

NAGY & TRÓCSÁNYI

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January 7, 2025

Council of the European Union
Legal Service
Rue de la Loi/Wetstraat 175
1048 Brussels

Attn.: Ms. Lucie VETILLARD
Mr. Emanuele REBASTI
Mr. Giacomo RUGGE

RE: Your letter SGS 25/6 dated Jan/3/2025

Dear Colleagues:

I am pleased to confirm receipt by email on Jan/6/2025 at 4:00 p.m. of your above referenced letter communicating your professional discontent with the availability on Semmelweis Egyetem's homepage of certain procedural documents in Case T-138/23.

In support of your professional discontent you referred to

- (i) Article 20, second paragraph, of the Statute of the Court of Justice;
- (ii) Article 65(1) of the Rules of Procedure of the General Court;
- (iii) Judgment of 20 September 2010, Sweden and Others v API and Commission, C-514/07 P, C-528/07 P and C-532/07 P, EU:C:2010:541, paragraph 78, 85, 86, 92 and 93;
- (iv) Judgment of 17 June 1998, Svenska Journalistförbundet v Council, T-174/95, EU:T:1998:127, paragraph 137.

Having thoroughly examined these references, we have been forced to conclude that

- (i) Art. 20(2) Statute reads that "*The written procedure shall consist of the communication to the parties and to the institutions of the Union whose decisions are in dispute...*". (underline added)
- (ii) Art. 65(1) Rules of Procedure reads that "*Subject to the provisions of Article 68(4), Articles 103 to 105 and Article 144(7), procedural documents and items included in the file in the case shall be served on the parties.*" (underline added)
- (iii) The joined Cases C-514/07 P, C-528/07 P and C-532/07 P, were about a journalists' organization requesting from the Commission access to the written pleadings lodged by the Commission before the General Court or the Court of Justice in certain proceedings. In one of those cases the Commission complied. In another, the request was rejected as premature. In two other cases the requests were refused due to concerns under Art. 4(2) Regulation No 1049/2001, which reads as follows: "*The institutions shall refuse access to a document where disclosure would undermine the protection of:*
- *commercial interests of a natural or legal person, including intellectual property,*
- *court proceedings and legal advice,*
- *the purpose of inspections, investigations and audits,*
unless there is an overriding public interest in disclosure." (underline added) For obvious reasons, your references to paragraph 78, 85, 86, 92 and 93 of the judgement can be interpreted in this context.

- (iv) The Case T-174/95 was adjudicated under 93/731/EC: Council Decision of 20 December 1993 on public access to Council documents, which is no longer in force since 2001. This case was about another journalists' organization requesting 46 Swedish authorities access to 20 police related documents, out of which access to 18 was granted, while the rest refused by the Council as they concerned other governments' positions and "...*their release could be harmful to the public interest (public security)*...". Paragraph 137 you refer to reads that "*It follows that a party who is granted access to the procedural documents of other parties is entitled to use those documents only for the purpose of pursuing his own case and for no other purpose, including that of inciting criticism on the part of the public in relation to arguments raised by other parties in the case.*" (underline added)

In short, in our opinion, neither the referenced sections of the Statute of the Court of Justice nor those of the Rules of Procedure of the General Court would prevent a litigant from allowing third party access to procedural documents received by such litigant lawfully. Also, the two cases from which you selected your paragraphs are unrelated to our Case T-138/23 to the extent that their relevance is questionable.

Additionally, and with all due respect, we invite you to consider your own discontent from our client's perspective. Semmelweis Egyetem understands that your client is 55% dissatisfied with certain actions or inactions of Hungary concerning the Union budget or otherwise. So, it is beyond our comprehension why Semmelweis Egyetem's 12,000 students and hundreds if not thousands of researchers from 129 countries are 100% excluded from EU freedom of movement without even giving them a fair chance to have a say in this matter. Yet your client expects these students and researchers to trust and be content that they are not being intentionally penalized by your client, whatever current circumstances they have been forced into. You seem now to suggest that the principles of equality of arms includes aiding and abetting creating a fog of secrecy around these very court proceedings. With all fairness, the 250-year struggle for its autonomy makes Semmelweis Egyetem rather believe in transparency vis-à-vis the public in general and specifically to its stakeholders.

On a separate note. You also mention that the names of the agents on your client's part appear on the court documents available on Semmelweis Egyetem's homepage. I fully understand the professional inconvenience but let me remind you that those names already appeared in the Order of the General Court (a public document) rejecting your plea of inadmissibility.

In the light of the foregoing, as counsel for Semmelweis Egyetem, I am advising my client to continue to maintain full transparency of this litigation since public interest in disclosure clearly overrides the unsubstantiated concerns raised in your letter.

Should you have any question or comment in connection with the above or otherwise, or should there be anything else that I still can help you with, please call.

Sincerely,

P. Nagy

cc. Prof. Dr. B. Merkely, rector, Semmelweis Egyetem