



Date of acceptance : 28/08/2024



Published ID	:	T-138/23
Document number	:	47
Register number	:	1200096
Date of lodgment	:	15/07/2024
Date of entry in the register	:	18/07/2024
Type of document	:	Statement in intervention
<hr/>		
e-Curia lodgment reference	:	Document DT209177
File number	:	1
Person lodging document	:	Julio Baquero Cruz (R105140) Commission



EUROPEAN COMMISSION

LEGAL SERVICE

Brussels, 15 July 2024
sj.n(2024)5772209

**TO THE PRESIDENT AND THE MEMBERS OF THE GENERAL COURT OF THE
EUROPEAN UNION**

STATEMENT IN INTERVENTION

submitted, pursuant to Article 145 of the Rules of Procedure of the General Court, by

the **European Commission**, represented by Julio Baquero Cruz, Daniela Drambozova and Hubert van Vliet, of its Legal Service, acting as agents, with an address for service at the Legal Service, Greffe contentieux, BERL 01/093, 1049 Brussels, and consenting to service by e Curia,

in Case **T-138/23**

Semmelweis Egyetem

- applicant -

against

Council of the European Union

- defendant -

in which the applicant seeks the annulment, pursuant to Article 263 TFEU, 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 rule of law in Hungary.

The European Commission ('Commission') presents the following arguments in support of the form of order sought by the Council of the European Union ('Council').

1. INTRODUCTION AND PROCEDURE

1. On 13 March 2023, Semmelweis Egyetem (Semmelweis University, the 'applicant') lodged an application, on the basis of Article 263 TFEU, seeking the annulment, in so far as it concerned it (or, in the alternative, in its entirety), 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 rule of law in Hungary (the 'Council implementing decision').¹ The Council implementing decision was adopted pursuant to 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 (the 'Conditionality Regulation').²
2. On 3 May 2023, the Commission requested to intervene in support of the Council.
3. On 30 May 2023, the Council lodged a plea of inadmissibility in so far as the application concerned Article 2(2) of the Council implementing decision.
4. By an order of 4 April 2024, the General Court dismissed the Council's plea of inadmissibility.³ The General Court considered that the Council implementing decision, in so far as Article 2(2) thereof is concerned, constitutes a regulatory act of general nature that does not entail implementing measures,⁴ and is of direct concern for the applicant.⁵
5. On 21 May 2024 the Council submitted its defence in the case.
6. On 4 June 2024 the General Court admitted the intervention of the Commission. The General Court set 15 July 2024 as the time limit for the Commission to submit its statement in intervention.
7. The Commission notes that the applicant is seeking the annulment of Article 2(2) of the Council implementing decision insofar as the applicant is concerned. In the alternative,

¹ OJ L 325, of 20 December 2022, pages 94 to 109.

² OJ L 433I, of 22 December 2020, pages 1 to 10.

³ Case T-138/23, EU:T:2024:211.

⁴ *Ibidem*, paragraph 54.

⁵ *Ibidem*, paragraph 81.

the applicant requests the General Court to annul Article 2(2) of the Council implementing decision in its entirety.⁶

8. The Commission wonders whether the first form of order sought by the applicant is admissible. If an action for annulment pursuant to Article 263 TFEU is successful, the Court declares ‘the act concerned to be void’ (Article 264 TFEU). An act can be annulled in part, certainly, provided that the challenged part is detachable from the rest. Under the same condition, even part of a provision can be annulled (in this case, the last ten words).
9. However, it seems difficult to conceive that a provision of general application or part of it could be annulled only in so far as it concerns a particular applicant, while it would remain in place for other persons or entities that are subject to it. The annulment concerns the validity of the act, not its applicability. The restriction included in the section of the application on the ‘forms of order sought’ (‘in so far as it concerns the Applicant’) is therefore contradictory in legal terms. The Commission considers that the admissible form of order would be the alternative one, by which the applicant requests the General Court to annul Article 2(2) of the Council implementing decision in its entirety.

2. LAW

2.1. Introduction

10. The applicant presents five pleas in law. The Commission intervenes in full support of the forms of order sought and the arguments raised by the Council in the defence. In the interest of procedural economy, the Commission will not repeat the arguments the Council has made, with which it concurs without any reservations. The Commission will only present additional considerations that could be of added value.
11. The Commission has nothing substantial to add to what the Council has stated in its defence regarding: (i) the second and third sub-pleas of the first plea; (ii) the second sub-plea of the third plea (on an alleged misuse of powers, which may be inadmissible in the light of the absence of any developed argument); and (iii) the fifth plea, on the alleged

⁶ Paragraph 101 of the application (‘form of order sought’).

distortion of the market. The Commission will therefore concentrate on the remaining pleas or sub-pleas.

12. The Commission would recall in general terms that Hungary, the addressee of the Council implementing decision, did not challenge it within the time limit provided by Article 263 TFEU. Therefore, in legal terms, the factual and legal findings contained in that decision are final vis-à-vis Hungary as a Member State, which is barred from contesting them at this stage. Hungary has acquiesced to the findings as regards the existence of breaches to the principles of the rule of law, to their impact on the Union's budget, and to the proportionality of the adopted measures. Of course, the applicant may still contest them, but one could wonder about the strength and the value of those claims when the very addressee of the Council implementing decision, the Member State under which the applicant is constituted, has refrained from challenging it.

2.2. First sub-plea of the first plea in law: lack of a sufficiently solid factual basis

13. By the first part of the first plea, the applicant argues that the Council 'failed to ensure that the inclusion of the Applicant in the group of entities made subject to the restrictive measures by Article 2(2) Decision rested on a sufficiently solid factual basis'.⁷
14. In substance, the applicant contends that the Commission and the Council did not examine the situation in specific public interest trusts and did not consider that those trusts were not involved in the management of universities, which are run by the Senate. Besides, there would be no indication of breaches of the rule of law that could be attributed to the applicant. The Council implementing decision would thus not rest on a solid factual basis.
15. The Commission considers that the applicant's attempt to dissociate the public interest trust from the university is manifestly incorrect, for the following reasons.
16. The model of public interest trusts to which those universities have decided freely to adhere, without being legally required to do so and in full knowledge of the rules applying

⁷ Application, paragraphs 108-124.

to them, is defined in Section 22 of Act IX of 2021 on public interest asset management foundations performing public duty.⁸

17. Importantly, paragraph 4 of Article 22 provides that ‘[t]he deed of foundation of a higher education institution referred to in Annex 1 maintained by a foundation may provide that the maintainer shall be responsible for approving the budget of the higher education institution, its annual account prepared in accordance with accounting provisions, its organisational and operational regulations, its asset management plan and the establishment of and the acquisition of shares in an economic operation and for announcing the call for applications for the position of the rector but the deed of foundation shall provide the right to give opinions and the right of consent to the senate’.
18. Therefore, depending on the deed of foundation of the university in question, the public interest trust may have very significant powers regarding budgetary, operational and organisational matters of the university. In addition, the deed of foundation may reduce the senate’s powers to giving non-binding opinions on these fundamental matters.
19. This is mirrored in Article 94(6) of Act CCIV of 2011 on national higher education,⁹ according to which, ‘[b]y way of derogation from Article 12(3) and Article 73(3), the founding charter of a private higher education institution may provide that the maintainer shall approve the higher education institution’s budget, annual accounts drawn up in accordance with the applicable accountancy provisions, rules for organisation and operation and asset management plan, the establishment of a commercial entity, the acquisition of shares in a commercial entity, furthermore the maintainer shall issue the call for applications for the position of rector’.
20. The public interest trust also has far-reaching powers as regards the maintained university under Articles 8(4) and 73 of the same Act CCIV of 2011. In particular, under Article 73(3)(a) of that provision, ‘[t]he maintainer shall [...] have competence to issue and amend the founding charter of the higher education institution, by way of a measure not

⁸ 2021. évi IX. Törvény a közfeladatot ellátó közérdekű vagyongazdálkodó alapítványokról; accessible at <https://net.jogtar.hu/jogszabaly?docid=a2100009.tv>; English version accessible at <https://njt.hu/jogszabaly/en/2021-9-00-00>.

⁹ An English translation is accessible at https://www.mab.hu/wp-content/uploads/Nftv_angol_2Sept2016_EMMI-forditas.pdf.

subject to consent within the meaning of Act CXCV of 2011 on public finances [...] in the case of public higher education institutions’.

21. It follows from the above that the role of the board of trustees as regards the maintained entity is only generally defined in national legislation. Section 22 of Act IX of 2021 leaves certain aspects of the division of powers between the public interest trust and the maintained university (and its senate) to be defined in the university’s deed of foundation. Moreover, the aforementioned provisions of Act CCIV of 2011 on national higher education also partly leave the relationship to be arranged by the deed of foundation, with further specification of the respective tasks and duties of the board and the senate.
22. The precise relationships and interactions between the board and the university organs, in terms of tasks and competences, may therefore vary, depending on each university’s founding document. As already recalled, however, this act can be changed at any time by a unilateral decision of the board of trustees, pursuant to Article 73(3)(a) of Act CCIV of 2011 on National Higher Education. The board can thus decide to assume more or less powers and whether it grants the university’s senate the right of consent or a simple (non-binding) opinion on those issues. Therefore, since the founding act of the university can be changed at any time by the public interest trust, the law gives the board of that trust full and exclusive decision-making powers, whether actual or potential, on all key areas of activity of the university.
23. The applicant has produced the deed of foundation as Annex A.7 to the application. As admitted by the applicant in paragraph 13 of the application, section 2.2. grants to the public interest trust far-reaching powers in financial and organisational matters. Inter alia, the ‘maintainer’ adopts the budget framework within which the Senate adopts the annual budget of the university (section 2.2.1.). The maintainer also adopts the annual accounts of the university, for which the Senate only has the right to express an opinion (section 2.2.2.). The maintainer also has extensive powers regarding the university’s institutional development plan.
24. The above explanations are sufficient to demonstrate that, structurally, public interest trusts and their maintained entities always form, actually or potentially, an inextricable unit under the Hungarian legislative framework on public interest trusts. The maintained entities are therefore not insulated from the risk of conflicts of interest that exists in public interest trusts and that can have a negative impact on the use of the Union budget.

25. As regards the applicant's argument that universities are managed by the Senate, the Commission considers that it is obvious, for the reasons given above, that the public interest trust will always have a significant actual or potential impact on the different policies of the university, including on the use of Union funding. The structural possibility for conflicts of interest inherent in the public interest trusts can therefore affect the expenditure of Union funds by the maintained university.
26. Indeed, the fact that the technical and accounting management of the financial process may well have stayed with the regular university organs or administration does not mean that the public interest trust cannot have an actual or potential influence over the university's policies and use of resources, affected by its structural risk of conflicts of interest. In the light of the legislation and rules mentioned in paragraphs 16 to 23 above, that influence can hardly be denied or minimised.
27. Equally irrelevant, for the same reasons, is the statement of the applicant according to which there would be no indication of breaches of the rule of law on its part.¹⁰ It is clear from the Council implementing decision that the concerns of the Commission and the Council were not about the concrete situation of particular universities, but about the structural risk of conflict of interest in all of them. The concrete situation of this or that particular public interest trust or university maintained by it, including the applicant, is irrelevant for the assessment of the legality of the Council implementing decision, which was adopted at a general level to protect the Union budget against a problem of a systemic nature in Hungary.
28. Finally, the case law on which the applicant relies in paragraphs 118 to 121 of the application relates to restrictive measures with regard to individual persons that are sanctions in nature.
29. In this case the applicant is not included in 'a group of entities': Article 2(2) of the Council implementing decision is a provision of general application. The Council implementing decision contains no list or annex detailing the entities to which the prohibition applies. In addition, that case law is irrelevant because the Council implementing decision does not impose repressive measures or penalties of any kind on the applicant, which is not the addressee of the measure. Nor does it impose penalties or sanctions of any kind on

¹⁰ Application, paragraphs 110, 112, and 116.

Hungary as a Member State. The Court of Justice has already found that the purpose of the General Conditionality Regulation ‘is to protect the Union budget from effects resulting from breaches of the principles of the rule of law in a Member State in a sufficiently direct way, and *not to penalise those breaches as such*’.¹¹

2.3. Second plea in law, alleging a breach of the applicant’s right to be heard

30. On the fourth plea, by which the applicant claims that his right to be heard has been breached,¹² the Commission will only recall, as the Council has already stated, that Article 41(2)(a) of the Charter of Fundamental Rights of the European Union defines it as ‘the right of every person to be heard, before any individual measure which would affect him or her adversely is taken’. As is clear from the order of 4 April 2024 of the General Court, the Council implementing decision is a regulatory act of a general nature.¹³ This means that it is not an individual act and that the right to be heard as laid down in Article 41 of the Charter does not apply in this context. It only applies as regards the Member State, which has been involved in the procedure and heard at its different stages following the rules of Article 6 of the General Conditionality Regulation (see paragraph 18 above), whose legality has already been confirmed by the Court of Justice.¹⁴

2.4. First sub-plea of the third plea in law, alleging that the Council implementing decision lacks proper authorisation

31. By the first sub-plea of the third plea, the applicant claims that the Conditionality Regulation contains no authorisation to adopt the Council implementing decision.¹⁵
32. Against the allegations of the applicant in paragraphs 156 to 159 of the application, the Commission would simply recall that the structural issues with public interest trusts were raised by the Commission since the beginning of the procedure under the Conditionality

¹¹ Judgment of the Court in Case C-156/21, cited in footnote 8, paragraph 119 (emphasis added).

¹² Application, paragraphs 149-153.

¹³ Order of 4 April 2024, cited in footnote 4, paragraph 36.

¹⁴ Judgments of the Court of 16 February 2022, *Hungary v Parliament and Council*, C-156/21, EU:C:2022:97; and *Poland v Parliament and Council*, C-157/21, EU:C:2022:98.

¹⁵ Application, paragraphs 154-179.

Regulation and even prior to its formal start, in the following Commission documents: request for information of 24 November 2021 (to which Hungary replied on 27 January 2022); written notification of 27 April 2022 (to which Hungary replied on 27 June 2022, with an additional letter of 19 July 2022); intention letter of 20 July 2022 (by which the Commission informed Hungary of its intention to propose to the Council to take measures, including on public interest trusts, and to which Hungary replied on 22 August 2022, a reply that was complemented by an additional letter of 13 September 2022);¹⁶ proposal for a Council implementing decision of 18 September 2022;¹⁷ Communication of 30 November 2022;¹⁸ and updated Commission assessment of 9 December 2022.

33. On the allegations of the applicant that it itself was not in a situation of conflict of interest, since ‘none of the curators of the Foundation in charge of its management was a member of Parliament or of the government’ (application, paragraph 158), the Commission would simply refer to paragraph 27 of this statement in intervention.
34. Contrary to the allegations of the applicant, Article 2(2) of the Council implementing decision is clearly within the scope of the measures provided for in the Conditionality Regulation. The Regulation can be used to protect the budget in cases of ‘individual breaches of the principles of the rule of law’, but it is even more relevant ‘for breaches that are widespread or due to recurrent practices or omissions by public authorities, or to general measures adopted by such authorities’ (recital 15 of the Conditionality Regulation). That systemic breaches are covered by the Regulation is confirmed by the very terms of Articles 3 and 4 thereof.
35. The applicability of the Regulation to systemic breaches has also been confirmed by the Court in its judgments of February 2022. In the case brought by Poland, this Member State,

¹⁶ The steps of the procedure under the Conditionality Regulation are set out in recitals 1 to 33 of the Council implementing decision. The request for information, the written notification, the intention letter, the updated assessment of 9 December 2022, and the different responses sent by the Hungarian authorities are not public documents and belong to the procedure under the Conditionality Regulation. The Commission could produce them in the procedure at the request of the Court, if this is deemed necessary.

¹⁷ 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, 18 September 2022, COM(2022) 485 final, accessible at: https://eur-lex.europa.eu/resource.html?uri=cellar:9473778e-372b-11ed-9c68-01aa75ed71a1.0001.02/DOC_1&format=PDF.

¹⁸ Communication from the Commission to the Council on the remedial measures notified by Hungary under Regulation (EU, Euratom) 2020/2092 for the protection of the Union budget Brussels, 30 November 2022, COM(2022) 687 final, accessible at: https://commission.europa.eu/system/files/2022-12/COM_2022_687_1_EN_ACT_part1_v5.pdf.

supported by Hungary, argued that ‘breaches which have been determined of the principles of the rule of law are liable to prove to be systematic in nature, such that they also affect areas other than those relevant to the sound financial management of the Union budget or to the protection of its financial interests’. The Court answered that ‘where such a breach is also liable to affect or seriously risk affecting the sound financial management of the Union budget or the protection of the financial interests of the Union, the Union cannot be criticised for implementing the means necessary to protect that sound management and those financial interests’.¹⁹ This suffices to refute the allegations of the applicant.

36. In addition, Article 6(1) of the Conditionality Regulation provides that the Commission is bound to launch the procedure where it ‘finds that it has reasonable grounds to consider that the conditions set out in Article 4 are fulfilled, unless it considers that other procedures set out in Union legislation would allow it to protect the Union budget more effectively’. The final condition means that the Conditionality Regulation will mainly be used, in practice, for systemic issues, since for individual issues Union law generally provides for leaner and more effective tools.
37. This plea also contains a number of allegations on the principle of proportionality. They will be dealt with in the analysis of the next plea.

2.5. Fourth plea in law, alleging an infringement of the principle of proportionality

38. As regards the fourth plea, by which the applicant claims that the Council implementing decision infringed the principle of proportionality,²⁰ the Commission would first refer to the argument made in paragraph 70 of the Commission’s Communication of 30 November 2022 (on which recital 43 of the Council implementing decision relies, and to which it refers), by which the Commission noted that ‘top-level officials, including senior political executives from the National Assembly and Hungary’s autonomous bodies, have not been excluded from sitting on boards of public interest asset management foundations, as requested in the course of the exchanges with Hungary. Instead, since the Commission’s

¹⁹ Judgment of the Court of 16 February 2022, *Poland v Parliament and Council*, C-157/21, EU:C:2022:98, paragraph 362.

²⁰ Application, paragraphs 180-196.

[Council implementing decision] proposal of 18 September 2022, and despite this concern having also been consistently raised by the Commission in its annual Rule of Law reports, Hungary has reintroduced as of 1 November 2022 the possibility (by means of an exception 30 from the general prohibition 31) for senior political executives to have other remunerated employments. This exception creates a situation in which senior political executives may participate in decision-making relating to the disbursement of public funds to entities in which they themselves are employed and have key decision-making powers. Consequently, even though Hungary addressed the concerns raised in the CID proposal of 18 September 2022, the exception introduced on 1 November 2022 renders the implementation of the remedial measure nevertheless inadequate'.²¹

39. The applicant does not present convincing arguments to contest the reasoning contained in recital 62 of the Council implementing decision, recital 42 of the Commission's proposal, paragraph 70 of the Commission's Communication of 30 November 2022, and paragraphs 152 and 156 of the Explanatory Memorandum of that proposal, which are related to the measure under Article 2(2) of the Council implementing decision.
40. The Commission would recall that the purpose of the Council implementing decision is to address risks posed by the Hungarian legislation on public interest trusts to the sound financial management of the Union budget because of concerns related to conflict of interest. The protection it provides is also designed to operate at that general level, since it addresses systemic issues. It is not necessary nor required to examine the situation of each public interest trust for the adoption of this kind of measure of a general nature, or to check who are the concrete members of its board of trustees. Public interest trusts are subject to the national legal framework that creates systemic issues and concerns about rules on conflict of interest. They cannot escape from the measure by trying to dissociate themselves from the Hungarian legal framework that, in legal terms, they have chosen to embrace.
41. The Commission would recall that the concern of the Council implementing decision is with the fact that 'the regulatory framework *still does not prevent top-level officials, including senior political executives from the National Assembly and Hungary's autonomous bodies, from sitting on boards of public interest asset management*

²¹ COM(2022) 687 final.

foundations, as repeatedly requested by the Commission'.²² It is this, together with the new '*possibility*' for senior political executives to have other remunerated employment, 'including on boards of public interest asset management foundations', that led the Council to finding a weakness with the regulatory framework as regards possible conflicts of interest, to consider the remedial measure inadequate, and to finally impose the measure of Article 2(2) of the Council implementing decision.

42. This recital must be read in the light of paragraph 70 of the Commission Communication of 30 November 2022, which also refers to the fact that 'top-level officials, including senior political executives from the National Assembly and Hungary's autonomous bodies, *have not yet been excluded* from sitting on boards of public interest asset management foundations'. For the Commission, this creates a situation 'in which senior political executives *may* participate in decision-making relating to the disbursement of public funds to entities, in which they themselves are employed and have key decision-making powers' (emphasis added).
43. As already stated above, the concerns of the Commission and the Council were not about an actual presence of top-level officials in all the boards of all public interest trusts, or about the concrete situation of each university, but about the fact that the law still allows them to sit in such boards, hence creating a serious structural risk of conflict of interest. The concrete situation of this or that particular public interest trust or university maintained by it, including the applicant, is irrelevant for the assessment of the legality of the Council implementing decision.
44. Therefore, the Commission and the Council did not need to examine other less onerous measures²³ and carefully assessed the proportionality of the measure that was adopted. The grounds for the measure are not linked to the individual situation of a particular university, but to the legal framework of public interest trusts and the risks it creates for the expenditure of the Union budget. In short, the applicant is manifestly mistaken about the level at which the measure operates and is to be assessed.
45. In addition, the Commission considers that the applicant focuses exclusively on the conflicts of interest the members of boards of public interest trusts could have with

²² Recital 43 (emphasis added).

²³ Application, paragraph 187.

financial actors implementing the Union budget. However, those members could also have a decisive influence on the university and ensure that Union funding is channelled to other entities. As already shown, this risk is embedded in the Hungarian legal framework considered as a whole.

46. The fact that the Council implementing decision is addressed to Hungary as a Member State does not mean that measures under the Conditionality Regulation can only concern Hungary in general and cannot identify a particular issue that affects a specific category of legal persons, as with Article 2(2) of the Council implementing decision. Such a line of reasoning could render the measures under Article 5(1)(a) of the Conditionality Regulation meaningless and totally ineffective. As regards Article 2(2) of the Council implementing decision, the breach of the rule of law is due to the conduct of the Hungarian authorities, in view of its legislation governing public interest trusts and its deficiencies as regards conflicts of interest. It is therefore a natural consequence that the measure concerns legal commitments with that category of entities created and regulated under Hungarian law, which are government entities receiving Union funding within the meaning of Article 2(b) of the Conditionality Regulation. Otherwise, the Union would not be able to ensure the protection of its budget in such situations, which is, precisely, what the Conditionality Regulation aims to secure, through the measures foreseen in Article 5 of that Regulation, where the prohibition on entering into new legal commitments is expressly provided for (Article 5(1)(a)(ii)).
47. The proportionality of the measure was explained in detail in the explanatory memorandum of the Commission proposal for a Council implementing decision. In that document, the Commission explained that, '[a]s regards the identified breaches relevant to public interest trusts, as the measure would concern only these entities as such, all programmes implemented under direct and indirect management should be targeted. The Commission considers proportionate as a measure the prohibition on entering into new legal commitments with any public interest trust and any entity maintained by them under any programme under direct and indirect management'.²⁴

²⁴ 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, 18 September 2022, COM(2022) 485 final, accessible at: https://eur-lex.europa.eu/resource.html?uri=cellar:9473778e-372b-11ed-9c68-01aa75ed71a1.0001.02/DOC_1&format=PDF, paragraph 141.

48. In the same document, the Commission also explained that, ‘[a]s there is currently a general exception for board members of public interest trusts to abide by conflict of interest requirements, while the applicability of public procurement rules to trust funds would depend on a case by case assessment of whether they meet the criteria to be considered contracting authorities, such exceptions may affect any budget these entities may implement or manage. *Thus it is practically impossible to consider that the prohibition should apply for some public interest trusts and the entities maintained by them, or that the Commission can enter in partial legal commitments with such entities.* Moreover, as the prohibition of entering into new legal commitments is limited to these entities, the allocation of funds from all Union programmes under direct and indirect management may still be used for any other entity, as beneficiary or implementing entity. Thus, in light of the list of measures applicable to direct and indirect management pursuant to Article 5(1)(a) of the Conditionality Regulation, the prohibition of entering into any new legal commitment with these entities can be considered proportionate to address the risk for the sound financial management of the Union budget and the Union’s financial interests, pending the adoption of the relevant legislative text’.²⁵
49. The explanatory memorandum of the proposal is part of its context and provides useful and sufficient grounds for it. The Commission also considers that it shows that the measure is in line with the principle of proportionality.
50. For the reasons given by the Council, supplemented by the above additional considerations, the Commission therefore considers that the allegations regarding the proportionality of the measure are manifestly unfounded.

²⁵ Ibidem, paragraph 142.

3. CONCLUSIONS

51. In light of the above, the Commission respectfully requests the General Court to:

- dismiss the application as unfounded;
- order the applicant to pay the costs.

Julio Baquero Cruz

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Hubert van Vliet

Agents for the Commission