

**Future Prospects of EU Legislation
in a Post-Brexit Council (2)**

A brexit utáni Tanács uniós jogalkotási kilátásai (2.)

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Abstract: The recent withdrawal of the United Kingdom from the European Union bestows unmatched actuality to an overview of Hungary's actions in the Council of the European Union (hereinafter: Council). The attitudes of these two Member States to legislative acts of the Union and the overlay thereof allow us to conduct inference on the changing position of Hungary. Moreover, the systematic overview of the final voting sessions before enacting legislative proposals reveals the Hungarian preferences with regards to the Union legislature. Our results indicate the preferences of Hungary overlap that of the United Kingdom to a relatively small degree. However, if cases of rejection are taken, we conclude that Britain and Poland were Hungary's most frequent partners. Thus, the departure of the United Kingdom might impair Hungary's blocking potential during qualified majority votes, though this effect is partly counterbalanced by the increasing weight of Poland.

Keywords: United Kingdom, European Union, Council of the European Union, legislation, Brexit

Összefoglaló: Az Egyesült Királyságnak az Európai Unióból történő távozása remek apropóval szolgál Magyarországnak az Európai Unió Tanácsában végzett tevékenységének az áttekintésére. A szóban forgó két tagállamnak az elmúlt tíz év egyes jogi aktusaihoz való viszonya közötti átfedésekből következtethetünk Magyarországnak a brexit után várható helyzetének jellemzőire. A jogalkotási javaslatokat elfogadó, záró tanácsi szavazások szisztematikus áttekintése pedig megvilágítja Magyarországnak az uniós jogszabályokkal kapcsolatos preferenciáit. A vizsgálódásunk eredményei szerint a magyar jogalkotási preferenciák viszonylag kis mértékben fedik az Egyesült Királyságét, bár egyes javaslatok elutasításakor Lengyelország mellett Nagy-Britannia volt Magyarország egyik legfontosabb partnere. Arra következtetünk tehát, hogy az Egyesült Királyság távozása rontja Magyarországnak a minősített többségi szavazások során a blokkolási lehetőségeit, ám ezt Lengyelország lényegesen növekvő szavazati súlya részben ellensúlyozhatja.

Kulcsszavak: Egyesült Királyság, Európai Unió, az Európai Unió Tanácsa, jogalkotás, brexit

INTRODUCTION

Brexit gives an unparalleled opportunity for scholars to analyse how the decision-making and legislation of the European Union (EU) will change in the new EU-27. In this paper, we analyse the potential implications of Brexit from Hungary's point of view. Most papers aim at making some predictions based on historical experiences. For a similar purpose, we use Council voting data for the period of 2010–2019 from the EU's [Open Data](#) portal. This dataset contains vote outcomes as well as a categorisation of legislative acts into policy areas along with other variables.



It should be pointed out that since the majority of legislative work in the Council is done in preparatory bodies, these formal votes are unable to account for the intricate dynamics of the legislative process. Nevertheless, votes against or even abstentions during qualified majority votes are representative of cases where Member States disfavoured the act in question to the extent that they declined to support them despite being unable to prevent their success.

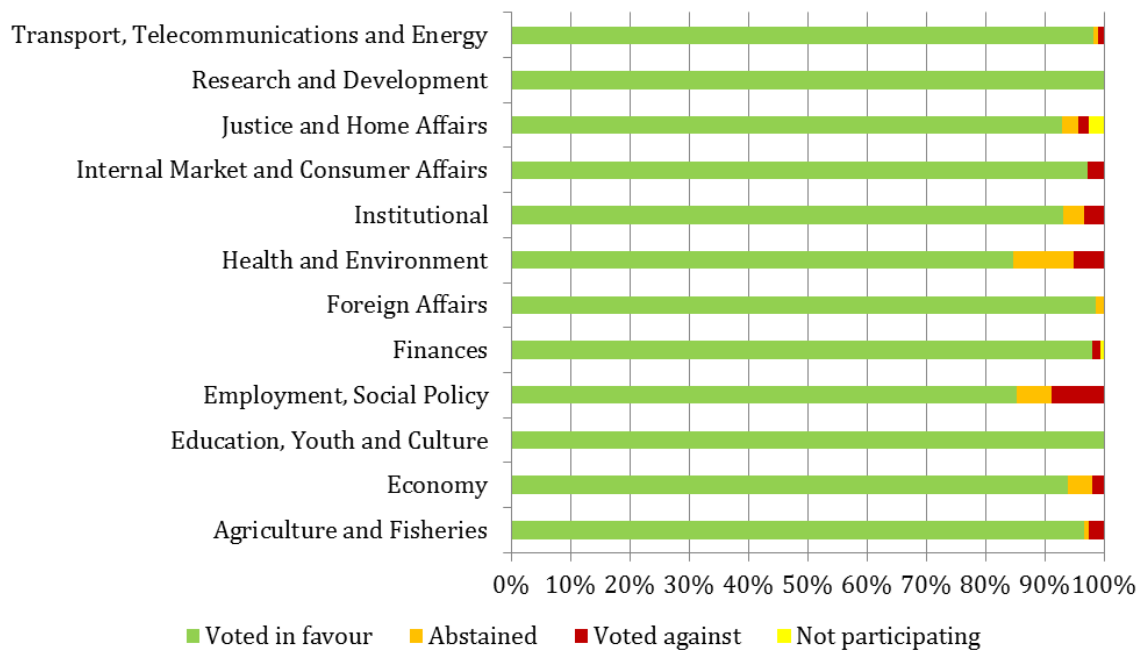
This paper is structured around three key components. First, we give an overview on Hungary's voting record along with the different policy areas of legislation. Second, we discuss the time evolution Hungary's voting positions and, in the third one, we analyse the most frequent partners of Hungary in the Council, devoting special attention to the patterns of mutual opposition of the legislative dossiers. Lastly, we summarise the sections outlined above and formulate expectations for the future of Hungary in the Council without the United Kingdom.

HUNGARIAN ATTITUDES TOWARDS EU LEGISLATION BY POLICY AREA

We begin our analysis with an overview of Hungary's positions on legislative acts of the Union. Figure 1 depicts Hungary's overall distribution of votes during the final decisions of the Council by policy area. The figure shows that the rate of non-support – i.e. the ratio of non-favourable – votes is the highest in *health and environment* (15.4%). The vast majority of these cases were environment-related matters, e.g. [regulation 1143/2014 on the prevention and management of the introduction and spread of invasive alien species](#) – that had important agricultural ramifications for Hungary – or the [amendment of directive 2003/87 to enhance cost-effective emission reductions and low-carbon investments](#). Additional notable examples are [directive 2019/904 on the reduction of the impact of certain plastic products on the environment](#) and regulation [2018/848 on organic production and labelling of organic products](#). In health-related matters Hungary opposed only once, during the enactment of [regulation 2014/282 on the establishment of a third "Programme for the Union's action"](#) in the field of health (2014–2020).

The policy area with the second highest rate of Hungarian opposition is *employment and social policy* (14.7%). In this domain, Hungary opposed legislative acts primary concerned with labour market regulation (see [regulation 2019/1149 establishing a European Labour Authority](#)), possibly being wary of the regulation eroding Hungarian competitiveness, or acts in the field of gender equality (see [directive 2010/41 on the application of the principle of equal treatment](#) between men and women engaged in an activity in a self-employed capacity). Another example of palpable importance is [regulation 2019/1700 establishing a common framework for European statistics relating to persons and households](#).

Figure 1
The Distribution of Hungarian Votes by Policy Area, 2010–2019



Source: the Authors' own calculations based on data from the EU's [Open Data](#) service.

Other policy areas were significantly less divisive for Hungary. Nevertheless, the rate of non-support seems to be somewhat higher than the rest in *justice and home affairs* (7.1%), *institutional* (6.9%) and *economic* (6.1%) matters.

In the first case, oppositions can be attributed to acts amending the Schengen Agreement (see [regulation 265/2010 as regards movement of persons with a long-stay visa](#)), as well as acts aimed at protecting the Union's financial interest (see [directive 2017/1371 on the fight against fraud to the Union's financial interests](#) by means of criminal law). This policy area is also subject to Hungarian non-participation in enhanced co-operations, namely the *European Public Prosecutor's Office* ([regulation 2017/1939](#)) or the one regarding *matrimonial property regime rules for international couples* (regulations [2016/1103](#) and [2016/1104](#)).

In the case of *institutional matters*, the rate of non-favourable view might seem relatively high at first, but closer inspection reveals it is due to merely two cases of opposition: regulation [2013/1260 adjusting the remuneration and pensions of EU staff](#) and [regulation 2013/1260 on European demographic statistics](#).

Lastly, in *economic matters* – similarly to the case above – just three oppositions are responsible for the relatively high rate. (Obviously, this is due to the fact, that the overall number of legislative acts in these categories is relatively low.) These acts are [regulation 2010/437, amending regulation 2006/1080 on the European Regional Development Fund](#) (as regards the eligibility of housing interventions in favour of marginalised communities), [regulation 2019/2152 on European business statistics](#)



and, most importantly, [decision 2018/947 providing further macro-financial assistance to Ukraine](#).

In the rest of the policy areas Hungarian non-supportive votes seem to be rare, though *agriculture* (3.4%) and *internal market affairs* (2.8%) are worth to mention. In the former, acts incurring Hungarian opposition are food market related ([directive 2014/63 amending Council Directive 2001/110/EC relating to honey](#), [regulation 2019/787 related to spirit drinks](#)) or regulate the breeding and trading of animals ([regulation 2016/1012, „Animal Breeding Regulation”](#)). In the latter, we find acts such as [regulation 2014/537 regarding the statutory audits of public-interest entities](#) or [directive 2014/67 concerned with the posting of workers](#).

HUNGARIAN VOTES BY ROTATING PRESIDENCY

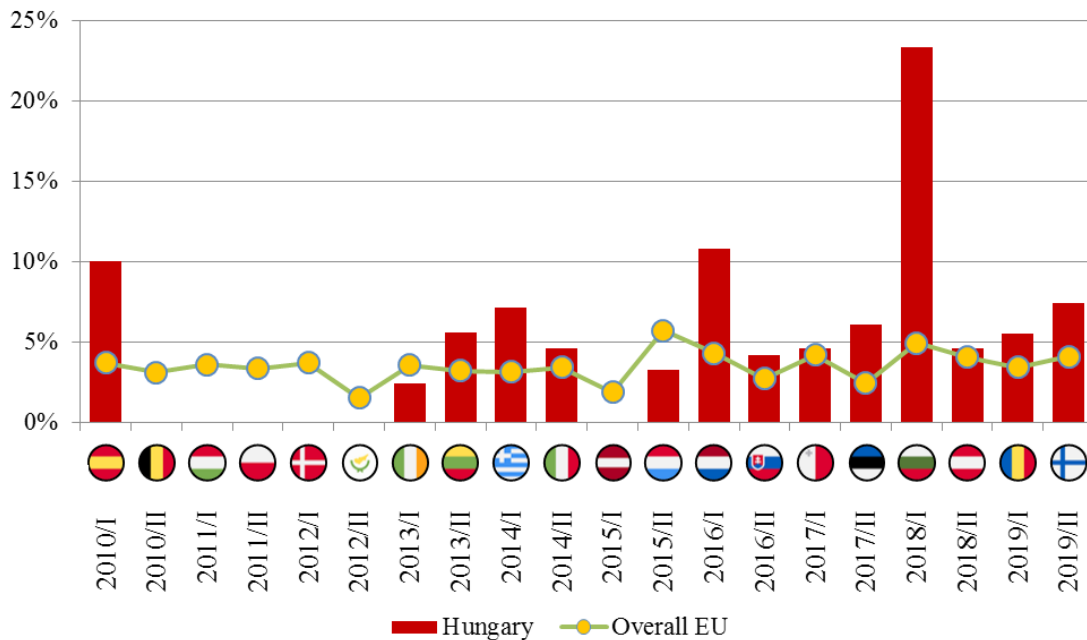
We continue our analysis by calculating the ratio of Hungarian non-supportive votes by semester, i.e. rotating presidencies.

According to Figure 2, the rate of opposition for Hungary exhibits a certain cyclical behaviour on top of an increasing trend. It starts from a local maximum in 2010/I, falls to and stays at zero from the Belgian (2010/II) to the Cypriot presidency (2012/II). The apparent zero rate of opposition during these years could be explained by that Hungary was in a presidential trio with Spain and Belgium (2010/I and 2010/II, respectively) and thus could influence their agenda, though the apparently high rate of opposition during the Spanish presidency does not fit into this reasoning. The fact that Hungarian oppositions remained zero during the presidencies of the next trio could be explained by the tight diplomatic relationship between Poland (2011/II) and Hungary, and the possible Polish influence on the agenda of those presidencies.

Nevertheless, Hungarian opposition became more frequent starting from the Irish presidency (2013/I) and peaked during the Greek one (2014/1), then fell back to zero shortly after (Latvian presidency, 2015/I). The first half of 2016 (Dutch presidency) was another local maximum, speaking in terms of opposition rate. The following semesters were characterised by an average rate of est. 5%, with the Bulgarian presidency (2018/I) being a massive outlier (greater than 20% rate of opposition).

All in all, the Hungarian rate of non-support seems to hover around the 5% mark with semesters 2010/I, 2014/I, 2016/I and 2018/I being positive outliers, and presidencies with connections to Hungary being negative outliers: semesters in which Hungarian opposition rate was lower than usual.

Figure 2
The Ratio of Hungarian Non-Favourable Votes by Semester.
(Rotating Presidencies Are Indicated by the Respective Country Flags)



Source: the Authors' own calculations based on data from the EU's [Open Data](#) service.

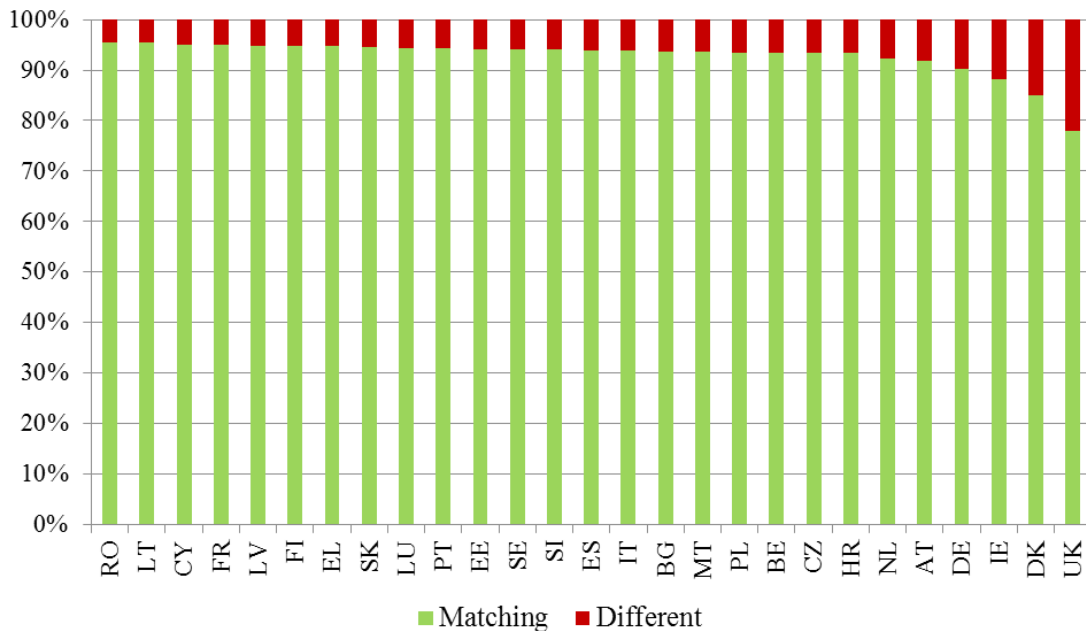
FREQUENT PARTNERS

While the previous chapters discussed the basic features of the Hungarian position in the cases of various policy domains and the time evolution of Hungary's preferences, they did not reveal its frequent partners, i.e. the Member States that were on the same position as Hungary with regards to certain legislative acts. The following section seeks to settle this debt. In order to assess, which Member States' views on legislative acts matched that of with Hungary's the most, the ratio of matching votes were calculated. Figure 3 presents the results.

As apparent from the figure, the ratio of matching votes with Hungary shows little variation. This is largely due to the overwhelming majority of supporting votes, suggestive of the consensual nature of EU legislation. Almost every Member State seems to have had the same position during the final votes on legislative acts as Hungary in greater than 90 per cent of the cases. The exceptions are the United Kingdom (78%), Denmark (85%), Ireland (88%) and Germany (90%). In the first three cases, this fact can be explained by these Member States' permanent opt-outs, or non-participation in enhanced co-operations, most notably the Schengen Convention. In the case of the United Kingdom, its relatively high non-support rate also contributes to this result.



Figure 3
The Ratio of Matching Positions with Hungary by Member State



Source: the Authors' own calculations based on data from the EU's [Open Data](#) service.

Germany on the other hand, has no opt-outs and does participate in enhanced co-operations, but has the second highest rate of opposing votes, non-participations cast aside. Not only does this suggest that Germany opposed more legislative acts, but also mostly different ones than Hungary. Generally, the same holds in the case of Austria and the Netherlands, both of which have a fair share of non-favourable votes (third and fourth highest respectively) and are in the lower end of the spectrum. (For an overview of vote distributions of Member States, see Figure 4 of [Future Prospects of EU Legislation in a Post-Brexit Council](#).)

On the other end of the spectrum lies Romania, Latvia and Cyprus, but keeping in mind the apparent low variation in the upper half of the spectrum, these results are less informative.

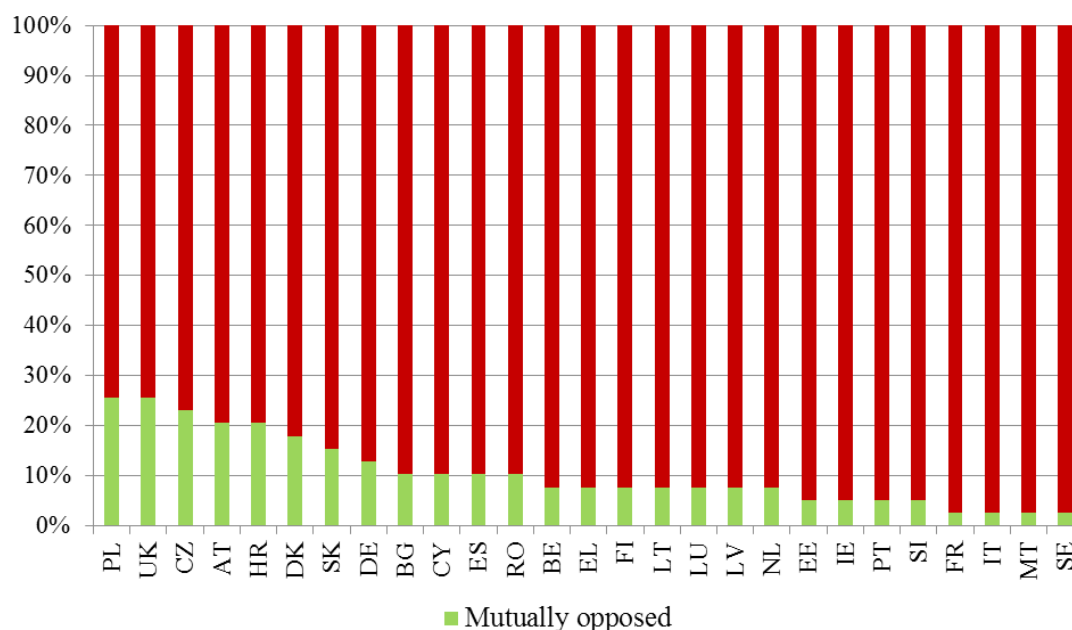
A perhaps more interesting exercise is to calculate the ratio of matching positions in the cases where Hungary did not support the legislative acts in question. In the calculations, votes against and abstentions during qualified majority votes are taken as oppositions. (Since non-participating Member States are missing from the whole legislative process, non-participations are not taken as oppositions in this case. This makes sense, as non-participation cannot be interpreted partaking in a blocking effort.)

Even though Member State positions during the preparatory sessions are unknown this quantity might be suggestive of Hungary's frequent partners in opposition. Figure 4 illustrates the results.

The apparent low rate of mutual opposition might be interpreted as evidence that the majority of Hungary's oppositions were either solitary ones or supported

by few or varying (case-by-case) other Member States. In the case of Hungary, the third option seems to be true, as on average 2.8 other Member States shared Hungary's non-favourable view on the particular acts (see Table 1).

Figure 4
The Ratio of Mutual Opposition with Hungary by Member State



Source: the Authors' own calculations based on data from the EU's [Open Data](#) service.

Nevertheless, certain Member States appear more frequently on the side of Hungary than others, most notably Poland and the United Kingdom. Czechia, Austria and Croatia also pass the 20% mark. While others, such as France, Italy, Malta or Sweden almost never appeared to oppose the same acts as Hungary. (It should be noted that France seldom opposed acts at all, specifically only opposed in 3 cases.)

Further analysing the top 5 partners of Hungary reveals additional insight. Figure 5 depicts the frequency of mutual opposition relative to Hungarian oppositions by policy area.

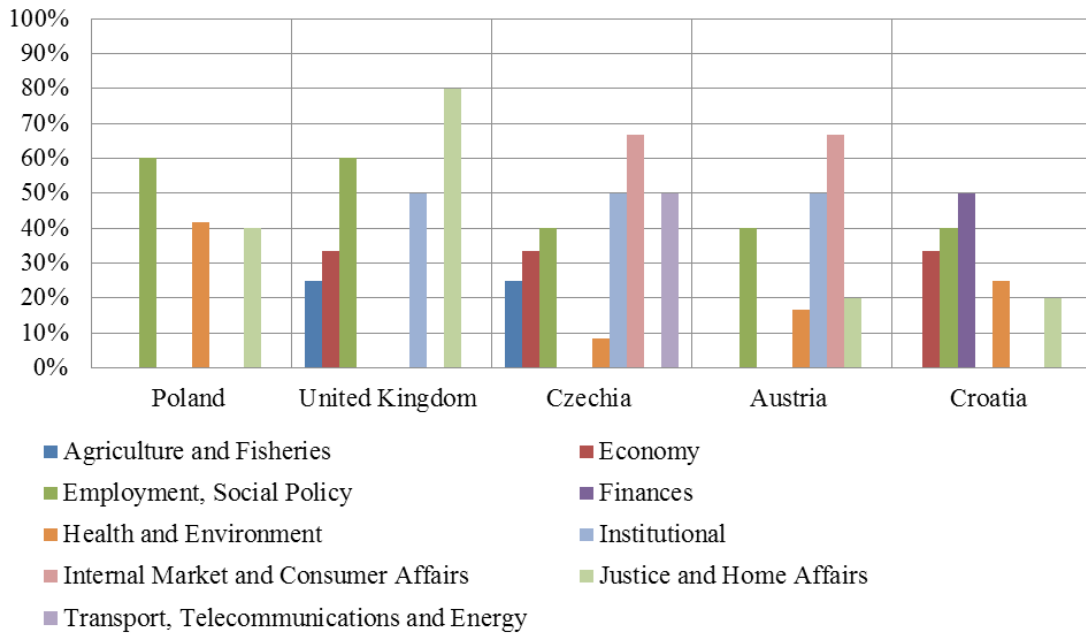
The figure gives the general impression that partnership in opposition is rather heterogeneous across Member States. The only persistent policy area seems to be employment and social policy, where each Member State of the top 5 shared Hungary's unfavourable view in at least two fifth of the cases, though these can be attributed to largely different acts. (See Table 1 for details.)

Co-operative opposition with Poland is confined to employment and social policy, health and environment, as well as justice and home affairs. (Mostly environment protection related matters, though the aggregation of policy areas masks this fact.) In these areas, however, Poland seems to be a relatively reliable partner for Hungary.



Figure 5

The Frequency of Mutual Opposition Relative to Hungarian Opposition by Policy Area



Source: the Authors' own calculations based on data from the EU's [Open Data](#) service.

Partnership in opposition with the United Kingdom is most prevalent in justice and home affairs related acts, where in 80 per cent of the cases the two Member States shared a non-favourable view on the legislative act in question.

The spectrum of mutual opposition is more widespread in the other cases, with few features in common. Nevertheless, there is some resemblance between the United Kingdom and Czechia, where apart from social policy, agriculture and economic matters similarly stand out. Also, there is a visible similarity in the structure of co-operation with Hungary in the case of Czechia and Austria.

CONCLUSIONS: THE RAMIFICATIONS OF BREXIT FROM A HUNGARIAN PERSPECTIVE

Finally, we attempt to synthesize the information from the previous sections in order to form expectations for the future, focusing on Hungary.

We concluded that the bulk of Hungary's opposition in the Council was environment protection related: a policy area in which the United Kingdom was not a frequent partner in opposition. However, in justice and home affairs, social policy, agriculture and institutional matters, the departure of the United Kingdom might impair Hungary's blocking potential. This is partly countered by the weight increase of Hungary's frequent partners, though due to the massive (former) weight of Britain it could be argued that the overall effect is still negative. This is largely in line with

the results of our previously published analysis (see Table 3 of [Future Prospects of EU Legislation in a Post-Brexit Council](#)), where it is shown that the average vote weight backing Hungarian oppositions would have been about 0.5 per cent lower without the United Kingdom. With this value, Hungary is around the middle of the spectrum.

However, the ramifications of Brexit might not be exclusively negative. Poland is among the greatest winners of Brexit in terms of vote weight gained during qualified majority votes, with its weight increasing from 7.4% to 8.5%. (It is the 5th biggest increase in the Union. See Table 1 of [Future Prospects of EU Legislation in a Post-Brexit Council](#).) This could yield greater blocking potential for Hungary, especially in environment-related cases, where co-operation between the two Member States was the strongest. With the upcoming legislative efforts in this policy area, a weighty Member State with similar preferences might come in handy during the negotiations.

While looking at the big picture – not restricted to oppositions – we can conclude that since the British position matched with the Hungarian one the least frequently, the overall changes could be beneficial for Hungary. Further argument for this assertion – though does not directly follow from the contents of this study – could be that the most stringent of net-contributors leaves the Union, thus Hungary might achieve its financial goals with increased likelihood, not without connection to environment protection related matters.

Table 1
Legislative Acts that Hungary Did Not Support
(from 1 January 2010 to 31 December 2019)

Date	Type	Act Nr.	Policy Area	Position	Partners
22.03.2010	Reg	2010/265	Justice and home	A	EL, PL, DE
26.04.2010	Reg	2010/437	Economy	A	DE
24.06.2010	Dir	2010/41	Social	A	UK
11.06.2012	Dir	2013/39	Environment	A	LT, SK, PL, RO, BG
20.06.2013	Dir	2013/34	Finances	VA	BG, PT, ES, EE
15.11.2013	Reg	2013/1260	Institutional	A	CZ, SK, IT
15.11.2013	Dec	2013/1386	Environment	VA	PL
05.12.2013	Reg	2013/1297	Finances	VA	
11.03.2014	Reg	2014/282	Health	A	
11.03.2014	Reg	2014/331	Finances	NP	BG, CZ, DK, HR, UK, LV, PL, RO, SE
14.04.2014	Reg	2014/423	Institutional	VA	SI, AT, CY, DK, UK, EL, NL
14.04.2014	Reg	2014/513	Justice and home	A	FI, DK, UK
14.04.2014	Reg	2014/537	Internal market	VA	AT, ES, LU, CZ



14.04.2014	Dir	2014/56	Internal market	VA	AT, ES, CZ
08.05.2014	Dir	2014/63	Agriculture	VA	CZ, FR, LU
13.05.2014	Dir	2014/66	Justice and home	A	AT, ES, DK, IE, UK
13.05.2014	Dir	2014/67	Internal market	VA	EE, LT, SK, PL, RO
29.09.2014	Reg	2014/1143	Environment	VA	BG, DE, RO
17.12.2014	Dec	2015/1814	Environment	VA	BG, CY, HR, PL, RO
11.04.2016	Reg	2016/791	Agriculture	VA	UK, NL
17.05.2016	Reg	2016/1012	Agriculture	VA	BE, DE, SK
24.06.2016	Dec	2015/1814	Justice and home	NP	DK, EE, UK, IE, LT, LV, PL, RO, SK
24.06.2016	Reg	2016/1103	Justice and home	NP	DK, EE, UK, IE, LT, LV, PL, RO, SK
22.09.2016	Reg	2017/1938	Energy	VA	
08.12.2016	Dir	2016/2284	Environment	VA	HR, AT, DK, LV, PL, RO
25.04.2017	Dir	2017/1371	Justice and home	VA	LU
26.06.2017	Dir	2018/2001	Energy	A	BE, SK, CZ
25.09.2017	Reg	2017/1601	Foreign affairs	A	CY, DE, IE, PL, MT, DK, UK
12.10.2017	Reg	2017/1939	Justice and home	NP	DK, IE, NL, MT, PL, SE, UK
27.02.2018	Dir	2018/410	Environment	A	HR, PL
22.05.2018	Dir	2018/849	Environment	A	
22.05.2018	Reg	2018/848	Environment	A	AT, BE, CY, CZ, FI, LV, SK
22.05.2018	Dir	2018/851	Environment	A	PT
22.05.2018	Dir	2018/852	Environment	A	
21.06.2018	Dir	2018/957	Social	VA	HR, UK, LT, LV, PL
26.06.2018	Dec	2018/947	Economy	VA	
11.12.2018	Reg	2018/2000	Justice and home	VA	FI, DK, UK
09.04.2019	Reg	2019/787	Agriculture	A	EL
21.05.2019	Dir	2019/904	Environment	A	
13.06.2019	Reg	2019/1149	Social	VA	CZ, PL, AT, SE
13.06.2019	Dir	2019/1158	Social	VA	AT, PL, DK, NL, SI
08.10.2019	Reg	2019/1700	Social	A	CZ, UK, SK
19.11.2019	Reg	2019/2152	Economy	A	CZ, UK

Source: The EU's [Open Data](#) portal, [EUR-Lex](#).

Note: Colours in the "Partners" column stand for: ● – abstained, ● – voted against, ● – did not participate. Letters in the "Position" column abbreviate: A – abstained, VA – voted against, NP – did not participate. Act types are abbreviated as follows: Reg – regulation, Dir – directive, Dec – decision. Further information about the acts is accessible by opening the hyperlinks in column "Act Nr".