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ОБЩ СЪД НА ЕВРОПЕЙСКИЯ СЪЮЗ
TRIBUNAL GENERAL DE LA UNIÓN EUROPEA
TRIBUNÁL EVROPSKÉ UNIE
DEN EUROPÆISKE UNIONS RET
GERICHT DER EUROPÄISCHEN UNION
EUROOPA LIIDU ÜLDKOHUS
ΓΕΝΙΚΟ ΔΙΚΑΣΤΗΡΙΟ ΤΗΣ ΕΥΡΩΠΑΪΚΗΣ ΕΝΩΣΗΣ
GENERAL COURT OF THE EUROPEAN UNION
TRIBUNAL DE L'UNION EUROPÉENNE
CÚIRT GHINEARÁLTA AN AONTAIS EORPAIGH
OPĆI SUD EUROPSKE UNIJE
TRIBUNALE DELL'UNIONE EUROPEA

EIROPAS SAVIENĪBAS VISPĀRĒJĀ TIESA
EUROPOS SĄJUNGOS BENDRASIS TEISMAS
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SPLOŠNO SODIŠČE EVROPSKE UNIJE
EUROOPAN UNIONIN YLEINEN TUOMIOISTUIN
EUROPEISKA UNIONENS TRIBUNAL

- 1182970 -

ORDER OF THE GENERAL COURT (Sixth Chamber)

- 31 -

4 April 2024 *

(Action for annulment – Measures for the protection of the Union budget against breaches of the principles of the rule of law in Hungary – Prohibition on entering into legal commitments with any public interest trust or any entity maintained by such a public interest trust – Article 2(2) of Implementing Decision (EU) 2022/2506 – Regulatory act not entailing implementing measures – Direct concern – Admissibility)

In Case T-138/23,

Semmelweis Egyetem, established in Budapest (Hungary), represented by P. Nagy and B. Karsai, lawyers,

applicant,

v

Council of the European Union, represented by E. Rebasti, G. Rugge and L. Vétillard, acting as Agents,

defendant,

THE GENERAL COURT (Sixth Chamber),

composed of M.J. Costeira, President, U. Öberg (Rapporteur) and P. Zilgalvis, Judges,

Registrar: V. Di Bucci,

makes the following

* Language of the case: English

Order

- 1 By its action under Article 263 TFEU, Semmelweis Egyetem, seeks the annulment of Article 2(2) of Council Implementing Decision (EU) 2022/2506 of 15 December 2022 on measures for the protection of the Union budget against breaches of the principles of the rule of law in Hungary (OJ 2022 L 325, p. 94, ‘the contested provision’), by which the Council of the European Union decided to prohibit the European Commission, where it implements the Union budget in direct or indirect management, from entering into legal commitments with any public interest trust established on the basis of the Hungarian Act IX of 2021 or any entity maintained by such a public interest trust.

Background to the dispute

- 2 The applicant is a medical and health sciences research university in Budapest (Hungary). In 2021, its founding and management rights were transferred to the Nemzeti Egészségügyi és Orvosképzésért Alapítvány public interest trust, a national foundation for healthcare and medical education. The activity of that trust is governed, inter alia, by the provisions of the a közfeladatot ellátó közérdekű vagyonkezelő alapítványokról szóló 2021. évi IX. törvény (Hungarian Act No IX of 2021 on public interest trusts with a public service function; ‘the Hungarian Act IX’).
- 3 On 24 November 2021, the Commission sent a request for information to Hungary pursuant to Article 6(4) of Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget (OJ 2020 L 433I, p. 1), to which the Hungarian authorities replied on 27 January 2022.
- 4 On 27 April 2022, the Commission sent a written notification to Hungary pursuant to Article 6(1) of Regulation 2020/2092 (‘the notification’), in which it raised its concerns and presented its findings regarding a number of issues related to the public procurement system in Hungary, the fight against corruption, and the effective investigation and prosecution of alleged criminal activity.
- 5 On 27 June 2022, Hungary replied to the notification (‘the first reply’). By letters of 30 June and 5 July 2022, Hungary submitted further information to supplement the first reply. On 19 July 2022, Hungary also sent an additional letter proposing a number of remedial measures to address the findings in the notification.
- 6 The Commission assessed the observations submitted in the first reply and concluded that they did not allay its concerns and findings set out in the notification. Furthermore, the Commission considered that neither the first reply nor the additional letters of 30 June and 5 July 2022 contained adequate remedial measures appropriately committed in the context of Regulation 2020/2092.

- 7 In line with Article 6(7) of Regulation 2020/2092, the Commission sent a letter to Hungary on 20 July 2022 ('the intention letter') to inform that Member State of its assessment pursuant to paragraph 6 of that article, and of the measures that the Commission envisaged to propose for adoption by the Council pursuant to paragraph 9 of that article, in the absence of a commitment from Hungary to take adequate remedial measures. In the intention letter, the Commission gave Hungary the opportunity to submit its observations, in particular on the proportionality of the envisaged measures.
- 8 Hungary replied to the intention letter on 22 August 2022 and provided its observations on the Commission's findings, the procedure and the proportionality of the measures referred to in the intention letter. Despite having contested the Commission's findings, Hungary proposed certain remedial measures to address the concerns raised by the Commission. On 13 September 2022, Hungary sent the Commission a letter that included clarifications and further commitments relevant to the remedial measures proposed.
- 9 On 18 September 2022, considering that the remedial measures proposed by Hungary did not adequately address the findings set out in the notification and the intention letter, so that the conditions for the application of Regulation 2020/2092 were met, the Commission adopted a proposal for a Council implementing decision on measures for the protection of the Union budget against breaches of the principles of the rule of law in Hungary.
- 10 After carrying out an assessment and examining the remedial measures proposed by Hungary, the Council concluded that those remedial measures, taken as a whole, as adopted and in view of their details and the ensuing uncertainty about their application in practice, did not put an end to the identified breaches of the principles of the rule of law. It stated that, because the cases of non-compliance found referred to breaches of a systemic character, they largely affected the sound financial management of the budget of the Union and the protection of the financial interests of the Union in a sufficiently direct way and that the ensuing risk for the Union budget remained high.
- 11 On 15 December 2022, the Council therefore adopted Implementing Decision 2022/2506, by which, inter alia, it was decided, in Article 2(2) thereof, that 'where the Commission implements the Union budget in direct or indirect management pursuant to ... Article 62(1) points (a) and (c), of Regulation (EU, Euratom) 2018/1046, no legal commitments shall be entered into with any public interest trust established on the basis of the Hungarian Act IX of 2021 or any entity maintained by such a public interest trust'.
- 12 Implementing Decision 2022/2506 took effect on 16 December 2022.

Forms of order sought

- 13 The applicant claims that the Court should:

- primarily, annul the contested provision, in so far as it concerns the applicant;
- in the alternative, annul the contested provision in its entirety;
- order the Council to pay the costs.

14 In its plea of inadmissibility, the Council contends that the Court should:

- dismiss the action as manifestly inadmissible;
- order the applicant to pay the costs.

15 In its observations on the plea of inadmissibility, the applicant claims that the Court should reject the plea of inadmissibility.

Law

16 Pursuant to Article 130(1) of the Rules of Procedure of the General Court, the Court may, if the defendant so requests, rule on the question of inadmissibility without going to the substance of the case. Under Article 130(7) of those rules, the Court is to decide on the application as soon as possible or, where special circumstances so justify, reserve its decision until it rules on the substance of the case.

17 The Council contends that the action is manifestly inadmissible. In support of the plea of inadmissibility, it submits, in essence, that the applicant has not established that it has standing to bring proceedings under the fourth paragraph of Article 263 TFEU and that Implementing Decision 2022/2506 cannot be regarded as a regulatory act which is of direct concern to the applicant and does not entail implementing measures.

18 More specifically, the Council contends that, although the contested provision imposes an obligation on the Commission and on Hungary not to enter into legal commitments with certain entities, it does not in itself affect the applicant's legal position.

19 Thus, according to the Council, unlike the concept of 'public interest trust established on the basis of the Hungarian Act IX of 2021', the concept of 'entity maintained by ... a public interest trust' should be regarded as an autonomous concept of EU law and be given a uniform interpretation throughout the European Union. Implementing Decision 2022/2506 was adopted on the basis of Regulation 2020/2092, with the aim of protecting the Union budget against situations of conflict of interests which the Member State concerned had not sufficiently remedied. The conditions laid down in Article 4 of that regulation for the adoption of measures must therefore be complied with, including the condition that there

must at all times be a sufficiently direct link between the breach in question and the implementation of the Union budget.

- 20 The Council submits that it is therefore the responsibility of the Commission and of the national agencies, in carrying out their task of implementing the Union budget, to apply the contested provision to individual cases, which requires an assessment *in concreto*, since an entity can be classified as an entity ‘maintained by ... a public interest trust’ only in so far as it is subject to decisive influence and control, so that its activities present the same risk of a conflict of interests as that run by the public interest trust itself.
- 21 According to the Council, a degree of discretion is retained in the implementation of the contested provision, even if an entity is identified by name in the Hungarian Act IX as being maintained by a public interest trust.
- 22 Implementing Decision 2022/2506 therefore presupposes the adoption of further implementing measures, on the part of the European Union or the Member States, that give concrete expression to the general and abstract concept of an ‘entity maintained by ... a public interest trust’. Such measures take the form of decisions by which the Commission or the national agencies decide, following an independent assessment, whether or not they will enter into legal commitments for the disbursement of EU funds. It is only at that stage that a natural or legal person could decide to bring an action under the first limb of the fourth paragraph of Article 263 TFEU, since that decision constitutes an act addressed to that person.
- 23 The Council adds that, without prejudice to the Commission’s responsibility for implementing the Union budget and the availability of funds, the Member State concerned remains responsible for fulfilling its obligations to implement EU programmes, including Erasmus+ and Horizon Europe, in order to ensure the protection of final recipients and beneficiaries, in accordance with Article 5(2) of Regulation 2020/2092. The legal situation of the individual beneficiaries of EU funds is therefore not determined definitively and automatically by the measure established by the contested provision. Rather, it is the result of additional policy choices that are required in order to comply with the concurrent obligation imposed on the Member State concerned by that regulation to protect final recipients and beneficiaries.
- 24 The Council also submits that the contested provision does not apply automatically, but requires the adoption of a specific decision of the Commission or of the national agencies in respect of a specific budgetary measure.
- 25 The applicant submits, *inter alia*, that the contested provision is of direct concern to it and does not entail implementing measures.
- 26 The Court recalls that it is settled case-law that the action for annulment provided for in Article 263 TFEU is available in the case of all measures adopted by the institutions, whatever their form, which are intended to have binding legal effects

(see judgment of 12 July 2022, *Nord Stream 2 v Parliament and Council*, C-348/20 P, EU:C:2022:548, paragraph 62 and the case-law cited).

- 27 The objective of the Treaties is to make a direct action available against all measures adopted by the institutions which are intended to have legal effects (see judgment of 23 April 1986, *Les Verts v Parliament*, 294/83, EU:C:1986:166, paragraph 24 and the case-law cited). Thus, the provisions of the Treaties which concern the right of interested parties to bring proceedings must not be interpreted restrictively (judgments of 15 July 1963, *Plaumann v Commission*, 25/62, EU:C:1963:17, p. 107, and of 11 July 1996, *Métropole télévision and Others v Commission*, T-528/93, T-542/93, T-543/93 and T-546/93, EU:T:1996:99, paragraph 60; and order of 10 September 2020, *Cambodia and CRF v Commission*, T-246/19, EU:T:2020:415, paragraph 36).
- 28 The principle of the effective judicial protection of individuals' rights under EU law is a general principle of EU law stemming from the constitutional traditions common to the Member States, which has been enshrined in Articles 6 and 13 of the Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950, and which is now reaffirmed by Article 47 of the Charter of Fundamental Rights of the European Union (judgment of 2 March 2021, *A.B. and Others (Appointment of judges to the Supreme Court – Actions)*, C-824/18, EU:C:2021:153, paragraph 110; see also judgment of 18 May 2021, *Asociația 'Forumul Judecătorilor din România' and Others*, C-83/19, C-127/19, C-195/19, C-291/19, C-355/19 and C-397/19, EU:C:2021:393, paragraph 190 and the case-law cited).
- 29 The very existence of effective judicial review designed to ensure compliance with provisions of EU law is inherent in the existence of the rule of law. It follows from Article 2 TEU that the European Union is founded on values, such as the rule of law, which are common to the Member States in a society in which, inter alia, justice prevails (judgments of 20 April 2021, *Repubblika*, C-896/19, EU:C:2021:311, paragraph 62, and of 22 June 2021, *Venezuela v Council (Whether a third State is affected)*, C-872/19 P, EU:C:2021:507, paragraph 48).
- 30 According to settled case-law, the admissibility of an action brought by a natural or legal person against an act which is not addressed to them, in accordance with the fourth paragraph of Article 263 TFEU, is subject to the condition that they be accorded standing to bring proceedings, which arises in two situations. First, such proceedings may be instituted if the act is of direct and individual concern to them. Second, such persons may bring proceedings against a regulatory act not entailing implementing measures if that act is of direct concern to them (see judgments of 17 September 2015, *Mory and Others v Commission*, C-33/14 P, EU:C:2015:609, paragraphs 59 and 91 and the case-law cited, and of 13 March 2018, *Industrias Químicas del Vallés v Commission*, C-244/16 P, EU:C:2018:177, paragraph 39 and the case-law cited).

- 31 In the present case, the applicant is not the addressee of Implementing Decision 2022/2506, which is addressed to Hungary. It may nevertheless have standing to bring proceedings if it falls within one of the two situations referred to in paragraph 30 above.
- 32 Accordingly, the Court will examine whether the present action is directed against a regulatory act which does not entail implementing measures and which is of direct concern to the applicant.

The existence of a regulatory act

- 33 The concept of regulatory act, within the meaning of the third limb of the fourth paragraph of Article 263 TFEU, encompasses acts of general application, excluding legislative acts (judgment of 3 October 2013, *Inuit Tapiriit Kanatami and Others v Parliament and Council*, C-583/11 P, EU:C:2013:625, paragraphs 58 to 61).
- 34 A decision which is addressed to a Member State is of general application if it applies to objectively determined situations and entails legal effects for categories of persons regarded generally and in the abstract (see, to that effect, order of 8 April 2008, *Saint-Gobain Glass Deutschland v Commission*, C-503/07 P, EU:C:2008:207, paragraph 71).
- 35 In the present case, Implementing Decision 2022/2506, which is addressed to Hungary, is not a legislative act, since it was not adopted in accordance with the ordinary legislative procedure described in Article 294 TFEU or in accordance with a special legislative procedure, as defined in Article 289(2) TFEU.
- 36 Implementing Decision 2022/2506 is of general application in that it applies generally to the economic operators concerned, that is to say, in particular, to any natural or legal person falling within the scope of the contested provision.
- 37 Implementing Decision 2022/2506 therefore constitutes a regulatory act within the meaning of the fourth paragraph of Article 263 TFEU.

The absence of implementing measures

- 38 As a preliminary point, the Court notes that, by its arguments, the Council confines itself to alleging that the applicant is not directly concerned, on the ground that the prohibition laid down by the contested provision does not apply automatically, but can take effect only if the Commission or the national agencies adopt a specific decision affecting the applicant's situation in relation to a specific budgetary measure. It adds that only that specific budgetary implementing measure is open to challenge before the appropriate court.
- 39 However, the condition relating to the absence of implementing measures is distinct from that of direct concern. The question whether or not applicable

legislation leaves a discretion to the Commission, the executive agencies of the European Union or the national authorities is therefore irrelevant for the purpose of determining whether the contested provision entails implementing measures (see, to that effect, order of 14 July 2015, *Forgital Italy v Council*, C-84/14 P, not published, EU:C:2015:517, paragraphs 43 and 44, and judgment of 12 September 2013, *Valeo Vision v Commission*, T-457/11, not published, EU:T:2013:414, paragraph 74).

- 40 According to the case-law, the expression ‘does not entail implementing measures’ within the meaning of the third limb of the fourth paragraph of Article 263 TFEU must be interpreted in the light of that provision’s objective, which, as is clear from its origin, consists in preventing an individual from being obliged to infringe the law in order to have access to a court. Where a regulatory act directly affects the legal situation of natural or legal persons without requiring implementing measures, those persons could be denied effective judicial protection if they did not have a legal remedy before the EU judicature for the purpose of challenging the legality of the regulatory act. In the absence of implementing measures, natural or legal persons, although directly concerned by the act in question, would be able to obtain a judicial review of that act only after having infringed its provisions, by pleading that those provisions are unlawful in proceedings initiated against them before the national courts (judgments of 19 December 2013, *Telefónica v Commission*, C-274/12 P, EU:C:2013:852, paragraph 27, and of 28 October 2020, *Associazione GranoSalus v Commission*, C-313/19 P, not published, EU:C:2020:869, paragraph 31).
- 41 The Court has, moreover, repeatedly held that the question whether a regulatory act entails implementing measures should be assessed by reference to the position of the person pleading the right to bring proceedings under the third limb of the fourth paragraph of Article 263 TFEU. It is therefore irrelevant whether the act in question entails implementing measures with regard to other persons (judgments of 19 December 2013, *Telefónica v Commission*, C-274/12 P, EU:C:2013:852, paragraph 30, and of 28 October 2020, *Associazione GranoSalus v Commission*, C-313/19 P, not published, EU:C:2020:869, paragraph 38).
- 42 Thus, the concept of ‘implementing measures’ entails, first, the adoption of an act, either by the institutions, bodies, offices or agencies of the European Union or by the Member States, which is open to judicial review and, second, that the legal effects of the contested act only materialise, in relation to the applicants, by virtue of those implementing measures (judgment of 27 April 2022, *Roos and Others v Parliament*, T-710/21, T-722/21 and T-723/21, EU:T:2022:262, paragraph 46).
- 43 In addition, the Court has already held that only measures which bodies, offices or agencies of the European Union or national authorities adopt in the normal course of events can constitute implementing measures within the meaning of the third limb of the fourth paragraph of Article 263 TFEU. If, in the normal course of events, the bodies, offices or agencies of the European Union and the national authorities do not adopt any measure in order to implement the regulatory act and

to specify the consequences of that act for each of the operators concerned, that regulatory act does not entail any implementing measures (judgment of 14 January 2016, *Doux v Commission*, T-434/13, not published, EU:T:2016:7, paragraph 44).

- 44 In order to determine whether the measure being challenged entails implementing measures, reference should be made exclusively to the subject matter of the action and, where an applicant seeks only the partial annulment of an act, it is solely any implementing measures which that part of the act may entail that must, as the case may be, be taken into consideration (judgment of 19 December 2013, *Telefónica v Commission*, C-274/12 P, EU:C:2013:852, paragraph 31).
- 45 In the present case, the present action is not directed against the entirety of Implementing Decision 2022/2506, but only the contested provision. It must therefore be determined whether that provision entails implementing measures with regard to the applicant, as is apparent from the case-law cited in paragraphs 41 to 44 above.
- 46 The contested provision imposes a prohibition on entering into legal commitments with, inter alia, entities maintained by public interest trusts established on the basis of the Hungarian Act IX. It does not therefore confer on the Commission or on any other authority, body, office or agency the power to adopt binding decisions or measures.
- 47 On the contrary, it is clear from the wording of the contested provision that the prohibition on entering into legal commitments with the entities concerned is self-contained and has the immediate consequence, from 16 December 2022, the date on which Implementing Decision 2022/2506 took effect, of prohibiting entering into any legal commitment with those entities, without the Commission or, as the Council maintains, the executive agencies of the European Union or the national authorities having to adopt ‘further implementing measures’ or ‘specific decisions’.
- 48 The applicant is precisely an ‘entity maintained’ by a public interest trust established on the basis of the Hungarian Act IX. Annex 1 to the Hungarian Act IX, which forms an integral part of that act and is entitled ‘Public interest trusts performing public functions and their public functions’, includes, in Part A thereof, a list of ‘public interest trusts established by the State to perform public functions and their public functions’, which contains 30 trusts. For 21 of those trusts, reference is also made to the entity in respect of which they exercise their rights as ‘founders, owners and maintainers’.
- 49 Among the trusts listed in Part A of Annex 1 to the Hungarian Act IX, it is indicated in point 18 thereof that Nemzeti Egészségügyi és Orvosképzésért Alapítvány exercises its rights as the ‘founder, owner and maintainer’ of the applicant and ensures the implementation of its conditions of operation and its institutional development objectives.

- 50 The applicant is therefore listed in Part A of Annex 1 to the Hungarian Act IX as an entity maintained by a public interest trust established on the basis of that act. Furthermore, the Council has acknowledged that the applicant must be regarded as an entity maintained by a public interest trust, within the meaning of the Hungarian Act IX.
- 51 Thus, the Commission and the executive agencies of the European Union and, where appropriate, the national authorities, are required, in the normal course of events, to comply with the prohibition on entering into legal commitments with that entity or with the applicant. The materialisation of the legal effects of that prohibition does not therefore require any implementing measures, since the entry into force of Implementing Decision 2022/2506 in itself precludes entering into such legal commitments.
- 52 Admittedly, the Council submits that the prohibition laid down by the contested provision would not apply automatically, but would require a specific decision, for example expressly refusing to conclude a grant agreement in connection with an Erasmus or Horizon call for proposals.
- 53 The Court recalls, however, that it would be artificial to demand that an operator request an implementing measure merely in order to be able to challenge that measure before the national courts, where it is clear that such a request will necessarily be refused (see judgments of 13 September 2018, *Rosneft and Others v Council*, T-715/14, not published, EU:T:2018:544, paragraph 90 and the case-law cited, and of 13 September 2018, *Gazprom Neft v Council*, T-735/14 and T-799/14, EU:T:2018:548, paragraph 102 and the case-law cited). It is necessary to avoid the applicants being obliged to adopt behaviour which must, with absolute certainty, fail in order to have access to a court (order of 12 July 2021, *Ryanair and Laudamotion v Commission*, T-866/19, not published, EU:T:2021:480, paragraph 75). The Council's argument in that regard is therefore unconvincing.
- 54 Accordingly, it must be concluded that the contested provision constitutes a regulatory provision which does not entail implementing measures with regard to the applicant, within the meaning of the third limb of the fourth paragraph of Article 263 TFEU.

Whether the applicant is directly concerned

- 55 According to case-law, the condition that a natural or legal person must be directly concerned by the measure being challenged, laid down in the fourth paragraph of Article 263 TFEU, requires two cumulative criteria to be met, namely, first, the contested measure must directly affect the legal situation of the applicant and, secondly, it must leave no discretion to its addressees who are entrusted with the task of implementing it, such implementation being purely automatic and resulting from EU rules alone without the application of other intermediate rules (see

judgment of 12 July 2022, *Nord Stream 2 v Parliament and Council*, C-348/20 P, EU:C:2022:548, paragraph 43 and the case-law cited).

- 56 The same applies where the possibility for addressees not to give effect to an EU measure is purely theoretical and their intention to act in conformity with it is not in doubt (see judgment of 5 May 1998, *Dreyfus v Commission*, C-386/96 P, EU:C:1998:193, paragraph 44 and the case-law cited).
- 57 As regards the first of the two cumulative criteria which must be met in order for it to be found that the applicant is directly concerned, it is necessary, in particular, to determine the legal effects of the contested decision. In that regard, it is necessary to look in particular to its purpose, its content, its scope, its substance and the legal and factual context in which it was adopted (judgment of 22 June 2021, *Venezuela v Council (Whether a third State is affected)*, C-872/19 P, EU:C:2021:507, paragraph 66).
- 58 As regards the second of the two cumulative criteria, which involves assessing whether an act leaves its addressees discretion with a view to its implementation, it is necessary to examine the legal effects produced by that act's provisions, as referred to in the action, on the situation of the person pleading the right to bring proceedings, pursuant to the second limb of the fourth paragraph of Article 263 TFEU (see judgment of 12 July 2022, *Nord Stream 2 v Parliament and Council*, C-348/20 P, EU:C:2022:548, paragraph 98 and the case-law cited).
- 59 Furthermore, the mere fact that, in order to apply the act the annulment of which is sought, a national implementing measure is necessary, does not prevent the individual applicant from being regarded as being directly concerned by the act at issue, provided that the Member State responsible for implementing it has no discretion of its own as to the imposition of those effects on that individual (see, to that effect, judgments of 12 July 2022, *Nord Stream 2 v Parliament and Council*, C-348/20 P, EU:C:2022:548, paragraph 74, and of 18 October 2023, *Zippo Manufacturing and Zippo v Commission*, T-402/20, EU:T:2023:640, paragraph 33 and the case-law cited).
- 60 In such a situation, the adoption of the national decision is automatic and the applicant's legal situation must be regarded as being directly affected by the contested decision (see, to that effect, judgment of 10 September 2009, *Commission v Ente per le Ville vesuviane and Ente per le Ville vesuviane v Commission*, C-445/07 P and C-455/07 P, EU:C:2009:529, paragraphs 45 and 46 and the case-law cited).
- 61 In the present case, as regards the criterion that the contested measure must directly affect the legal situation of the applicant, the Court recalls that, according to the contested provision, where 'the Commission implements the Union budget in direct or indirect management pursuant to ... Article 62(1) points (a) and (c), of Regulation ... 2018/1046, no legal commitments shall be entered into with any

public interest trust established on the basis of the Hungarian Act IX of 2021 or any entity maintained by such a public interest trust’.

- 62 The contested provision thus expressly refers to the Hungarian Act IX when it provides that the trusts with which no legal commitment may be entered into are those established on the basis of that act, which is not disputed by the parties. The parties disagree, however, as to whether the concept of ‘entity maintained’ by such trusts must be interpreted in accordance with Hungarian law or whether, on the contrary, it is an autonomous concept of EU law.
- 63 The Court considers that that question is irrelevant, since it follows from a literal reading of the words ‘any entity maintained by such a public interest trust’ that entities maintained by a public interest trust that is established on the basis of the Hungarian Act IX are expressly referred to in the contested provision.
- 64 The applicant is an entity maintained by a public interest trust established on the basis of the Hungarian Act IX, as is apparent from paragraphs 48 to 50 above.
- 65 In those circumstances, the contested provision directly affects the legal situation of the applicant by introducing a prohibition on entering into legal commitments with it, as an entity maintained by a public interest trust established on the basis of the Hungarian Act IX.
- 66 The contested provision thus necessarily affects the possibility for the applicant to enter into legal commitments in connection with the Commission’s implementation of the Union budget in direct or indirect management, pursuant to Article 62(1), points (a) and (c), of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ 2018 L 193, p. 1).
- 67 In addition, it must be stated that, even assuming that the concept of ‘entity maintained’ by a public interest trust may correspond to entities maintained by trusts other than those referred to in Annex 1 to the Hungarian Act IX, that fact has, in any event, no bearing on the outcome of the dispute since, as stated in paragraph 49 above, the trust that maintains the applicant is listed in that annex.
- 68 Therefore, the first criterion of direct concern is met.
- 69 As regards the second criterion, namely that the contested EU measure must leave no discretion to its addressees who are entrusted with the task of implementing it, the Court infers from the clear wording of the contested provision, and in particular from the use of the present indicative, that that provision imposes, in mandatory terms, a prohibition, in connection with the implementation of the Union budget in direct or indirect management, on entering into legal

commitments with public interest trusts established on the basis of the Hungarian Act IX or with entities maintained by such public interest trusts, such as the applicant.

- 70 The contested provision is intended to be binding on the Commission and on the authorities entrusted with implementing the Union budget in direct or indirect management. It does not provide for the exercise of any discretion or the adoption of national measures in order for the prohibition at issue to enter into force and thus be applied to the entities concerned, which include the applicant.
- 71 It follows that the implementation of the contested provision is purely automatic and mandatory as from 16 December 2022, the date on which Implementing Decision 2022/2506 took effect, and results from EU rules alone, without leaving any discretion in that regard to the Commission, which is entrusted with the task of implementing it, to an executive agency of the European Union or to a national authority.
- 72 Consequently, the second of the two cumulative criteria of direct concern is also met.
- 73 The Council's arguments relating to Hungary's obligation to protect the final recipients and beneficiaries of EU funds, in accordance with Article 5(2) of Regulation 2020/2092, are not such as to call that conclusion into question.
- 74 It is apparent from the wording of Article 5(2) of Regulation 2020/2092 that the Member States concerned by the obligation to protect the final recipients and beneficiaries of EU funds are those referred to in point (b) of paragraph 1 of that article. That provision concerns the implementation of the Union budget under shared management between the Commission and the national authorities.
- 75 Recital 63 of Implementing Decision 2022/2506, which refers to that article in order to clarify that that decision does not affect the obligations of Hungary with regard to final recipients or beneficiaries of EU funds, must therefore be understood as referring to that Member State's obligations in connection with the implementation of the Union budget under shared management with the Commission.
- 76 The present action seeks the annulment of the contested provision, which prohibits entering into legal commitments with certain entities where the Commission implements the Union budget in direct or indirect management pursuant to Article 62(1), points (a) and (c), of Regulation 2018/1046, and not under shared management, on the basis of point (b) of paragraph 1 of that article.
- 77 The Council's line of argument in that regard is therefore ineffective.
- 78 In any event, even if a national implementing measure were necessary in order to apply the contested provision, it is apparent from the case-law cited in paragraph 59 above that that mere fact does not prevent the applicant from being

regarded as being directly concerned by that provision, provided, however, that the authorities responsible for implementing it have no discretion of their own. In such a situation, the adoption of the implementing measure is automatic and the applicant's legal situation must be regarded as being directly affected by the contested provision.

- 79 As noted in paragraphs 69 to 71 above, the wording of Implementing Decision 2022/2506 leaves no doubt as to the consequences to be drawn from the contested provision. The Commission and the authorities responsible for implementing the Union budget in direct or indirect management are bound by a clear, precise and express prohibition on entering into legal commitments with public interest trusts established on the basis of the Hungarian Act IX and entities maintained by such public interest trusts, which follows directly from that provision, and they do not have any discretion of their own in that regard.
- 80 Accordingly, since the entry into force of the contested provision, the Commission and the authorities responsible for implementing the Union budget in direct or indirect management have been required to comply with the prohibition at issue and cannot enter into a legal commitment with an entity such as the applicant.
- 81 The condition relating to whether the applicant is directly concerned is therefore also met.
- 82 It follows from all the foregoing that the plea of inadmissibility raised by the Council must be rejected on the basis of the third limb of the fourth paragraph of Article 263 TFEU, without there being any need to examine whether the contested provision is of direct and individual concern to the applicant.

Costs

- 83 Under Article 133 of the Rules of Procedure, a decision as to costs is to be given in the judgment or order which closes the proceedings. Since the present order does not close the proceedings, the costs must be reserved.

On those grounds,

THE GENERAL COURT (Sixth Chamber)

hereby orders:

- 1. The plea of inadmissibility is rejected.**

2. The costs are reserved.

Luxembourg, 4 April 2024.

V. Di Bucci

M.J. Costeira

Registrar

President



**Certified copy of an original signed by qualified
electronic signature**

Registry of the General Court

4 April 2024