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

OBSERVATIONS ON THE LETTERS DATED 13/JAN/2025 OF DEFENDANT & 7/JAN/2025 OF ITS INTERVENER CONCNERNING ACCESSABILITY OF PROCEDURAL DOCUMENTS ON APPLICANT'S WEBSITE

Lodged on 30 January 2025 by Semmelweis Egyetem

in Case **T-138/23**

SEMMELWEIS EGYETEM

Applicant

represented by Dr. Péter P. Nagy, ügyvéd, and Dr. Balázs Karsai, ügyvéd, both of the Budapest Bar, with an address at 4/B Ugocsa utca, Budapest 1126, email: nagy.peter@nt.hu (with service to be effected at the eCuria account associated with that email address)

v.

COUNCIL OF THE EUROPEAN UNION

Defendant

in proceedings brought for partial annulment in respect 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, insofar as it concerns the Applicant.

Counsel for Semmelweis Egyetem, Applicant, submits these Observations on the letter dated 13 January 2025 of the Agents of the Council of the European Union, Defendant, and the letter dated 7 January 2025 of the Agents of the European Commission, Intervener, both addressed to the Registrar, complaining about the availability on Applicant's website of certain procedural documents of these proceedings. (Underlines in quotations in this brief are added.)

I. Underlying facts

1. Art. 4(1) Conditionality Regulation[1] provides: "*Appropriate measures shall be taken where it is established in accordance with Article 6 that breaches of the principles of the rule of law in a Member State affect or seriously risk affecting the sound financial management of the Union budget or the protection of the financial interests of the Union in a sufficiently direct way.*"

2. Art. 1(1) contested Decision[2] provides: "*The conditions set out in Article 4(1) of Regulation (EU, Euratom) 2020/2092 are fulfilled for the adoption of appropriate measures for the protection of the Union budget against breaches of the principles of the rule of law in Hungary.*"

3. As a consequence, Hungary was stripped off of 55% of budgetary commitments under certain EU programs[3]. With the same effort, (among others) Applicant and ultimately its researchers and students were stripped off of 100% of their academic freedom of movement, i.e. participation in the Horizon and Erasmus+ programs[4].

4. Notwithstanding Defendant's unsuccessful nonetheless time-consuming efforts performed in these proceedings[5] alleging that the sanctions are none of the Applicant's business, Applicant's students and faculty cannot but perceive it otherwise[6]. And with reason because it is them who, in fact, have been effectively rid of their academic freedom of movement that any other European student or faculty has indiscriminate right to.

5. Neither the Defendant, nor the Intervener, nor anyone for that matter has ever even hinted that the Applicant or its owner, management, staff, faculty or students have ever breached any laws, and certainly not the rule of law affecting "*the Union budget or the protection of the financial interests of the Union*" in any way. Consequently,

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[1] 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

[2] 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

[3] Art. 2(1) contested Decision

[4] Art. 2(2) contested Decision

[5] Plea of Inadmissibility of 30 May 2023

[6] It is established that Applicant in fact is "*being directly affected by the contested decision*" - ¶60, ¶68 Order of the General Court 4/Apr/2024

students and faculty hold themselves out as being innocent victims sacrificed in the commotion between the Union and Hungary.

6. Notwithstanding the polite euphemism of Art. 4(1) Conditionality Regulation, Art. 2(2) of the contested Decision created, in fact, a sticky fog of suspicions of monetary irregularities directly around the Applicant, and indirectly around its personnel, which – in light of Art. 4(1) Conditionality Regulation – is defamatory and as such damaging to the good reputation of the Applicant and those personnel.

7. The apparent reasonlessness of extending the Defendant's anger to Applicant so as to reach and hurt its students and researchers created a residue of fear of what comes next and what for.

8. "*In response to inquiries from within the university community*"[7], i.e. the final recipients and beneficiaries whose interests otherwise are supposed to be safeguarded[8], the Applicant made available on its website its Application subsequent to its filing nearly 2 years ago, and then, as a matter of fairness, the rest of the procedural documents, including other litigants' submissions which have been presumed to have been drafted with utmost professionalism and fairness worthy of the importance of Applicant's case and the huge number of individuals personally affected.

9. Upon information and belief, no one ever commented on or referred to in the press or otherwise those procedural documents available on Applicant's website.

II. The complaint at hand

10. On 6 January 2025 Agents for Defendant sent an email to counsel for Applicant[9] communicating professional discontent with the availability on Applicant's homepage of certain procedural documents of this very Case. The next day, we, as counsel for Applicant, disagreed[10]. On 15 January 2025, enclosed with its communication calling on Applicant to make observations, the Registrar forwarded Applicant the letter dated 7 January 2025 of Intervener and the letter dated 13 January 2025 of Defendant principally to the same effect.

11. Both Defendant and Intervener claim that it has come to their attention only "*recently*" that certain procedural documents of this Case are available on Applicant's website.

12. Defendant demands the removal of its own briefs while Intervener appears to demand the removal of all procedural documents from Applicant's website.

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[7] https://semmelweis.hu/english/2023/03/application-for-partial-annulment-in-respect-of-council-implementing-decision-eu-2022-2506

[8] see ¶13 Plea of Inadmissibility

[9] Annex I/1-2 to letter dated 13 January 2025 addressed to the Registrar

[10] Annex II/1-2 to letter dated 13 January 2025 addressed to the Registrar

13. Defendant claims "*the disclosure of the Council's procedural documents seriously jeopardises respect for the principles of equality of arms and the sound administration of justice*", and "*it deems necessary to put an end to this flagrant violation of the principles of equality of arms and the sound administration of justice*".

14. Intervener claims the "*breach of the principle of confidentiality*", and "*that disclosure of such pleadings 'would have the effect of exposing judicial activities to external pressure, albeit only in the perception of the public, and would disturb the serenity of the proceedings*".

III. Laws

15. In its email of 6 January 2025, in support of their professional discontent, Agents for Defendant 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.

16. Intervener, on its part, referred also to Sweden and Others v API and Commission, C-514/07 P, C-528/07 P and C-532/07 P, EU:C:2010:541, and, on top of that, to

    (v) Article 38, paragraph 2, of the Rules of Procedure of the General Court.

17. Such a complaint concerning **(a)** equality of arms, **(b)** sound administration of justice, **(c)** external pressure, **(d)** disturbance of the serenity of the proceedings and **(e)** breach of confidentiality, especially if coming from such distinguished complainers, cannot be but taken seriously, and that is what we are trying to do in this submission.

(i) Art. 20(2) Statute of the Court of Justice

18. Art. 20(2) Statute of the Court of Justice provides: "*The written procedure shall consist of the communication to the parties and to the institutions of the Union whose decisions are in dispute, of applications, statements of case, defences and observations, and of replies, if any, as well as of all papers and documents in support or of certified copies of them.*"

19. This Art. 20 is embedded in Title III on Procedure before the Court of Justice. This Title, from Art. 19 through Art. 46, contains procedures by, among, to and vis-à-vis

the litigants and the Court, and nothing else. Art. 20 describes solely what the written procedure is. This language is not about, and it cannot be interpolated from it how, when and if dealing with unclassified documents. Simply, it cannot be read into it any rule or prohibition that would or could prevent a litigant from disclosing unclassified procedural documents. Consequently, this legal argument is misplaced.

(ii) Art. 65(1) Rules of Procedure of the General Court

20. Within section 5 (Conduct of the proceedings and procedures for dealing with cases), titled as "Service of procedural documents and of decisions taken in the course of proceedings", Article 65(1) of the Rules of Procedure of the General Court provides, as follows: "*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*."

21. This Art. 65(1) contains nothing else but the general rules of service. Again, how it could be interpolated from it what a litigant is supposed to do with procedural documents served on him. Apparently, this legal argument is also false.

(iii) Joined Case C-514/07 P, C-528/07 P and C-532/07 P

22. The joint Case C-514/07P, C-528/07P and C-532/07P was about the interpretations of Regulation N°1049/2001 regarding public access to European Parliament, Council and Commission documents. The Regulation's Art. 2(1) contains the rule, and reads: "*Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to documents of the institutions, subject to the principles, conditions and limits defined in this Regulation.*" Based on this law, a journalists' organization requested the Commission to grant access to a long list of court procedural documents. While most of those requests have been granted by the Commission, some were rejected. And this partial refusal of access was the case about.

23. Pursuant to Regulation N°1049/2001, access to documents shall (as exception to the rule) be refused in limited cases only as named and listed one-by-one in Art. 4. Under "Exceptions" clause Art. 4(2) 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." (Overriding public interest being the exception to the exception).

24. In this very judgement the Court held that "*In the case currently under consideration, it was solely on examining the arguments put forward by API in support of its plea at first instance, alleging infringement of the second indent of Article 4(2) of Regulation*

No 1049/2001 …"[11]. The Court also warned that "*Of course, since they derogate from the principle of the widest possible public access to documents, those exceptions must be interpreted and applied strictly (Sison v Council, paragraph 63; Sweden v Commission, paragraph 66; and Sweden and Turco v Council, paragraph 36).*"[12] Considering these limitations and warnings made by the Court itself, it is worth comparing the two cases:

joined Cases C-514/07 P, C-528/07 P and C-532/07 P	this very Case
access requested by uninterested third-party journalists	access requested by final recipients and beneficiaries interested in outcome
access requested from an EU institution	access requested from a private party
Regulation N°1049/2001 applicable	Regulation N°1049/2001 not applicable

25. With no attention to the above, Defendant mentioned paragraphs 78, 85-86 and 92-93 of the Judgement as if they were case law rules directly applicable in this Case. Such cherry pickings, however, carry some risks of misinterpretation:

- ¶78: The line of arguments (¶75-79) that paragraph 78 is integral part of deals specifically with the right of access to documents. Paragraph 79 reads, as follows: "*It is clear, both from the wording of the relevant provisions of the Treaties and from the broad logic of Regulation No 1049/2001 and the objectives of the relevant EU rules, that judicial activities are as such excluded from the scope, established by those rules, of the right of access to documents.*" With special regard to the Court's warning that "*exceptions must be interpreted and applied strictly*", given the dissimilarities, it is hardly rational to invoke general applicability of paragraph 78.

- ¶85-86: These paragraphs 85-86 each start with reference to the preceding paragraph ("*in that regard…*") which makes it clear (see ¶84) that this line of thought is in defence of the exception rules solely when applying Regulation No 1049/2001.

- ¶92-93: Again, when read together with the preceding ¶91, it is clear that paragraphs 92-93 aim at defining the boundaries of the exception rules of Regulation No 1049/2001 and are not about an axiom.

26. The Judgement C-514/07 P, C-528/07 P and C-532/07 P is in general, and the parts referenced by Defendant are specifically, concerning Regulation No 1049/2001 and nothing beyond. Otherwise correctly, neither Defendant nor Intervener stated that Regulation No 1049/2001 would be applicable in these proceedings in any way, they only seem to give some cherry-picked interpretations of Regulation No 1049/2001 a generalized meaning as if such interpretations were of general case law.

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[11] paragraph 66

[12] paragraph 73

Argumentum ad absurdum, should Regulation No 1049/2001 be applicable in this very Case, then – logically – its exception rule (Art. 4) should also be applicable, together with the exception to the exception rule, i.e. that "… *unless there is an overriding public interest in disclosure …*" (Art. 4(2) last line).

(iv) Case T-174/95

27. Defendant refers also to the Judgement in T-174/95 which case, by the way, was also about the right of access to documents. The referenced paragraph 137, together with the surrounding paragraphs 135-139, is about misuse of a party's pleadings. As it happened in that case, a litigant party **(a)** edited the other party's pleadings and **(b)** invited the public to send comments to such other party's agents thus **(c)** "*inciting criticism on the part of the public in relation to arguments raised by other parties in the case*". This resulted in suspension of the proceedings and additional exchange of submissions. No such misuse was or could be claimed in these proceedings and neither Defendant nor Intervener complained of any such misuse so the findings in T-174/95 may hardly serve as rules in this very Case, and certainly not in a sweepingly broad sense.

(v) Art. 38(2) Rules of Procedure of the General Court

28. Intervener in its complaint letter called upon Art. 38(2) Rules of Procedure of the General Court, which provides: "*No third party, private or public, may have access to the file in a case without the express authorisation of the President of the General Court, once the parties have been heard. That authorisation may be granted, in whole or in part, only upon written request accompanied by a detailed explanation of the third party's legitimate interest in having access to the file.*" With all due respect, relevance of this section remains mysterious.

IV. Analysis

(i) Facts

29. In terms of the facts: The Application is available on Applicant's homepage since its submission nearly 2 years ago. The rest of the procedural documents have been made available there in a timely fashion, with no commentary not even translation. Short internet research will verify that while there are abundant commentaries to the contested Decision (and, except for the Commission's, none of them sympathetic towards the exclusion of Applicant's students and researchers from EU programs), there is absolutely no public commentary specifically to those procedural documents on Applicant's homepage. Consequently, the haughty rhetoric Defendant & Intervener designed to apply in their complaints (see at ¶13-14 above, such as "*seriously jeopardises*", "*flagrant violation*" of equality of arms and the sound administration of justice, or "*exposing judicial activities to external pressure*", or "*would disturb the serenity of the proceedings*" and alike) is talk of hypothetical[13] in

[13] It is comforting and refreshingly candid that not a single example was mentioned.

an attempt to deceive the Court. Contrary to these bombasts, the stubborn fact is that in nearly 2 years nobody cared (see ¶9 above).

30. To address the hypothetical: Certainly, anything and everything can be abused. For example, these very proceedings are about the abuse of power vested in Defendant by the Conditionality Regulation.

31. Whatever the real interest of Defendant & Intervener might be in so desperately fighting for secrecy, it shall be overridden by the public interest in disclosure.

32. Notwithstanding the stated purpose of the Conditionality Regulation and the contested Decision, it is the plain and undisputed fact that the 15,200 students and 1,000+ researchers of Applicant do suffer (quite many irreparably) from Art. 2(2) contested Decision. These people, who are all stakeholders of Applicant, are indeed hurt by their exclusion from academic freedom of movement, consequently they are having undeniable direct interest in the outcome of this litigation.

33. Among the 12,000+ employees of the Applicant there are quite a few who dealt in the past with the administration of Horizon and Erasmus+. Their human dignity is hurt as the defamatory fog of suspicions of monetary irregularities around the Applicant (see ¶6 above) stick with them personally. These people are another group of stakeholders who are having direct interest in this litigation.

34. On top of their right to receive information granted by the Charter of Fundamental Rights of the European Union, these groups of stakeholders are personally having undeniable vested interest in this litigation. This 16-17,000 mostly young people, (without apparent reason, cause, or justification) have been deprived of their academic freedom of movement, a couple of hundreds are hurt in dignity. They deserve to know not only the outcome of this litigation a good many years after the injury but to learn about arguments pro & con. Any gag order on or self-restraint by Applicant would be imposing secrecy on those stakeholders which would be adding insult to injury and would undermine the public's confidence in equal application of justice.

(ii) Law

35. The principle of transparency prevails overall in the Union laws. Certainly, exceptions and exceptions to the exceptions may apply.

36. There is no EU law preventing *per se* a litigant from disclosing unclassified procedural documents obtained lawfully.

37. This very case itself demonstrates that there is no former decision of the Court that could be taken as precedent in this matter without stretching the law beyond recognition.

38. The hypothetical morsel of truth in Defendant/Intervener's complaints is that what if once upon a time somebody would use his procedural rights somehow abusively. The correct answer is that it shall then be addressed in the concrete in that very case.

V. Conclusion

39. Only on the part of Applicant, some 16-17 thousand people are directly harmed by the contested Decision. Given that their right to be heard has been continuously violated, and given also that more than 2 years was not enough to remedy the harm, thousands appear to believe that the harm has been caused intentionally. Their right to know why (contained in the procedural documents) cannot be denied. Practically, these many people can be kept informed via the Internet.

40. The risks of transparency alleged by Defendant and its Intervener (see ¶13-14, 17 above) are highly exaggerated and solely imaginary, while the harm caused by the contested Decision is painfully real and getting worse by the day.

41. In the light of the foregoing, the complaints of Defendant and Intervener are unfounded.

VI. Compromise

42. Applicant is not available to conspire to provide cover-up for the Defendant and/or the Intervener but certainly will comply with a gag order of the Court. However, as a matter of practicality, it shall be noted that no such gag order could prevent passing information including documents on interested third parties individually if any of them so insists. Notwithstanding the foregoing, Applicant is available to bona fide work together with Defendant and/or Intervener to find a legitimate solution that would lessen the professional inconvenience caused to their counsels by undesired publicity of their work products.

Budapest, 30 January 2025

Respectfully submitted,

Dr. Péter P. Nagy
counsel for Applicant