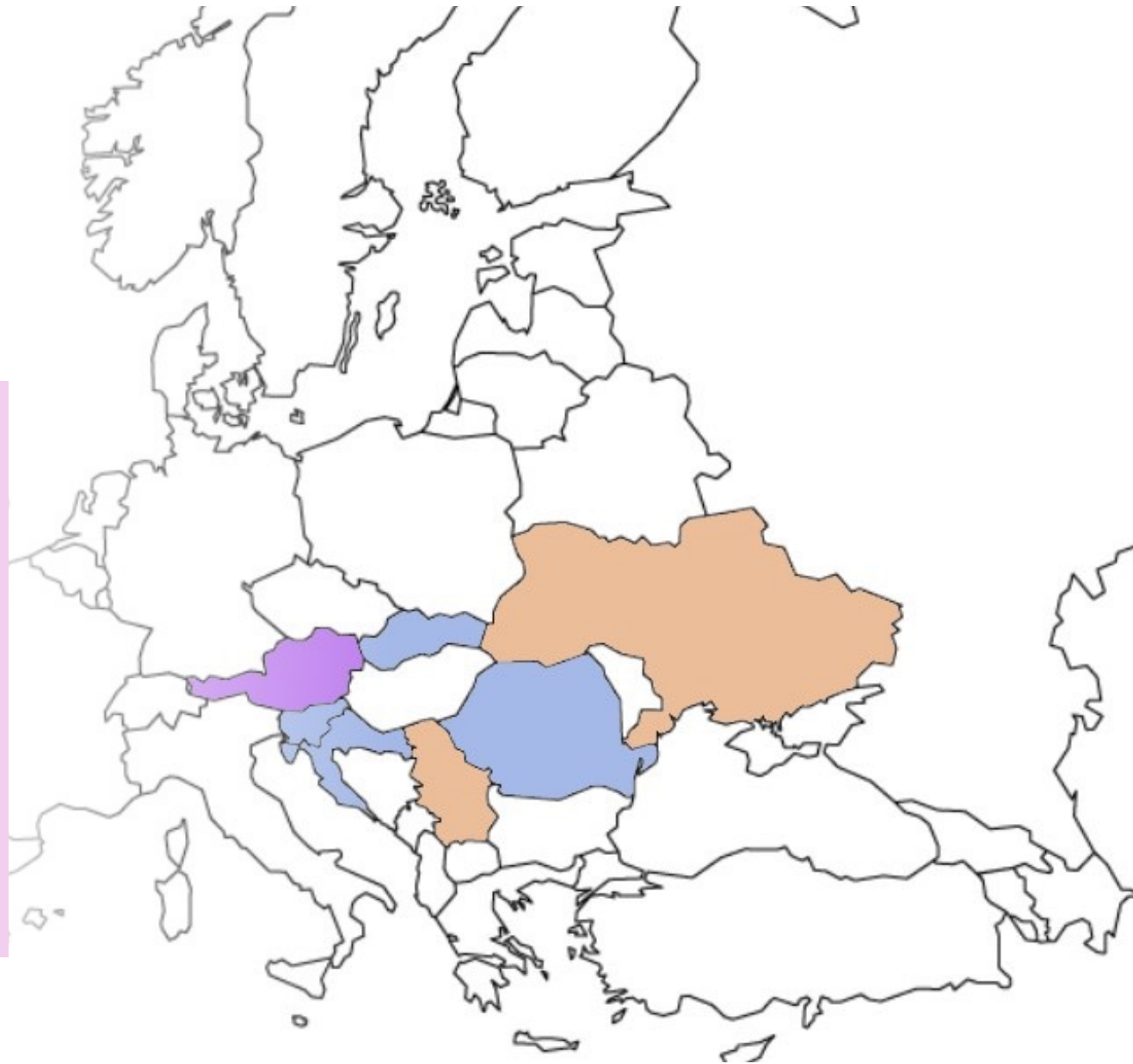
☑ Hungarian beyond the borders by post

☑ Hungarian living abroad **with**
permanent address at foreign
representation (**harder vote / more link**)

☑ Hungarian living abroad **without**
permanent address by post
(**easier vote / less link**)

ECtHR ok, HCC ok

NOT OK



Muting Dissent, Amplifying Consent: From Technicalities to an Electoral Autocracy

- Differential treatment between Hungarian voters
- **Practical implications**
 - Positive discrimination in **advantages for Hungarians beyond the borders**
 - Negative discrimination in **muting Hungarians living abroad**
 - Distorted representativity caused by **allocation of mandates in favour of popular parties**
 - Distorted representativity causing **low real value of the proportional component**

Figure 1. Parliamentary election: electorate and National Assembly mandates

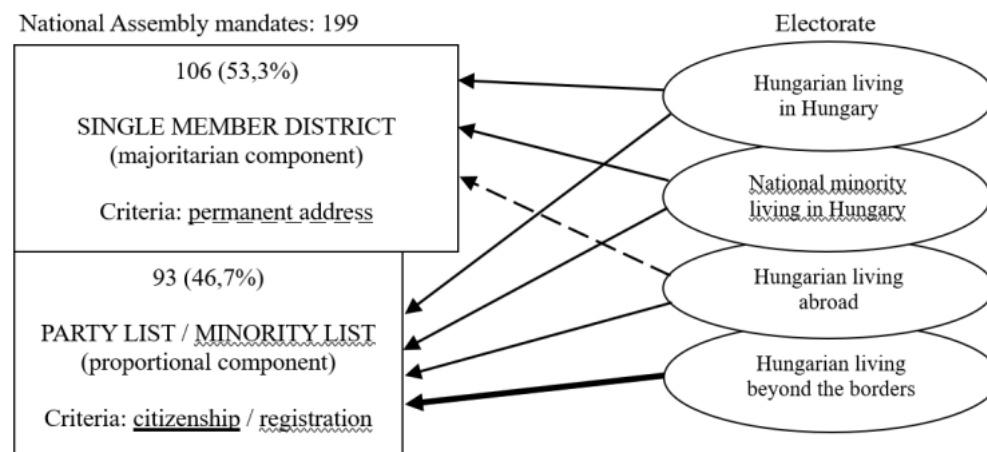
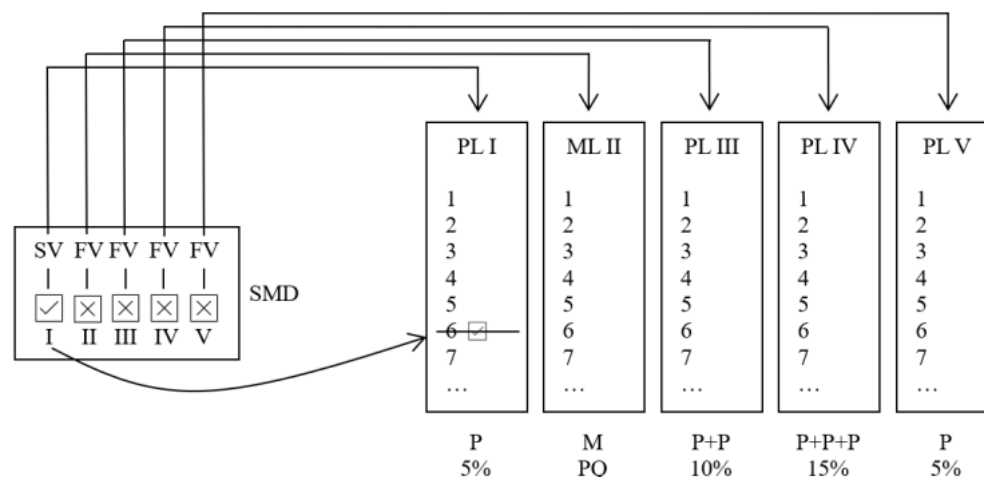


Figure 2. Parliamentary election: surplus votes and fractional votes transferred to lists



Parliamentary election year	2014	2018	2022
ELECTORS (Hungarian citizen)	8.241.562 (100%)	8.312.173 (100%)	8.215.304 (100%)
Minimum number of emigrants ⁵¹ since 2011 (Hungarian living abroad with or without permanent address in Hungary)	46.957	167.576	254.336
Total number of emigrants ⁵²	Min. 550.000	Min. 650.000	Min. 714.420
Minimum number of preferentially naturalised Hungarians beyond the borders ⁵³ since 2011	433.300	Min. 659.000	940.000
VOTERS (voted)	5.096.310 (61,8%)	5.796.268 (69,7%)	5.717.182 (69,6%)
Foreign representation electoral register (Hungarian living abroad with permanent address in Hungary)	No data	58.310	65.480
Register of postal voters (Hungarian living abroad without permanent address in Hungary + Hungarian living beyond the borders)	193.793	378.449	456.129
TOTAL VOTES FOR PARTY LISTS before vote transfer	5.027.820 (100%)	5.694.751 (100%)	5.624.225 (100%)
For Fidesz party list by all electors	2.264.780 (45,05%)	2.824.551 (49,27%)	3.060.706 (54,42%)
Votes for party lists by voters at foreign representations	No data	No data	No data
Votes for party lists by postal voters	128.429 (100%)	225.025 (100%)	267.834 (100%)
For Fidesz party list by postal voters	122.638 (95,49%) →	216.561 (96,24%) →	251.468 (93,89%)
Surplus votes and fractional votes	3.327.395	3.515.209	3.216.469
SV and FV transferred from SMD Fidesz candidates to Fidesz party list	940.881	1.218.518	1.330.256
TOTAL VOTES FOR PARTY LISTS after vote transfer	8.172.871	8.827.857	8.556.993
For Fidesz party list	3.205.661	4.043.069	4.390.962
NATIONAL ASSEMBLY MANDATES	199 (100%)	199 (100%)	199 (100%)
For Fidesz	133 (66,83%)	133 (66,83%)	135 (67,84%)
Single member district mandates	106	106	106
For Fidesz	96	91 (-5)	87 (-4)
Party list mandates	93	92	92
For Fidesz after vote transfer	37 →	42 (+5) →	48 (+6)
Minority list mandates	0	1	1

Practical implications

Total cumulative naturalisations in 2022:
1.000.000

← 85%

← 48,52%



Discrimination: positive aspect
Advantages for Hungarians living beyond the borders



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Practical implications



← 9%

Emigrating Hungarian citizen =

A person who leaves Hungary with the intention of settling abroad, without planning to return (permanently) or planning to return but leaving Hungary on a long-term (temporary) basis and declares this

(<https://demografia.hu/hu/tudastar/fogalomtar/9-kivandorlas>)



Discrimination: negative aspect
Muting Hungarians living abroad

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Practical implications

Surplus votes =
votes of the winning candidate minus
votes of the candidate who obtained the second
highest number of votes plus one

$$SV = V_{wc} - (V_{sc} + 1)$$

Fractional votes =
votes cast for candidates who did not win
a mandate

+ 1/2

Distorted representativity: cause
Allocation of mandates in favour of
popular parties

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Practical implications

→ Total population in 2022:
9.689.010

Result of proportional voting **without** vote transfer:

No 2/3 majority in NA = 54,42% and not **67,84%**

Hypothesis of **mandatory voting** with same data:

3.060.706 / 8.215.304 = **37,25%** and not **67,84%**

Projection of same data onto **total population**:

3.060.706 / 9.689.010 = **31,6%** and not **67,84%**

Distorted representativity: consq.
Low real value of the proportional component

The EU's (In)Capacity to Interfere with Sovereign Powers of MS

Democracy

Art. 10 TEU + Roquette (138/97)

= “the peoples should take part in the exercise of power through the intermediary of a representative assembly”

Practical implementation through electoral systems in Member States, **no EU competence** (Art. 5 TEU)

Rule of law

Art. 2 TEU + ROL mechanisms

But possible angle: democracy is either a component of the rule of law in the form of “democratic and pluralistic law-making process” (subordinate relationship), or a “co-value” (equal relationship)

Approach	Rule of law mechanism	Procedural provisions
Evaluation	Annual rule of law dialogue	Council Presidency Conclusions 14173/19
	EU Justice Scoreboard	COM(2023) 309 final, pp. 1-5
	EU Rule of Law Framework	COM(2014) 158 final, 4.2
	Rule of Law Review Cycle	COM(2019) 343 final, pp. 10-15
Reaction	Preventive arm of Article 7 TEU	Article 7(1) TEU
	Sanctioning arm of Article 7 TEU	Article 7(2)(3)(4) TEU
	Infringement procedure	Articles 258, 259, 260 TFEU
	Action for annulment	Article 263 TFEU
	Preliminary reference	Article 267 TFEU
Conditionality	General regime of conditionality	Article 6 of Regulation 2020/2092
	European Semester	Articles 2-bis, 2-bis-ter, 5, 6, 9, 10 of Regulation 1466/97
	Recovery and Resilience Facility	Articles 8, 10, 12, 16, 19, 20, 23 of Regulation 2021/241

← Campaign financing (indirect)
← EP resolutions (indirect)

ROL = law is indistinctly applicable to legal subjects as well as public authorities and serves both as basis for action and means of action in a legal order

- evaluation mechanisms = assess various aspects of the rule of law and/or overall compliance with it within the Member States
- reaction mechanisms = treaty-based sanctions and judicial remedies
- conditionality mechanisms = subject the allocation of EU funding to the respect for certain rule of law elements

The EU's (In)Capacity to Interfere with Sovereign Powers of MS

EU citizenship

Art. 18, 20, 21, 22 TFEU

Right to free movement (Art. 20(2)(a) and 21 TFEU)

Right to vote at European Parliament elections (Article 20(2)(b) TFEU)

Tjebbes (C-221/17): “it is legitimate for a Member State to take the view that nationality is the expression of a genuine link between it and its nationals”

MS sovereignty **includes** a priori granting citizenship in exchange for votes & citizenship by investment (to be continued: Commission v Malta (C-181/23), application on 28 April 2023)

The EU's (In)Capacity to Interfere with Sovereign Powers of MS

Internal market

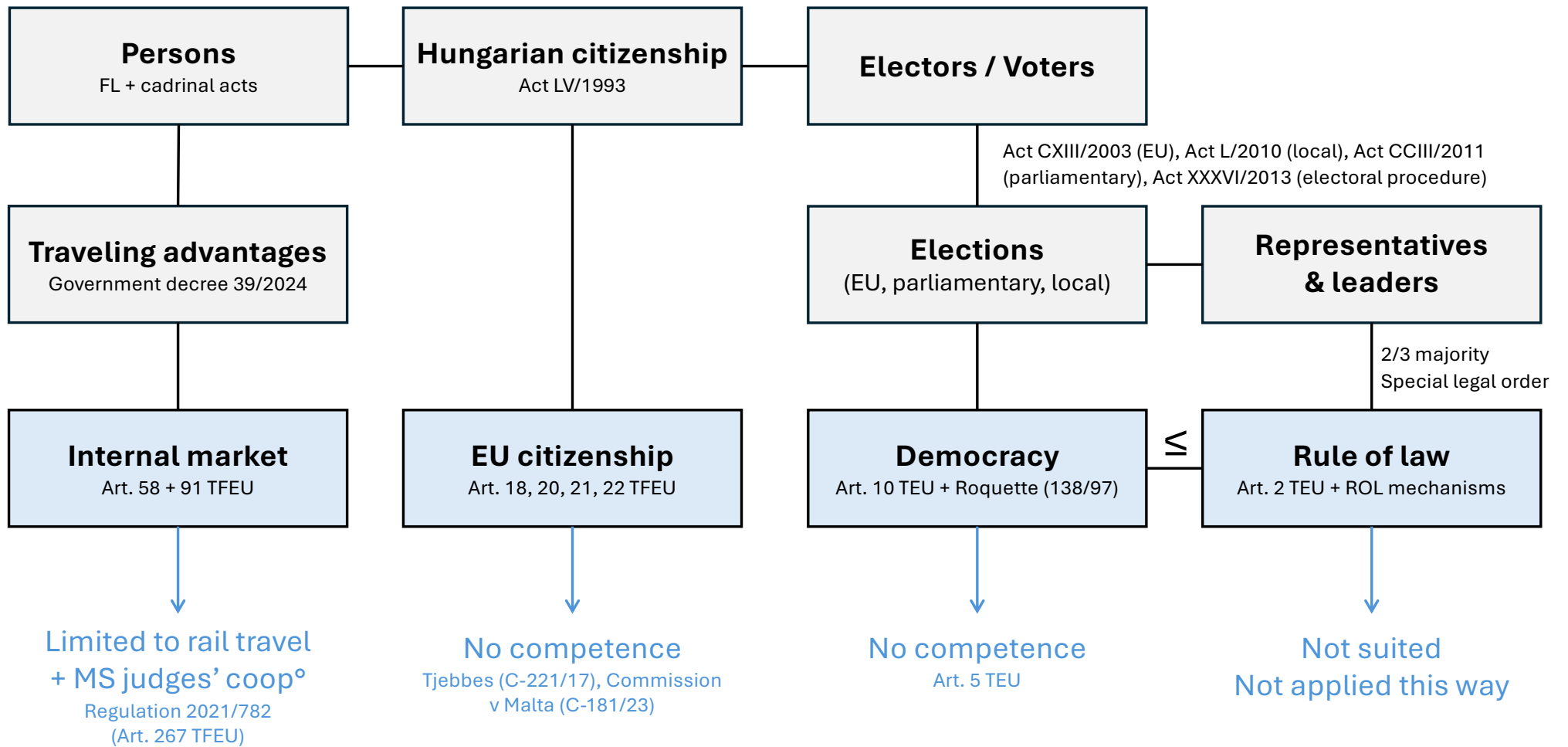
Art. 58 + 91 TFEU

Travel benefits for Hungarians beyond the borders by virtue of Government Decree 39/2024 (II.29.)

Art. 58 + 91(1) TFEU + Regulation (EU) 2021/782 of the European Parliament and of the Council of 29 April 2021 on rail passengers' rights and obligations (Art. 5)

- ☒ rail travel ☒ all other forms of public transportation (still discriminatory)
- ☒ establishment in the EU of the transport service provider
- ☒ establishment in Hungary of railway undertaking MÁV Magyar Államvasutak Zrt
- ☒ no discrimination between passengers on the basis of their nationality, **including** ethnic or social origin and membership of a national minority (Article 21 CFREU)
- ☒ Hungarians beyond the borders entitled to 100% discount on domestic intercity travel 12 times a year on prior notice

Upon CJEU's interpretation of Art. 5 of Regulation 2021/782 (Art. 267 TFEU), a Hungarian judge should invite the government to modify at least part of its decree (but judicial independence in Hungary)



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Not really...

Thank you for your attention!

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