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**Small Member States as policy actors in the EU:  
defining a new strategy through the case of  
Hungary**

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## Introduction

This paper examines Hungary as a small Member State in the European Union, more precisely its strategic possibilities and actions to successfully influence European policy outcomes and achieve its own policy priorities. This topic is increasingly relevant for the future of European integration due to the growing number of small states in the EU and the fact that the strategies they follow as Member States may serve as an example for their peers. I argue that, in the last few years, Hungary has adopted a particular strategy as a Member State in the EU which is significantly different from its previously pursued strategy and which is also unconventional among Central and Eastern European EU members. Moreover, this strategy has not been accounted for in previous EU studies, which usually focus on outlining strategies or circumstances under which small states can exercise influence despite the apparent disadvantages they face compared to the large countries. This research uses the already existing theories on small states in the EU as a background for presenting and analysing Hungary's special case. It aims to find answers to the following question: *can the arguably new, distinct Hungarian behaviour be considered to be a small state strategy to influence EU policy-making?*

The examination of the Hungarian case is rooted in the 'size-factor', which, as a subject of discussion, has long been present in the EU due to the complex voting and decision-making mechanisms of the organization. In spite of the fact that the aim of the different institutional mechanisms, such as the voting system in the Council of the European Union or the distribution of seats in the European Parliament, is to achieve equal representation, many researchers claim that there is a huge discrepancy between the impacts of large and small states in the EU. Realist scholars still often state that large states are dominant in most of the EU policy areas (mainly in foreign policy),<sup>1</sup> but there is an emerging discourse which says that small states are clearly overrepresented in the institutions, thus their influence is increasing in EU policy-making.<sup>2</sup> Which statement is more convincing and which is less depends on several circumstances, such as the examined policy area and the particular country in question. Therefore, I argue that the best way of conducting research about the influence of small and big Member States is to investigate specific cases from several aspects and draw conclusions from them.

The proposed research consists of an empirical limb examining Hungary's behaviour after 2010, which calls for further theoretical enquiries about Member State behaviour in the EU,

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<sup>1</sup> For accounts of the influence of large states see Catherine Gegout, "The Quint: Acknowledging the Existence of a Big Four–US Directoire at the Heart of the European Union's Foreign Policy Decision-Making Process," *JCMS: Journal of Common Market Studies* 40, no. 2 (June 2002): 331–44; Christopher Hill, "Renationalizing or Regrouping? EU Foreign Policy Since 11 September 2001," *JCMS: Journal of Common Market Studies* 42, no. 1 (March 2004): 143–63, doi:10.1111/j.0021-9886.2004.00480.x.

<sup>2</sup> For insights into the institutional advantage of small state in the EU see Clive Archer and Neill Nugent, "Introduction: Does the Size of Member States Matter in the European Union?," *Journal of European Integration* 28, no. 1 (March 2006): 3, doi:10.1080/07036330500480466.

and a theoretical limb which, on the basis of the assessment of Hungary's new strategy, intends to contribute to and supplement the already existing literature. The experience of the past decade shows that research centred around small state behaviour usually concentrates only on individual policy areas in a certain country and mainly 'older' Member States of the EU are examined from this aspect. There is a clear need to discuss small state theories from the perspective of 'new' Member States and to engage in a more comprehensive examination of their strategic possibilities and actions to influence EU policy-making. Also, because most of the academic research analyses small states as law-abiding actors using the EU to achieve their goals, there is room for further research on a specific Member State behaviour that sometimes openly confronts EU principles and whose primary interest is to achieve its own goals in its own ways. The current study aims to shed new light on the theories of small states by finding out how Hungary's current behaviour can be evaluated from the perspective of small state studies. Reviewing the theories on small states will show that there is a gap in this regard and the existing studies cannot explain the Hungarian phenomenon.

Despite the potential in this research project, small state studies inevitably face certain limitations. Conducting an analysis about the influence of all the small Member States in all the EU policy areas would be very interesting and challenging, but hardly feasible. Therefore, the researcher always has to narrow down the scope of study and has to be careful with generalizing. This study tries to compensate for this limitation by conducting an in-depth research about the Hungarian case, examining several aspects of policy-making.

The structure of this paper is as follows. First, the literature review will reveal the most important theoretical implications about the behaviour of small states in the EU. Then, the current Hungarian EU strategy will be presented based on several smaller instances, problematic issues and interactions between Hungary and the European Union. The research will conclude by examining how Hungary fits into the already existing small state theories and whether the strategy the country conducts can be seen as a relevant small state strategy in today's European political scene.

## **Literature review - theoretical background**

### **States in European studies**

For examining the Hungarian case, we have to draw back to the research focusing on states and their behaviour in the international political arena. Analysing state behaviour in European studies is usually used to denote influence and power on the international level, to describe country attitudes towards participation and contribution in post-national governance arenas, and to evaluate (Member) State behaviour with respect to obligations undertaken in international treaties. There are distinct approaches the respective positions of which have culminated in debates about the behaviour and roles of states as actors in European integration. Neo-functional theory, for example, regards the concept of states as much more

complex entities than classic realist theory in IR has presumed,<sup>3</sup> and claims that the state loses its power to the supranational institutions in bargaining, and the important areas of decision-making shift towards the European arena.<sup>4</sup> In contrast, intergovernmentalist theory reaches back to the roots of realism by arguing that states are and will always remain the driving forces of European integration<sup>5</sup> by controlling its nature and pace in order to protect and promote national interests.<sup>6</sup> Liberal intergovernmentalism presumes that states are rational actors and recognizes the complexity of their actions<sup>7</sup> in its theory of ‘two-level games’, which refers to the interactions of states in both the international and intra-national levels.<sup>8</sup> The distinct views of these schools of thought show that there is no consensus about the behaviour of states neither as world stage actors nor as members of the European Union. They accept, however, that states are actors with agency and they are able to pursue their interests in the international and European setting. These theoretical premises are essential in examining the Hungarian behaviour in the EU and in defining the characteristics of the Hungarian strategy.

### Size of EU member States

In order to be able to analyse the behaviour of a particular small state in the EU, it is indispensable to define what qualifies as ‘small’ in the current research project. Authors dealing with EU Member States usually choose an absolute definition. The four most prominent criteria in defining size are population, territory, GDP and military capacity.<sup>9</sup> However, Baldur Thorhallsson argues that size is a complex characteristic of states consisting of more than one variables which have to be focused on when examining how size affects states’ behaviour and influence. He differentiates between several categories in this regard (e.g. fixed, economic or preference size) and argues that the researcher has to decide which category he/she focuses on, but it is always better to combine the different criteria and not to look at only one aspect.<sup>10</sup> This ‘multidimensional’ nature of size is emphasized by other authors as well.<sup>11</sup>

On the other hand, some researchers use more subjective definitions. Mouritzen and Wivel define small states as ‘the weaker part in an asymmetric relationship, unable to change the

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<sup>3</sup> Ian Bache and Stephen George, *Politics in the European Union*, 2nd ed (Oxford [UK] ; New York: Oxford University Press, 2006), 9.

<sup>4</sup> Ernst B. Haas, *The Uniting of Europe: Political, Social and Economic Forces, 1950-1957* (Stanford University Press, 1968).

<sup>5</sup> Stanley Hoffmann, “Obstinate or Obsolete? The State of the Nation-State and the Case of Western Europe,” *Daedalus, Journal of the American Academy of Arts and Sciences* 95, no. 3 (1966): 862–915.

<sup>6</sup> Bache and George, *Politics in the European Union*, 12.

<sup>7</sup> Andrew Moravcsik, “Preferences and Power in the European Community: A Liberal Intergovernmentalist Approach,” *JCMS: Journal of Common Market Studies* 31, no. 4 (n.d.): 473–524.

<sup>8</sup> Bache and George, *Politics in the European Union*, 16.

<sup>9</sup> Baldur Thorhallsson, “The Size of States in the European Union: Theoretical and Conceptual Perspectives,” *Journal of European Integration* 28, no. 1 (March 2006): 7, doi:10.1080/07036330500480490.

<sup>10</sup> To find out more about Thorhallsson’s categorization see *Ibid.*, 8.

<sup>11</sup> See for example Archer and Nugent, “Introduction,” 6.

nature or functioning of the relationship on their own.’<sup>12</sup> As a consequence, they consider all EU Member States to be small, except for France, Germany and the UK.<sup>13</sup> However, in this research I will rely on a more objective definition which roots in Thorhallsson’s views, namely Diana Panke’s concept of smallness. Panke takes the allocation of votes among the states in qualified majority voting in the Council, and defines as small those with fewer votes than the EU-average.<sup>14</sup> Based on this categorization, she identifies nineteen small states, whose number grew to twenty since then, with the accession of Croatia in 2013. This research will adopt Panke’s understanding of ‘small’, because the distribution of votes in the Council already reflects size and population of the Member States, so it is a clear and comprehensive categorization. It is interesting to note that in EU-related research, scholars do not usually use the category of middle states, even if it would seem rational. The reason for this is that the diversity of the criteria determining size would make it extremely difficult to decide where to draw the lines and how to make more groupings. Based on these terms, Hungary can be identified as a small Member State of the EU. Another important characteristic of the examined country, which determines its behaviour, is the time of its accession to the EU. In this regard, we can talk about old and new member states. Even though in 2014 Hungary celebrates its tenth anniversary of being an EU Member State, it can still be considered a new EU country, because ten years is a short period in EU-history, moreover only three other states joined the Union since the 2004 accession.

### Small state studies

The proposed research builds on and challenges the existing views about small Member States of the EU, which can help identify the basic features of small state behaviour. Small state theories challenged the practice that only large Member States could be regarded as relevant actors of European integration. In the 1990s, scholarly attention was directed towards the examination of small states and their influence in the EU. With the accession of thirteen new countries since 2004, this discipline became even more relevant. These states proved to be worth examining because they are likely to have commonalities, which are different from that of the large states, therefore it can be expected that their behaviour will be different as well.<sup>15</sup> Diana Panke argues that small EU Member States face ‘structural disadvantages in uploading their national policies to the EU level due to less bargaining power and less of the financial and administrative resources necessary for building up policy expertise and exerting influence via arguing.’<sup>16</sup> The main components of the small ones’ disadvantage, according to Panke, are

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<sup>12</sup> Hans Mouritzen and Anders Wivel, *The Geopolitics of Euro-Atlantic Integration* (London: Routledge, 2005), 4; Caroline Howard Grøn and Anders Wivel, “Maximizing Influence in the European Union after the Lisbon Treaty: From Small State Policy to Smart State Strategy,” *Journal of European Integration* 33, no. 5 (September 2011): 524, doi:10.1080/07036337.2010.546846.

<sup>13</sup> Grøn and Wivel, “Maximizing Influence in the European Union after the Lisbon Treaty,” 524.

<sup>14</sup> Diana Panke, “Small States in the European Union: Structural Disadvantages in EU Policy-Making and Counter-Strategies,” *Journal of European Public Policy* 17, no. 6 (September 2010): 799, doi:10.1080/13501763.2010.486980.

<sup>15</sup> Baldur Thorhallsson, *The Role of Small States in the European Union* (Aldershot, Hants, England ; Burlington, Vt: Ashgate, 2000), 1.

<sup>16</sup> Diana Panke, “The Influence of Small States in the EU: Structural Disadvantages and Counterstrategies” (UCD Dublin European Institute Working Paper 08-3, May 2008), 1.

the lack of political power, the insufficient resources to develop policy expertise, the fact that these states joined the EU recently and their lack of expertise and proficiency to operate as policy forerunners.<sup>17</sup> The existence of this structural disadvantage can be seen as the central tenet of research focusing on small states. The main researchers of the topic, such as Peter V. Jakobsen,<sup>18</sup> Diana Panke,<sup>19</sup> Jonas Tallberg<sup>20</sup> and Baldur Thorhallsson,<sup>21</sup> outline strategies for small Member States and circumstances under which they can exercise influence despite these disadvantages in the EU. These are, in particular, being an old Member State, possessing policy expertise, having good economic and administrative capacities, using institutional channels (e.g. the EU Presidency or ‘friendship’ with the Commission) and creating coalitions or partnerships etc.

A distinct type of small state behaviour was identified by some researchers of the field in the late 1990s and early 2000s (P. Joenniemi<sup>22</sup> and D. Arter<sup>23</sup>), namely the smart state strategy. Smart states are able to ‘exploit the weakness of small states as resource for influence’<sup>24</sup> by having well-developed preferences, being able to present their initiatives as interests of the whole EU, and being able to mediate.<sup>25</sup> Caroline Howard Grøn and Anders Wivel further developed the concept by claiming that the recent developments in the EU introduced by the Lisbon Treaty, such as the increase in the role of the EP or the creation of the post of European Council President, undermine the traditional small state approach to European integration.<sup>26</sup> Therefore, the authors identified the characteristics of an ideal smart strategy that small states should apply in order to accommodate and ‘take advantage of the new institutional environment.’<sup>27</sup> They created three variations of ideal smart state strategies: the state as a lobbyist, the state as a self-interested mediator and the state as a norm entrepreneur. However, we should treat these ‘new’ variations with reservations, because all three of them are built upon or require the same skillsets or conditions that were identified by the ‘traditional’ small state literature e.g. honest-brokerage, administrative capacities, policy expertise etc.

The paragraphs above permit the researcher to make some critical remarks about the views of small state studies. First of all, in general, they pay too much attention to objective characteristics, such as the size or the administrative capacities of a state, instead of looking at more subjective circumstances of states, like political capacities or constraints. Second, they

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<sup>17</sup> Ibid., 2.

<sup>18</sup> Peter Viggo Jakobsen, “Small States, Big Influence: The Overlooked Nordic Influence on the Civilian ESDP,” *Journal of Common Market Studies* 47, no. 1 (2009): 87-102.

<sup>19</sup> Panke, “The Influence of Small States in the EU: Structural Disadvantages and Counterstrategies,” 1.

<sup>20</sup> Jonas Tallberg, “The Power of the Presidency: Brokerage, Efficiency and Distribution in EU Negotiations,” *JCMS: Journal of Common Market Studies* 42, no. 5 (2004): 999-999-1022.

<sup>21</sup> Thorhallsson, “The Size of States in the European Union,” 7.

<sup>22</sup> Pertti Joenniemi, “From Small to Smart: Reflections on the Concept of Small States.,” *Irish Studies in International Affairs*, no. 9 (n.d.): 61-62.

<sup>23</sup> David Arter, “Small State Influence within the EU: The Case of Finland’s Northern Dimension Initiative.,” *JCMS: Journal of Common Market Studies* 38, no. 5 (2000): 677-97.

<sup>24</sup> Grøn and Wivel, “Maximizing Influence in the European Union after the Lisbon Treaty,” 530.

<sup>25</sup> Ibid., 529.

<sup>26</sup> Ibid., 527.

<sup>27</sup> Ibid., 529.

usually focus on one specific policy area of one state, instead of broadening the picture by examining one case (for example a country) from several aspects. The most important feature of these theories is that they assume a rule-abiding behaviour from the examined actors which stays within the EU's constitutional and political settlements instead of analysing rule-breaker or non-conventional behaviour as well. Moreover, researchers dealing with small states usually focus on how these states can influence EU policy-making, but they somehow neglect the overall behaviour and general actions of these Member States towards the EU. Trying to take advantage of these slight shortcomings of small state theories, this research, based on the Hungarian case, will supplement the existing discourse on small Member States as actors in the EU by touching on some of the neglected aspects of small state behaviour. Hungary's behaviour will be examined in light of this discussion, enabling its analysis as a distinct small state strategy and allowing its evaluation.

## **The Hungarian case**

### **Hungary's EU policy since 2004 and 2010**

Before joining the European Union, Hungary started out as an elite candidate country, successfully meeting the Copenhagen criteria and quickly completing the accession process. This progress was largely facilitated by the internal political consensus in the country about EU membership and by the EU's system of pre-accession conditionality.<sup>28</sup> After its accession, however, Hungary has had a mixed experience as a policy actor and a subject of EU obligations both on the EU and the national level. After starting its membership relatively smoothly, in recent years, it began to adopt a markedly more self-centred and autonomous behaviour which is more conscious about Member State opportunities and which is not afraid of taking up legal and political conflicts with the EU. This new strategy must, however, be assessed with reference to the overall respectable compliance record of Hungary<sup>29</sup> and its willingness to resolve the emerging conflicts with the EU.

### **The Hungarian Presidency: a change of tone towards the EU?**

These developments lead to the question whether a distinct, deliberately pursued strategy can be discovered behind the Hungarian behaviour. If this is a valid question, then the nature of this strategy has to be defined. This study argues that since the government change of 2010 Hungary perceives itself more openly as a sovereign state responsible for and capable of achieving its own policy priorities in Europe and it applies a different, more autonomous and conflict-seeking standpoint towards the EU than previously. This was manifested by the

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<sup>28</sup> For an overview on accession conditionality, see: Frank Schimmelfennig and Ulrich Sedelmeier, "Governance by Conditionality: EU Rule Transfer to the Candidate Countries of Central and Eastern Europe," *Journal of European Public Policy* 11, no. 4 (January 2004): 661–679, doi:10.1080/1350176042000248089.

<sup>29</sup> For accounts of Member State compliance see for example: "Internal Market Scoreboard 26" (European Commission, February 2013), [http://ec.europa.eu/internal\\_market/score/docs/score26\\_en.pdf](http://ec.europa.eu/internal_market/score/docs/score26_en.pdf) (accessed December 13, 2013).

Hungarian Presidency of the EU Council in the first half of 2011 as well. Hungary came up with a realistic and well-structured program for itself whose main priorities were: the Danube Strategy, the Roma Strategy and the integration of the European energy sector. In these areas some major steps were taken due to the effective manoeuvring of Hungarian politicians and experts (for example MEP Lívía Járóka's role in the Roma Strategy). Péter Balázs, Director of Center for EU Enlargement Studies and former Minister of Foreign Affairs of Hungary, argues that besides its priorities, the country holding the EU presidency should be able to focus on long-term tasks and handle unexpected events as well.<sup>30</sup> In the case of the long-term duties the strengthening of the EU economic governance was the biggest task in which Hungary performed well despite not being a Eurozone Member, thus not being a member of some cooperative formations (e.g. Euro Plus Pact).<sup>31</sup> In the enlargement area, which was another long-term goal, Hungary pushed the case of the Croatian accession quite well. The Hungarian government officials are still very proud of this achievement and they like to refer to it as pulling Croatia into the EU. The country also handled the unexpected events, such as the Arab Spring, smoothly despite being a small country with no direct geopolitical interest in the area. In Libya, the Hungarian Embassy of Tripoli was the only EU representation which remained active.<sup>32</sup> If we look at most of the mandatory tasks during the six months, we would get a decent picture about the Hungarian Presidency altogether.

However, there were less successful sides of the Hungarian Presidency as well. One of the most important events of the Presidency should have been the summit between EU and Eastern Partnership countries, but the meeting was postponed to the semester of the Polish Presidency, which meant that there was no European Council meeting in Budapest in 2011. The official reason behind postponing the event was coordination problems, but some assume that the Hungarian government's work fell short of adequately preparing for the meeting in Budapest.<sup>33</sup> Some politically sensitive issues cast their shadows over the period as well. The Hungarian Government adopted some legislative measures, for example the new media law or the new Fundamental Law in the face of heavy criticism from EU circles and the Venice Commission.<sup>34</sup> In the European Parliament, during Prime Minister Viktor Orbán's first presentation as President of the Council, he already had to face harsh criticism over his government's acts.<sup>35</sup> These attacks initiated a change in the PM's rhetoric towards Brussels, which became more and more firm and critical. The Hungarian Government's certain acts could even have been perceived as insults, or symbolic mistakes by the EU, such as not putting the EU flag behind the Prime Minister while he held his major speeches, but

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<sup>30</sup> Péter Balázs, "Achievements of the First Hungarian EU Council Presidency," *EU Frontiers Policy Paper - Center for EU Enlargement Studies* 8 (June 2011): 4.

<sup>31</sup> *Ibid.*, 5.

<sup>32</sup> *Ibid.*, 7.

<sup>33</sup> *Ibid.*

<sup>34</sup> Attila Ágh, "The Hungarian Rhapsodies: The Conflict of Adventurism and Professionalism in the European Union Presidency: The Hungarian Rhapsodies," *JCMS: Journal of Common Market Studies* 50 (September 2012): 71, doi:10.1111/j.1468-5965.2012.02254.x.

<sup>35</sup> "Orbán Ready for Battle," *Hungarian EU Presidency Website*, January 19, 2011, <http://www.eu2011.hu/news/ep-debate-orban-ready-battle> (accessed March 12, 2014).

surrounding him with Hungarian flags only.<sup>36</sup> In the first half of 2011, international attention was increasingly directed towards Hungary, but the conversation about Hungary was not always pleasant or appreciative. Hungarian policy-makers did not seem to mind; their strategy was based on focusing on professional issues and their tasks concerning the Presidency, so they did not care about the possibility of decreasing reputation and they were not afraid to stand up against the EU. In a nutshell, we can conclude that the Hungarian Presidency can be characterized by the ‘contrast between the political activities of the Government and the professional activities of the administration.’<sup>37</sup> Later we will see that this characteristic stretches further than the semester of the Presidency.

The change in Prime Minister Viktor Orbán’s rhetoric that manifested in many of his speeches in both Hungary and abroad is demonstrated best by his speech in 2012 on the Hungarian national holiday of March 15. In this controversial speech he emphasized that Hungary insists on national sovereignty and does not need ‘unsolicited assistance of foreigners.’<sup>38</sup> Comparing the EU to the former Soviet dominance of Hungary, he stated that for his country ‘freedom means that we decide about the laws governing our own lives, we decide what is important and what is not.’<sup>39</sup> Since starting his term as a Prime Minister, Orbán used a harsh tone towards Brussels several times, out of which some occasions will be analysed in the following pages. This may indicate a new and distinct strategy towards the European Union.

### **Hungary’s constitutional and legal reforms**

The most visible aspect of the new Hungarian strategy is the determined defence of national positions in the EU. This appeared in many different forms and reached its peak in the conflict with the EU over the country’s comprehensive constitutional and legal reforms. After the parliamentary elections of 2010, the centre-right Fidesz party obtained a 2/3 majority of the seats in the Hungarian Parliament by forming a coalition with the KDNP (Christian Democratic People’s Party). With this victory, the new government was given the possibility to enact fundamental changes to the country’s constitution and legislation as a whole, within a short period of time. These acts were not always received well across Europe. The changes brought by the Fidesz government had legal consequences, such as the reduction of the retirement age of judges or appointing a new media-supervising authority, while others had symbolic importance, such as modifying the country’s official name to Hungary (instead of the Republic of Hungary) and defining the concept of family in a way which could be seen as discriminatory against individuals with different sexual orientations. Many of these changes were added to the Hungarian Fundamental law (formerly called Constitution), which was amended four times in a short period of time since the spring of 2010. These subjects generated heated debates in Europe. Not only different Member States, but also international

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<sup>36</sup> Balázs, “Achievements of the First Hungarian EU Council Presidency,” 9.

<sup>37</sup> Ágh, “The Hungarian Rhapsodies,” 72.

<sup>38</sup> Ian Traynor, “Hungary Prime Minister Hits out at EU Interference in National Day Speech,” *The Guardian*, March 15, 2012, <http://www.theguardian.com/world/2012/mar/15/hungary-prime-minister-orban-eu> (accessed January 13, 2014).

<sup>39</sup> *Ibid.*

organizations, such as the Venice Commission, condemned some of the developments in Hungary.<sup>40</sup> The discussion was the most intense between Hungary and the European Commission, namely its Vice President and Commissioner for Justice, Fundamental Rights and Citizenship, Viviane Reding. Reding warned Hungary on several occasions about her concerns with the recent changes in Hungary, such as the reduction of the retirement age of judges or the consistency of the new Hungarian Fundamental Law with EU law and the spirit of the Treaties. She did so, for example, in a letter addressed to Tibor Navracsics, Minister of Justice and Public Administration in 2011.<sup>41</sup> The following sentences are some excerpts of this letter.

*I need to bring to your urgent attention a number of legal issues that arise under new measures that the Hungarian authorities are currently taking under the new Hungarian Constitution.*

*As you know, earlier this year, the European Commission has been conducting a review of the new Hungarian Constitution in order to check that it is consistent with EU law...  
(...)*

*As regards these matters, the Commission is faced with a series of complaints by Supreme Court judges of several Member States, Members of the European Parliament and non governmental organisations.*

*In order for the Commission to carry out a detailed assessment of the compatibility of the various measures with EU law, I should ask you to provide your observations on the questions indicated in the attached document.<sup>42</sup>*

The European Parliament also voiced its discontent with the situation of fundamental rights in Hungary. First, the Parliament issued a resolution in February 2012 about the ‘recent political developments in Hungary’ which suggested the possibility of resorting to Article 7(1) of TEU against Hungary if the country’s authorities do not respond to the concerns of the EU.<sup>43</sup> This resolution was followed by perhaps the harshest and most controversial report on Hungary, namely the motion of MEP Rui Tavares in the summer of 2013. The Tavares Report regarded the reforms of the Hungarian Government as unprecedented and incompatible with several

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<sup>40</sup> “Opinion on the Fourth Amendment to the Fundamental Law of Hungary Adopted by the Venice Commission at Its 95th Plenary Session, Venice, 14-15 June 2013,” *Council of Europe Website*, June 2013, [http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2013\)012-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2013)012-e) (accessed March 13, 2014).

<sup>41</sup> “Viviane Reding’s Letter to Tibor Navracsics” (European Commission, December 12, 2011), [http://ec.europa.eu/commission\\_2010-2014/reding/pdf/news/20120109\\_1\\_en.pdf](http://ec.europa.eu/commission_2010-2014/reding/pdf/news/20120109_1_en.pdf) (accessed January 23, 2014).

<sup>42</sup> *Ibid.*

<sup>43</sup> “European Parliament Resolution of 16 February 2012 on the Recent Political Developments in Hungary (2012/2511(RSP))” (European Parliament, February 16, 2012), <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+TA+P7-TA-2012-0053+0+DOC+PDF+V0//EN> (accessed January 23, 2014).

EU values and TEU Articles.<sup>44</sup> It provided a detailed assessment of the main concerns in several different political areas, such as the Fundamental law of Hungary and its implementation:

*'...the process of drafting and adopting the Fundamental Law of Hungary lacked the transparency, openness, inclusiveness and, ultimately, the consensual basis that could be expected in a modern democratic constituent process, thus weakening the legitimacy of the Fundamental Law itself.'*<sup>45</sup>

*' the extensive use of cardinal laws to set forth very specific and detailed rules undermines the principles of democracy and the rule of law, as it has enabled the current government, which enjoys the support of a qualified majority, to set in stone political choices with the consequence of making it more difficult for any new future government having only a simple majority in the parliament to respond to social changes '*<sup>46</sup>

the democratic system of checks and balances:

*'is concerned ... about the shift of powers in constitutional matters to the advantage of the parliament and to the detriment of the Constitutional Court, which undermines severely the principle of separation of powers and a properly functioning system of checks and balances, which are key corollaries of the rule of law'*<sup>47</sup>

the independence of the judiciary:

*'Regrets the fact that the numerous measures adopted – as well as some ongoing reforms – do not provide sufficient assurances of constitutional safeguards as to the independence of the judiciary and the independence of the Constitutional Court of Hungary;*<sup>48</sup>

the electoral reform:

*'Is concerned that in the present political environment the current provisions for the procedure to appoint the members of the National Election Committee do not adequately guarantee balanced representation and the committee's independence;*<sup>49</sup>

media pluralism:

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<sup>44</sup> Rui Tavares, "Report on the Situation of Fundamental Rights: Standards and Practices in Hungary (pursuant to the European Parliament Resolution of 16 February 2012) (2012/2130(INI))" (European Parliament, June 24, 2013), <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+REPORT+A7-2013-0229+0+DOC+PDF+V0//EN> (accessed January 24, 2014).

<sup>45</sup> Ibid., 20.

<sup>46</sup> Ibid., 21.

<sup>47</sup> Ibid., 23.

<sup>48</sup> Ibid., 24.

<sup>49</sup> Ibid., 25.

*'Is concerned that public service broadcasting is controlled by an extremely centralised institutional system, which takes the real operational decisions without public scrutiny,'*<sup>50</sup>

the rights of persons belonging to minorities:

*'Notes with concern repeated changes to the legal order restricting the rights of lesbian, gay, bisexual and transgender (LGBT) people, for instance by seeking to exclude same-sex couples and their children, as well as other varied family structures, from the definition of 'family' in the Fundamental Law'*<sup>51</sup>

the freedom of religion or belief and recognition of churches:

*'Notes with concern that the changes made to the Fundamental Law by the Fourth Amendment give the parliament the power to recognise, by way of cardinal laws and without a constitutional duty to justify a refusal of recognition, certain organisations engaged in religious activities as churches, which might negatively affect the duty of the state to remain neutral and impartial in its relations with the various religions and beliefs;'*<sup>52</sup>

The resolution concluded with resorting to Article 7(1) of TEU 'in case the replies from the Hungarian authorities appear not to comply with the requirements of Article 2 TEU.'<sup>53</sup> This motion created a clear division between MEPs: some of them, mainly leftist politicians, supported Tavares in his criticisms against Hungary, while others considered them to be an exaggeration. This suggests that some points made by the report were politically motivated. As a response to this document, one day before the Report was put up for vote at the European Parliament, Hungarian Prime Minister Viktor Orbán paid an unexpected visit in Brussels, and he sharply criticized the report in front of the European Parliament for being 'insulting' and 'unfair' towards the Hungarian people.<sup>54</sup> Moreover, he declared the proposal set forth in the report to be in 'serious breach of the Founding Treaties' because it 'would bring one of the Member States of the European Union under control and guardianship.'<sup>55</sup> According to Orbán, the European Parliament's support for such a report would 'mean a real danger for the future of Europe.'<sup>56</sup> Despite the PM's efforts, on 3 July 3 2013, the European Parliament issued its resolution on the Hungarian situation which reiterated most of Tavares's concerns.<sup>57</sup> The legislative body reacted to Orbán's accusations by denying that it applied

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<sup>50</sup> Ibid., 27.

<sup>51</sup> Ibid., 28.

<sup>52</sup> Ibid.

<sup>53</sup> Ibid., 37.

<sup>54</sup> "Prime Minister Orbán's Speech in the European Parliament," *Website of the Hungarian Government*, July 2, 2013, <http://www.kormany.hu/en/prime-minister-s-office/the-prime-ministers-speeches/prime-minister-orban-s-opening-speech-in-the-european-parliament> (accessed March 25, 2014).

<sup>55</sup> Ibid.

<sup>56</sup> Ibid.

<sup>57</sup> "European Parliament Resolution of 3 July 2013 on the Situation of Fundamental Rights: Standards and Practices in Hungary (pursuant to the European Parliament Resolution of 16 February 2012) (2012/2130(INI))" (European Parliament, July 3, 2013), <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2013-0315+0+DOC+XML+V0//EN> (accessed January 23, 2014).

double standards, and by reminding that its opinion about basic values and principles of the EU was valid to all Member States of the European Union, not just to Hungary. Moreover, it urged Hungary to:

*‘implement as swiftly as possible all the measures the European Commission as the guardian of the treaties deems necessary in order to fully comply with EU law, fully comply with the decisions of the Hungarian Constitutional Court and implement as swiftly as possible the following recommendations,’*<sup>58</sup>

The recommendations of the European Parliament contained revoking the controversial issues mentioned above and complying with the declarations of the Constitutional Court. The Hungarian government reacted with its own parliamentary resolution accusing the European Parliament of overstepping its authority and calling the EU to treat Hungary on equal footing with other Member States and to respect its sovereignty.<sup>59</sup>

### **Politically sensitive discussion or deep problems under the surface?**

The resolution from the Hungarian Parliament addressed to the EU was not unique in its nature: in the spring of 2013 the Hungarian legislative body issued a similar document, based on the motion of Tibor Naracsics,<sup>60</sup> directed towards Viviane Reding, in the Tobin-case. In this long and sensitive judicial case Francis Tobin, an Irishman, caused the death of two children in a car accident in 2000, in Leányfalu, Hungary. During the legislative process Tobin was allowed to return to Ireland, and even though the Hungarian court sentenced him to prison, he was not imprisoned because his home country did not extradite him to Hungarian justice, despite Hungary’s repeated calls for a decade. In March 2013, Commissioner Reding stated in an interview to Frankfurter Allgemeine Zeitung that she is not surprised that Ireland does not extradite Tobin to a country where serious concerns arise about the independence of the judicial authorities.<sup>61</sup> This statement might have had some ground, but many European journals and policy-makers agreed that it was a politically-motivated and inappropriate statement in that particular case. The Hungarian Parliament condemned Reding for not urging Ireland to serve justice in the case. Finally Tobin accepted the Hungarian sentence on his own will, and started his confinement. This case proves that the criticisms arriving from Brussels were not always well-funded and did not always lack political motivation.

Lately, a new topic entered the EU-related political discussion in Hungary: the decrease of the Hungarian utility costs. The Hungarian government started a utility cost decreasing campaign with the motivation of excluding international firms from supplying the Hungarian

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<sup>58</sup> Ibid., 3.

<sup>59</sup> “69/2013. (VII. 5.) OGY Határozat,” <http://www.complex.hu/kzldat/o13h0069.htm/o13h0069.htm> (accessed March 12, 2014).

<sup>60</sup> “Report of Tibor Navracsics about Viviane Reding’s Actions Related to the Tobin-Case” (Motion for the Hungarian Parliament, March 2013), <http://www.parlament.hu/irom39/10517/10517.pdf> (accessed March 16, 2014).

<sup>61</sup> “Hungarian Parliament Passes Resolution Condemning Comments of EC Commissioner Reding,” *Politics.hu*, April 30, 2013, <http://www.politics.hu/20130430/hungarian-parliament-passes-resolution-condemning-comments-of-ec-commissioner-reding/> (accessed March 16, 2014).

households and preferring Hungarian companies instead. The European Commission did not pay much attention to this issue publicly, but it voiced its concerns about this area in its country specific reports issued every year.<sup>62</sup> Hungary accused the European Commission of breaching EU law when urging the country to revoke its laws about the reduction of public utility costs.<sup>63</sup> However, it has to be clarified that the Commission did not ask Hungary specifically to revoke its laws: every year the institution calls the attention of the country that energy prices should not be regulated by the state. This case proves that due to the experience of the past four years the Hungarian government became very irritated by all the EU warnings and reacts immediately when it receives an alleged criticism from the Brussels.

The most difficult part of analysing the Hungarian situation, or any similar interaction between an EU institution and a Member State, is deciding whether there is a real problem lying behind the seemingly politically sensitive discussions of the country and the EU. The cases mentioned above show that the answer can be yes and no as well. However, a decision of the European Commission published recently shows that the Commission might have indeed had some serious concerns about the rule of law in some EU Member States, assumedly Hungary as well. On March 11, the Commission presented a new framework to safeguard the rule of law in the European Union.<sup>64</sup> The framework will serve as a ‘tool to deal, at the EU level, with systemic threats to the rule of law’ and it will be complementary to infringement procedures and Article 7. The most important feature of the new procedure is its early warning mechanism which allows the Commission to enter into a dialogue with the Member State in question as early as possible. The introduction of this mechanism suggests that the concerns of the European Union about the state of rule of law in some EU countries were legitimate. This framework can be advantageous for the future because it will clarify the authority of the Commission and will hopefully prevent politically heated discussions and accusations about the EU overstepping its authority, such as the ones surrounding the Tavares Report.

## Legal proceedings against Hungary

Besides conducting a dialogue sometimes in the form of resolutions, sometimes in a more informal way, some legal action have also been taken against Hungary, expressing the concerns of the Commission about the developments in the country. One of these ‘formal’ procedures against Hungary was the Excessive Deficit Procedure that the country has been under since 2004. The resolution of this issue was among the biggest aims of the Hungarian government since 2010, and finally the European Commission recommended the abrogation

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<sup>62</sup> “Recommendation for a COUNCIL RECOMMENDATION on Hungary’s 2013 National Reform Programme and Delivering a Council Opinion on Hungary’s Convergence Programme for 2012-2016 {SWD(2013) 367 Final}” (European Commission, May 29, 2013), [http://ec.europa.eu/europe2020/pdf/nd/csr2013\\_hungary\\_en.pdf](http://ec.europa.eu/europe2020/pdf/nd/csr2013_hungary_en.pdf) (accessed March 12, 2014).

<sup>63</sup> “Politikai Nyilatkozattervezet a Rezsicsökkentés Védelméről Az Európai Unió Burokrácia Nyomásgyakorlásával Szemben” (Magyar Országgyűlés, October 14, 2013), <http://www.parlament.hu/irom39/12713/12713.pdf> (accessed March 12, 2014).

<sup>64</sup> “EUROPA - PRESS RELEASES - Press Release - European Commission Presents a Framework to Safeguard the Rule of Law in the European Union,” *Europa.eu*, March 11, 2014, [http://europa.eu/rapid/press-release\\_IP-14-237\\_en.htm](http://europa.eu/rapid/press-release_IP-14-237_en.htm) (accessed March 23, 2014).

of the Procedure in May 2013, and the Ecofin agreed to lift it in June.<sup>65</sup> The case was interesting because of the divergent interpretations of the events on the level of politics: the Hungarian government evaluated lifting the Procedure as a success and stated that with this step the Commission acknowledged the economic achievement of the country,<sup>66</sup> meanwhile members of the opposition and some experts warned that this was only a result of the EU's pressure on Hungary to which the government could only comply with introducing austerity measures and increasing poverty within the country.<sup>67</sup>

Another type of legal procedures launched against the country several times was the infringement procedure. Already in 2010, the Commission declared to bring Hungary, along with Portugal, before the European Court of Justice over introducing controversial taxes.<sup>68</sup> In January 2012, the European Commission launched politically highly sensitive infringement proceedings against Hungary over the independence of its central bank and data protection authorities, as well as over measures affecting the judiciary. The Commission stated that the 'Hungarian legislation conflicts with EU law' at several points.<sup>69</sup> In November 2013, two new infringement procedures were launched against Hungary, one concerning waste management problem, and another about alleged market distortions of mobile payment services.<sup>70</sup> However, these cases did not lead to sanctions against the country. Some of them, for example the procedure against telecommunications taxes, were dropped because the European Court of Justice decided that they are in line with EU legislation. In other cases Hungary promised to act and modified the parts of its laws criticized by the Commission. In April 2012, the Commission expressed its satisfaction about the measures which Hungary promised to take in the case of its central bank statute.<sup>71</sup> In November 2013 the infringement procedure

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<sup>65</sup> "EU Frees Hungary from Excessive Deficit Procedure after Nine Years," *Politics.hu*, June 21, 2013, <http://www.politics.hu/20130621/eu-frees-hungary-from-excessive-deficit-procedure-after-nine-years/> (accessed March 16, 2014).

<sup>66</sup> "Hungary's Economic Performance Is Acknowledged: Excessive Deficit Procedure Lifted," *Website of the Hungarian Government*, May 29, 2013, <http://www.kormany.hu/en/news/hungary-s-economic-performance-is-acknowledged-excessive-deficit-procedure-lifted> (accessed January 23, 2014).

<sup>67</sup> "Excessive Deficit Procedure against Hungary to Be Lifted," *Budapest - A Hungarian Press Review*, May 31, 2013, <http://budapest.eu/2013/05/excessive-deficit-procedure-against-hungary-to-be-lifted/> (accessed March 23, 2014).

<sup>68</sup> "Commission Takes Portugal and Hungary to Court and Asks France to Modify Its VAT Legislation," *European Commission Website*, March 18, 2010, [http://ec.europa.eu/taxation\\_customs/resources/documents/common/infringements/factsheet/2010/03/2010-03-296-hu-vat\\_en.pdf](http://ec.europa.eu/taxation_customs/resources/documents/common/infringements/factsheet/2010/03/2010-03-296-hu-vat_en.pdf) (accessed March 16, 2014).

<sup>69</sup> "EUROPA - PRESS RELEASES - Press Release - European Commission Launches Accelerated Infringement Proceedings against Hungary over the Independence of Its Central Bank and Data Protection Authorities as Well as over Measures Affecting the Judiciary," *Europa.eu*, January 17, 2012, [http://europa.eu/rapid/press-release\\_IP-12-24\\_en.htm?locale=en](http://europa.eu/rapid/press-release_IP-12-24_en.htm?locale=en) (accessed January 22, 2014).

<sup>70</sup> "EU Launches Two New Infringement Procedures against Hungary," *Politics.hu*, November 22, 2013, <http://www.politics.hu/20131122/eu-launches-two-new-infringement-procedures-against-hungary/> (accessed March 16, 2014).

<sup>71</sup> "Hungary - Infringements: European Commission Satisfied with Changes to Central Bank Statute, but Refers Hungary to the Court of Justice on the Independence of the Data Protection Authority and Measures Affecting the Judiciary," *Europa.eu*, April 25, 2012, [http://europa.eu/rapid/press-release\\_IP-12-395\\_en.htm](http://europa.eu/rapid/press-release_IP-12-395_en.htm) (accessed March 12, 2014).

in the case of the retirement age of the judges was closed,<sup>72</sup> meanwhile in other cases the decision of the ECJ is yet to come.

### Features of the Hungarian strategy

The picture described above demonstrates that the Hungarian behaviour towards the EU consists of several elements. First of all, the determined defence of national positions in the EU culminating in strong and conflict-seeking responses to the criticisms of Brussels can be seen as a clear indication of the new Hungarian strategy. Secondly, the fact that the Hungarian government in most of the cases cooperated with Brussels in the end shows its general willingness to comply with EU legislation, which is another important characteristic of the Hungarian small state strategy. It is not by chance that Article 7(1) of TEU did not have to be applied in the case of Hungary, because the country exerted many modifications to its legal system where it was most pressed to do so. However, it is also interesting to note in this regard that the communication of the Hungarian government, mainly towards its citizens, did not focus on this compliance or this ‘obedience’ to the demands of Brussels. The Hungarian government rather put an emphasis on how Hungary managed to stand on its own feet and did not let Brussels rule over its everyday policy-making. Creating the picture of a ‘strong’ and ‘sovereign’ country is also a significant feature of the Hungarian strategy. The political declarations or resolutions of the Hungarian parliament clearly demonstrate this stance. They have a massive political weight in the national political arena, because the Government can show the Hungarian citizens that they do not let the country be exploited by the ‘forces of Brussels’, but such documents usually lack any consequences. Especially when in the case of the most pressing issues there is legal compliance.

On the other hand, some of the criticism arriving from Brussels is indeed politically motivated and come from politicians or groups which have different political views than Fidesz, therefore they can be exaggerated sometimes. Hungary can take advantage of this by considering most of Brussels’ actions to be of such nature, and communicating this towards the Hungarian citizens by stressing that there is an offensive campaign driven by economic interests going against the country. The risk of this kind of strategy, however, is to be unpopular or gain a bad reputation in the European ‘club’. The next distinct feature of the Hungarian strategy is that the Government is willing to take this risk. Another distinguished feature of the Hungarian case is that there is a clear division between the political and the expert level of EU membership. There is a difference between the political ‘acting’ that the citizens see on the surface and the background processes that go behind the scenes: despite the political conflicts, the day-to-day work of Hungary and Hungarian experts in EU matters can be top notch. The performance of the experts working in the background or the legal compliance of the country might not be different than it was ten years ago, but the picture the Hungarian government paints about itself, or the role it plays, is definitely new. The Hungarian government thus navigates inventively within the European political arena. The Hungarian Presidency and the ‘dialogue’ between the Hungarian Government and different

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<sup>72</sup> “European Commission Closes Infringement Procedure on Forced Retirement of Hungarian Judges,” *Europa.eu*, November 20, 2013, [http://europa.eu/rapid/press-release\\_IP-13-1112\\_en.htm](http://europa.eu/rapid/press-release_IP-13-1112_en.htm).

EU institutions was a clear demonstration of this complex nature of Hungary's small state strategy. To sum up, the Hungarian small state strategy in the EU consists of:

- a sovereignty-oriented, conflict-seeking and risk-taking behaviour,
- an overall legal compliance,
- politically motivated communication towards Hungarian citizens in which Hungary appears as the defender of national interest against the forces of Brussels,
- a discrepancy between the political and the expert level.

## **Conclusion: the Hungarian strategy as a relevant small state strategy in the EU?**

After presenting the most important features of Hungarian politics towards Brussels, let us see how this fits in the small state theories. These theories usually try to find out how small Member States can influence EU policy-making or achieve their goals in the EU successfully. One could say that Hungary is not a 'successful' small state because it does not even apply the small state strategies enlisted by the usual small state scholarship to influence EU policy-making (relying on its policy-expertise, creating coalitions etc.). However, it must be highlighted that the aim of this study was not to decide whether Hungary is successful or not. Our intention was to discover whether the Hungarian behaviour in the past four years can be explained by the existing small state literature and whether its strategy could be worth following by other small countries. In this regard, we can say that the Hungarian behaviour cannot be explained by the small state literature in general. As already mentioned at the beginning, most of the academic research analyses small states as law-abiding actors using the EU to achieve their goals. The Hungarian case is different in this regard because it often takes the risk of breaching EU rules, or playing the role of the 'bad guy' in order to achieve its purposes. It seems that its primary goal is not to influence EU policy-making, but to achieve its own goals, which are in line with its national interest. As a result of Hungary's more autonomous and conflict-seeking standpoint towards the EU, the country's 'popularity' in the EU experienced a decrease. Hungary cannot be considered a smart small state either, at least not based on Mouritzen and Wivel's understanding, because it is not a lobbyist, a self-interested mediator or a norm entrepreneur. Hungary does not try to present its ideas as interests of the whole EU, or at least not when it concerns fundamental legal structures or values. It rather sees itself as a strong country standing in the middle of Europe (Hungarian politicians barely refer to the country's smallness) and it emphasizes that the EU does not have the authority to define what is in Hungary's interest.

If we look around among the other small Member States of the EU, this self-centred, autonomy-oriented behaviour is not common. Nor is the discrepancy between a decent legal compliance and a harsh, sometimes anti-EU rhetoric. Based on these observations, the answer to the research question, '*can the arguably new, distinct Hungarian behaviour be considered to be a small state strategy to influence EU policy-making?*' is yes and no. It can be seen as a

relevant strategy but it is not necessarily directed towards influencing EU policy-making. This strategy, although different than the typical small state behaviour, is a strategy which seems to work for Hungary, because it has not seen major disadvantages yet. If a small state is willing to take the risk of being a sort of an outsider in the EU, or having a bad reputation, then this is a completely viable strategy. In the end, the Hungarian experts sitting in the EU institutions are doing their jobs in the best way they can, and Hungary is as vital a part of the day-to-day EU negotiations as any other EU country, so we cannot judge the whole Hungarian EU-policy based on the adventurism or populism of its government. However, we cannot confirm that this strategy is aimed directly to influence EU policy-making, which is why the answer to the second part of the research question is no. Hungary plays a certain kind of 'minimal membership' in which it performs its main duties and complies with the main EU obligations, it is not afraid to react aggressively when it is criticized, but there is no sign of attempts to a conscious policy-making in a core EU policy-area.

The conclusion of this study, however, is not that the Hungarian way is the way to go, or that it is a wise choice. I argue that the Hungarian example shows that if a country's government wants to conduct a bit more aggressive, conflict-oriented behaviour and its politics are not very enthusiastic towards the EU, then it is possible to apply this strategy. Of course, the legal compliance and the active participation in the EU-machine are indispensable prerequisites for this. However, I also claim that this behaviour might be dangerous, mainly in the long term, because what Europe needs now is a group of cooperative countries whose work with each other can be built on trust. Small states should also be part of this cooperation, which is not facilitated by such behaviour as the Hungarian one. A small state can be strong and compliant in the EU without bringing unnecessary conflicts upon itself. For the discipline of small state studies, I recommend that sometimes the big-small dichotomy should be put aside. Small states should not be examined in light of the big, but the success of their strategy needs to be evaluated through the preferences of the Member State itself. Moreover, my suggestion for small state theories is to extend their scope of examination to unconventional country behaviour as well, because interesting conclusions can be drawn from analysing them.

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