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COM(2022) 687 final

**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**

- (1) This Communication follows the European Commission’s 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<sup>1</sup> (‘CID Proposal’) of 18 September 2022. It provides the Council with the necessary information to take a decision pursuant to Article 6(10) 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 (‘Conditionality Regulation’)<sup>2</sup> before 19 December 2022.
- (2) The procedure under the Conditionality Regulation was initiated by a written notification transmitted to Hungary on 27 April 2022 (‘Notification’). On 18 September 2022, the European Commission (‘Commission’) adopted the CID Proposal in accordance with Article 6(9) of the Conditionality Regulation.
- (3) In the CID Proposal, the Commission presented its assessment of the proposed remedial measures as they were submitted by the Hungarian Government to address the Commission’s findings. In particular, recital (28) of the CID proposal states that ‘since the issues identified in Hungary concern both the legal framework and, to a large extent, administrative practices, the assessment of the adequacy of the remedial measures proposed by Hungary to achieve their aim of putting an end to the breaches and/or to the risks for the Union’s financial interests will depend on the analysis of the details of the measures and of the correct, full and effective implementation of all key implementation steps as indicated in the relevant timelines submitted by Hungary on 22 August. In this respect, key steps for many of the proposed remedial measures still need to be taken by Hungary’. The key implementation steps are also reproduced in the Annex to the explanatory memorandum of the CID Proposal (the ‘Key Implementation Steps’).
- (4) In recitals 11 and 12, the CID Proposal summarises the Commission’s findings in the Notification about situations that constitute breaches of the principles of the rule of law and the situations or cases concerned by such breaches in Hungary that are detrimental to or may create risks for the sound financial management of the Union budget or the financial interests of the Union. The findings concern serious systemic irregularities, deficiencies and weaknesses in public procurement procedures, leading to concentration of contract awards, serious deficiencies in the attribution of framework agreements, non-application of public procurement and conflict of interest rules to ‘public interest trusts’ and the entities managed by them, and lack of transparency with regard to the management of funds by those trusts. In addition, the findings also concerned limitations to effective investigation and prosecution of alleged criminal activity, issues regarding the organisation of the prosecution services, and the absence of a functioning and effective anti-corruption framework. The Commission considered that those issues and their recurrence over time demonstrate a systemic inability, failure or unwillingness, on the part of the Hungarian authorities, to prevent decisions that are in breach of the applicable law, as regards public procurement and conflicts of interest, and thus to adequately tackle risks of corruption. They constitute breaches of the principle of the rule of law, in particular the principles of legal certainty and prohibition of arbitrariness of the executive powers and raise concerns as regards the separation of powers.

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<sup>1</sup> COM(2022) 485 final, 2022/0295 (NLE).

<sup>2</sup> OJ L 433I, 22.12.2020, p. 1.

- (5) In Recital 38 of the CID Proposal the Commission considered that ‘the proposed remedial measures, taken together, would in principle be capable of addressing the issues regarding systemic irregularities, deficiencies and weaknesses in public procurement, risks of conflicts of interest, and concerns regarding ‘public interest trusts’, as well as the additional grounds regarding investigation, prosecution and the anti-corruption framework, provided that all the measures are correctly and effectively implemented’.
- (6) Recital 39 added that the detailed implementing rules for the proposed remedial measures were still to be determined, notably how key elements of the measures would be transposed in the actual legal texts to be adopted for the implementation of the remedial measures. Recital 39 also recalled that, given that several of the issues identified in Hungary are not only about changes in the legal framework, but more prominently about the concrete implementation of changes in practice, the latter requiring a more extended timeframe to produce concrete results, pending the implementation of at least the key elements of some of the remedial measures at the time of the CID Proposal, as indicated in the timelines of the remedial measures submitted by Hungary on 22 August, a risk for the Union budget remained. Pending the entry into force of key legislative texts that would implement many of the proposed remedial measures and taking into account the assessment contained in the Explanatory Memorandum, as well as the possibility that the measures might not be correctly implemented, or that their effectiveness would be weakened in the details of the measures, the Commission estimated the ensuing risk for the Union budget and proposed measures to the Council under Article 6(9) of the Conditionality Regulation.
- (7) On that basis, the Commission proposed the suspension of 65% of the commitments under three Cohesion policy programmes under the Multiannual Financial Framework 2021-2027, namely the (i) Environmental and Energy Efficiency Operational Programme Plus, (ii) the Integrated Transport Operational Programme Plus, and (iii) the Territorial and Settlement Development Operational Programme Plus. For the case where those programmes would not be approved by the time the Council adopts its decision, the Commission proposed the suspension of approval of one or more of them. Furthermore, the Commission proposed the prohibition of entering into new legal commitments with any public interest trust and any entity maintained by them under any Union programme under direct and indirect management.
- (8) The CID Proposal reflected Hungary’s commitment to report to the Commission, by 19 November 2022, about the implementation of the remedial measures submitted by Hungary. In the CID Proposal, the Commission also stated that it would keep the Council informed of any relevant element which might have an effect of its assessment.
- (9) Following the discussions between the Hungarian authorities and the Commission services, the Commission received information from Hungary on 19 November 2022 on the actions taken to implement the commitments undertaken by the Hungarian Government.
- (10) Having now considered the remedial measures in the light of their more detailed implementation by Hungary, this Communication provides the Council with the necessary information to take a decision on the CID Proposal. The assessment in this

Communication is based on the documents received from the Hungarian authorities by 19 November 2022, which is the cut-off date for the assessment<sup>3</sup>.

#### **ASSESSMENT OF THE ADEQUACY OF AND PROGRESS ON THE REMEDIAL MEASURES SUBMITTED BY HUNGARY**

(11) Following the adoption of the CID Proposal, the Commission has analysed, in particular, the details of relevant legal acts submitted by Hungary and the fulfilment of the Key Implementation Steps. On that basis, it has assessed the adequacy of the 17 remedial measures as submitted by Hungary in the letter of 22 August 2022 to address the Commission's findings in the Notification, as complemented by additional commitments undertaken in the letter of 13 September 2022 (the 'September Letter'), taking into account the progress made on their implementation by 19 November 2022. The Commission also took into account the letter on the implementation of the remedial measures sent by Hungary's Minister of Justice Varga to Commissioner Hahn on 19 November 2022 ('the November Letter').

(12) The remedial measures are the following:

- i. Reinforcing prevention, detection and correction of illegalities and irregularities concerning the implementation of Union funds through a newly established Integrity Authority;
- ii. Anti-Corruption Task Force;
- iii. Strengthening the Anti-Corruption Framework;
- iv. Ensuring the transparency of the use of Union support by public interest asset management foundations;
- v. Introduction of a specific procedure in the case of special crimes related to the exercise of public authority or the management of public property;
- vi. Strengthening audit and control mechanisms to guarantee the sound use of EU support;
- vii. Reducing the share of tender procedures with single bids financed from Union funds;
- viii. Reducing the share of tender procedures with single bids financed from the national budget;
- ix. Development of a single-bid reporting tool to monitor and report on public procurements closed with single-bids;
- x. Development of the Electronic Public Procurement System (EPS) to increase transparency;

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<sup>3</sup> The Commission acknowledges receipt of the letter that Minister of Justice Varga sent to Commissioner Hahn on 26 November 2022. The content of that letter is not part of the present assessment.

- xi. Development of a performance measurement framework assessing the efficiency and cost effectiveness of public procurements;
  - xii. Adoption of an action plan to increase the level of competition in public procurement;
  - xiii. Training to be provided for micro, small and medium-sized enterprises on public procurement practices;
  - xiv. Setting up a support scheme for compensating the costs associated with participating in public procurement of micro, small and medium-sized enterprises;
  - xv. Application of Arachne;
  - xvi. Strengthening cooperation with OLAF; and
  - xvii. Adoption of a legislative act ensuring enhanced transparency of public spending.
- (13) Thirteen of the remedial measures set Key Implementation Steps to be fulfilled by 19 November 2022. For four remedial measures, namely remedial measures (viii.) and (xii.) to (xiv.), the Commission indicated that there were no immediate Key Implementation Steps, as they require a longer implementation period.
- (14) In order to meet the deadlines set in the Key Implementation Steps, Hungary proceeded with the adoption of several legislative acts between the end of September and the beginning of October 2022. However, intense discussions between the Hungarian authorities and the Commission services were necessary to try to ensure that these acts would be fully aligned with the remedial measures and that they would be effective. An earlier adherence to the wording and spirit of the remedial measures, ensuring their effectiveness, would have allowed for a smoother process and for this updated assessment to be presented earlier. The Hungarian Government submitted to the National Assembly a so-called “service package” on 15 November 2022, with a number of proposed amendments to the legal texts that were adopted at the end of September and beginning of October 2022. The service package is composed of two draft bills, one (T/2033) for adoption according to the ordinary procedure, for which the final vote took place on 22 November 2022, and the other draft bill (T/2032) for adoption according to the procedure applicable for cardinal acts (requiring a two-thirds majority), with a final vote set for 6 December 2022. As a result, amendments that concern the implementation of a single remedial measure may be split in these two bills, with different dates of adoption. The working English version of this service package reached the Commission services only late on 18 November 2022.
- (15) In accordance with the Conditionality Regulation, and in the light of Articles 4 and 6 thereof, the assessment of the adequacy of the remedial measures requires determining whether those measures, as adopted and in view of their details, are capable of putting an end to the relevant breaches of the principles of the rule of law and/or to the impacts or risks for the sound financial management of the Union’s budget and for the Union’s financial interests, and therefore to reach the conclusion that the conditions for the application of the Regulation are no longer met.

- (16) The current assessment is without prejudice to any possible future action by the Commission in case of changes in the relevant legal acts or in their implementing rules, or in case the remedial measures are not, or cease to be, effectively implemented or do not bring about the expected results. On that basis, the Commission reserves the right to reconsider its position on each of the issues, and, if all conditions under the Conditionality Regulation are fulfilled, to start a new procedure.
- (17) With the November Letter, the Hungarian Government committed to report to the Commission on the implementation of all remedial measures on a quarterly basis and unconditionally until 31 December 2028, i.e. by the end of the year where the first six-year mandate of the board of the Integrity Authority would expire. Without prejudice to the proposed measures for the protection of the Union budget, the Commission will continue to monitor the correct, full and effective implementation of all remedial measures, including the implementation of all the steps Hungary committed to in the remedial measures, including those requiring a longer implementation period (i.e. beyond 19 November 2022), and of any further commitments undertaken by Hungary in the context of the remedial measures.
- i. Reinforcing prevention, detection and correction of illegalities and irregularities concerning the implementation of Union funds through a newly established Integrity Authority**
- (18) The Hungarian Government committed to establish an Integrity Authority with the objective of reinforcing the prevention, detection and correction of fraud, conflicts of interest and corruption, as well as other illegalities and irregularities in the implementation of any Union financial support. For that purpose, Hungary committed to provide the Integrity Authority with extensive powers. It also committed to specific rules on the appointment of the Integrity Authority's board and on the involvement of an eligibility committee (the 'Eligibility Committee'), aimed at guaranteeing that the Integrity Authority and the members of its board will be fully independent.
- (19) The creation of the Integrity Authority, a new body in the Hungarian context, is a horizontal measure that aims at remedying the systemic breaches of the rule of law concerning public procurement affecting the Union's financial interests. It is one of the central remedial measures proposed by Hungary.
- (20) The Key Implementation Steps for this measure were: (i) the adoption of a Government Decision providing for the tasking and the timeline for the establishment of the Integrity Authority by 5 September 2022, (ii) the submission to the National Assembly of a draft Act on the establishment of the Integrity Authority by 30 September 2022, (iii) the appointment of the board by 4 November 2022 and (iv) the beginning of the actual activities of the Integrity Authority as of 19 November 2022.
- (21) Hungary took the following steps to address the Key Implementation Steps.
- (22) On 5 September 2022, the Hungarian Government adopted Government Decision 1424/2022 on tasks relating to setting up an independent authority operating to prevent, detect and correct illegalities and irregularities concerning the implementation of EU funds. This Government Decision entered into force on 6 September 2022.
- (23) On 23 September 2022, the Hungarian Government submitted to the National Assembly the draft Act aiming at establishing the Integrity Authority. On 4 October 2022, the

National Assembly adopted the Act establishing the Integrity Authority (Act XXVII of 2022 on the control of the use of European Union budget funds, the ‘Integrity Authority Act’), which was promulgated on 10 October 2022 and entered into force on 11 October 2022. The Hungarian authorities discussed several amendments to the Integrity Authority Act with the Commission services; most of the amendments were introduced in the part of the service package on which the National Assembly voted on 22 November 2022. However, the amendments concerning the Integrity Authority’s powers regarding asset declarations were inserted in the part of the service package with a final vote set for 6 December 2022. Following the submission of the service package to the National Assembly, the Hungarian authorities sent the Commission services a revised draft legal text of the Integrity Authority Act on 16 November 2022<sup>4</sup>. The amending act regarding most of the amendments was adopted on 22 November 2022 and it reflects the changes included in the legal text received by the Commission on 16 November 2022. The Commission is not in a position to assess whether the amendments regarding asset declarations, scheduled for vote in the National Assembly for 6 December 2022, will enter into force as proposed or if further amendments will be tabled before the date of adoption.

- (24) With regard to the preparation of the draft Integrity Authority Act, the Hungarian Government had committed to consult extensively with national and international stakeholders, to seek the Organisation for Economic Co-operation and Development’s (OECD) policy advice and to take into account the related recommendations. In addition to consulting the Commission, the Hungarian Government effectively consulted the OECD, which provided drafting suggestions on 27 September 2022. On 4 November, the Hungarian government informed the OECD about how it addressed the OECD’s opinions in the Integrity Authority Act promulgated on 10 October 2022. In addition, the Hungarian Government consulted the Council of Europe on the draft Integrity Authority Act on 15 September 2022. The Council of Europe provided comments on 13 October 2022, after the promulgation of the Integrity Authority Act on 10 October 2022. The Hungarian Government replied on 16 November 2022, after the submission of amendments to the Integrity Authority Act as part of the service package of 15 November 2022. The Hungarian Government took into account certain opinions or drafting suggestions, including following recommendations from the Commission that were in line with the positions of the OECD and of the Council Europe. The Hungarian authorities explained why certain opinions or suggestions could not be taken into account<sup>5</sup>. On this basis, the Commission considers that the Hungarian Government fulfilled the relevant commitments in the remedial measure with regard to the consultation process. The Commission notes that some recommendations were accepted and reflected in the legal text and others not. To the extent that certain recommendations

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<sup>4</sup> The Commission notes that there were some discrepancies in the numbering and in the content of certain provisions amending the Integrity Authority Act as shown in bill T/2033 and in the draft Integrity Authority Act submitted to the Commission services on 16 November 2022. However, these discrepancies do not concern substantive issues.

<sup>5</sup> The opinion of the Council of Europe, for example, signalled concerns relating to a limited set of provisions for external audit processes, reporting and accountability arrangements, including that the annual analytical integrity report is submitted to the National Assembly only for information. Hungary replied that this solution was chosen consciously, so to ensure that the Integrity Authority is fully independent in the performance of its tasks.

were reflected, the Commission considers that the consultation of the OECD and the Council of Europe contributed to improve the design of the Integrity Authority Act<sup>6</sup>.

- (25) As regards the selection and appointment of the board of the Integrity Authority, the relevant Hungarian authorities acted in line with the timeline and the basic requirements set in the remedial measure that aimed at guaranteeing that the Integrity Authority and the members of its board be fully independent. On 23 September 2022, the Director General of the Directorate General for Audit of European Funds (‘EUTAF’) issued an international open call for expression of interest regarding the selection of the three members of the Eligibility Committee, based on the criteria established by the remedial measure<sup>7</sup>. On 11 October 2022, the Director General of the EUTAF appointed the three members<sup>8</sup> of the Eligibility Committee. On 14 October 2022, the Eligibility Committee published a call for applications for the board of the Integrity Authority based on the criteria established by the remedial measure<sup>9</sup>, with the deadline of 25 October 2022. On 28 October 2022, the Eligibility Committee issued the list of eligible candidates for the position of President and Vice Presidents of the board of the Integrity Authority. On the same date, the President of the State Audit Office published the evaluation grid to be used for the selection of the members of the board<sup>10</sup>. On 3 November 2022, the President of the State Audit Office nominated the selected members<sup>11</sup>, who were appointed by the President of the Republic on 4 November 2022.
- (26) The selection process of the members of the board of the Integrity Authority formally complied with the commitments under the remedial measure. Nevertheless, the Commission notes that, based on information published by the State Audit Office, the second Vice President of the board was appointed although other candidates had obtained a higher number of points in the selection process. According to the information provided by the Hungarian authorities to the Commission services, this followed a process by which the nominee for the position of President of the board was given the possibility to interview two candidates for the second Vice President position<sup>12</sup>. The choice was then made based on feedback from the nominee President,

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<sup>6</sup> Beyond the official consultations, the Commission also notes some critical external specialist assessments about the design of the integrity authority, for example by the Hungarian Helsinki Committee, K-Monitor and Transparency International Hungary <https://transparency.hu/en/news/the-eu-comm-should-to-stop-systemic-corruption-in-hungary-joint-analysis-by-ngos/>.

<sup>7</sup> The call for expression of interest, the result and other relevant information are published on the website of the EUTAF, at <https://eutaf.kormany.hu/alkalmassagi-bizottsag>.

<sup>8</sup> Following a resignation, the Director General of the EUTAF replaced one of the three members of the Eligibility Committee on 21 October 2022 with another appointee.

<sup>9</sup> The conditions for application, similarly to those for the Eligibility Committee, require that the candidates do not hold certain posts or political mandates, that they are not members of or employed by a political party or a party foundation and, in addition, that they have no management or ownership links with a company. The call for expression of interest and the eligible candidates following the screening of the Eligibility Committee are published on the website of the EUTAF, at <https://eutaf.kormany.hu/integritas-hatosag-igazgatosag>.

<sup>10</sup> See <https://www.aszhirportal.hu/hirek/az-allami-szamvevoszek-elnokenek-kozlemenye>.

<sup>11</sup> See <https://www.aszhirportal-hu.translate.google.hu/sajtokozlemenyek/az-allami-szamvevoszek-elnokenek-kozlemenye-2022-11-03-20-39-00? x tr sl=auto& x tr tl=en& x tr hl=en-US& x tr pto=wapp>. In line with the remedial measure, the applicants eligible were more than twice the posts in the board (five applicants for the position of President and 13 applicants for the position of Vice President).

<sup>12</sup> Dr Kálmán Dabóczy, nominated by the State Audit Office and appointed as Vice President, scored 102 points, while other candidates had scored more points. See <https://www.aszhirportal.hu/sajtokozlemenyek/az-allami-szamvevoszek-elnokenek-kozlemenye-2022->



based on the need to select a candidate with experience in managing large organisations. While in principle this facilitates the establishment of a board that could effectively cooperate, this procedure is not foreseen as such by the remedial measure, which states that the board would be appointed following an eligibility check by the Eligibility Committee and a selection by the State Audit Office. The procedure has thus not been fully transparent as regards this choice. It is also noted that the available information does not allow the Commission to conclude that the appointed candidate fully meets the criterion of sufficient international experience with regard to anti-corruption and public procurement, even if he meets all the other criteria set out in the remedial measures. The two other members of the board fully meet all criteria set out in the remedial measures.

- (27) The President of the Integrity Authority has informed the Commission that he envisages a larger organisation (with at least 120 staff members) than the minimum of 50 staff members foreseen in the remedial measure, with a commensurate budget. He envisages also remuneration packages for staff members that allow him to attract private sector experts even if these would exceed the pay levels of the Integrity Authority board members. He also reported that the Hungarian Government had not opposed this request even if discussions on the finalisation of the budget were still ongoing. Recruitment of staff is ongoing and the President confirmed that he was the sole appointing authority with no government involvement in this process. These staffing and resources plans remain subject to budgetary decisions which still need to be adopted. If confirmed, the Commission considers that these developments would contribute to the effectiveness of the institution.
- (28) On 18 November 2022, the board of the Integrity Authority held the first official meeting, the minutes of which were provided to the Commission services.
- (29) With regard to the powers of the Integrity Authority, relevant Sections<sup>13</sup> of the Integrity Authority Act provide it with most of the powers required by the remedial measure, including: (i) having full access to information of on-going and upcoming or planned public procurement procedures, conflict of interest declarations<sup>14</sup> (Sections 5 (5)(a), 8 (1) and (2); Section 18 (8)); (ii) instructing other authorities to carry out administrative investigative acts on its behalf (Section 5 (2)(a) and Chapter III, Subtitle 7); (iii) instructing the relevant authorities to initiate procedures to verify conflict of interest declarations upon complaints and suspicion in relation to the management of Union funds (Section 18 (2); Section 24 (1); Section 25 (1)); (iv) initiating procedures to verify certain asset declarations (Section 5 (6), (6)(a)

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[11-03-20-39-00](#). The State Audit Office explained to the Commission's services that candidates were ranked based on the points they scored and that, in addition to that, in case of even points, the State Audit Office considered the leadership skills of the candidates and whether the Eligibility Committee had recommended them for nomination. The nominee for the position of President of the Integrity Authority was given the opportunity to interview the candidates with the highest scores recommended by the Eligibility Committee for nomination.

<sup>13</sup> The numbering of Chapters, Subtitles and Sections refers to the consolidated version of the Integrity Authority Act that the Hungarian authorities submitted to the Commission services on 16 November 2022.

<sup>14</sup> Under remedial measure (vi.) on strengthening audit and control mechanisms to guarantee the sound use of EU support, the Hungarian Government committed to oblige the newly created Directorate of Internal Audit and Integrity (DIAI) to provide the Integrity Authority, on request, with full access to conflict of interest declarations or DIAI's files without delay. This commitment has been implemented in a legal act (see assessment under section vi. below).

and (7)); (v) recommending contracting authorities to use a certain public procurement procedure in a specific procedure or for a category of procedures (Section 15 (1)(a) to (e)); (vi) instructing the relevant contracting authority to suspend a tender in case of suspected fraud, corruption, conflict of interests or other serious illegalities or irregularities detected in the procedure (Section 21); (vii) recommending contracting authorities on grounds for exclusion of economic operators from public procurement (Sections 15 (1)(e) and 16); (viii) initiating proceedings before the Public Procurement Arbitration Board for behaviour or default in violation of public procurement rules pursuant to the Act CXLIII of 2015 on Public Procurement (Section 15 (4)); (ix) requesting judicial review of all decisions of authorities concerning public procurement procedures that involve any Union support and may be subject to judicial review (Section 15 (4)); (x) issuing an annual analytical Integrity Report including recommendations and findings, with the obligation for the Hungarian Government to reply to the Integrity Authority and explain how it will address the report's findings(Chapter I, Subtitles 5 and 6; Section 74).

- (30) The Commission notes that the last sentence of Section 3 of the Integrity Authority Act, regarding the performance of the tasks of the Integrity Authority, states that '[s]hould a project be removed from European Union financing, this shall not lead to depriving the Authority from its powers if the fraud, conflict of interest, corruption and other illegalities or irregularities affect or seriously risk affecting the sound financial management of the European Union budget or the protection of the financial interests of the European Union'. Depending on the way it is interpreted, this provision as such does not need to deprive the Integrity Authority of its powers in case a project is withdrawn from Union financing. Insofar as the Integrity Authority maintains its appreciation on the underlying issues concerning fraud, conflict of interest, corruption and other illegalities or irregularities and their link with the Union budget, the provision could be taken to mean that even the said projects would remain subject to the scrutiny of the Integrity Authority. However, the interpretation and application of this provision will depend on decisions by the Hungarian authorities, and it is also possible that such a provision is interpreted in a way that allows depriving the Integrity Authority of its powers as soon as it starts examining certain public procurement procedures. This provision could thus be used to render the Integrity Authority ineffective and unable to put an end to the structural problems that led the Commission to open the procedure under the Conditionality Regulation. Legal certainty and the effectiveness of the Integrity Authority would have required the wording of the relevant provisions to state explicitly that the Integrity Authority's powers are maintained even after a project is withdrawn from Union funding, with no exception or limitation.
- (31) The Commission welcomes Section 27/A of the Integrity Authority Act. Under that provision, the Integrity Authority may file a motion for revision or a motion for repeated revision of decisions of the prosecution service or of investigating authorities to dismiss a crime report or terminate proceedings, in accordance with the new procedure introduced as a result of remedial measure (v.)<sup>15</sup>. This provision would contribute to make both the remedial measure (v.) and the remedial measure on the Integrity Authority more effective. The Integrity Authority would have first-hand information and evidence on situations that may be relevant for criminal proceedings. It

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<sup>15</sup> Introduction of a specific procedure in the case of special crimes related to the exercise of public authority or the management of public property

would be able to provide elements necessary to ensure that investigation or prosecution of the criminal offences covered by the new procedure under the remedial measure (v.) is duly resumed. However, as will be explained below, the details of the remedial measure on the introduction of a specific procedure in the case of special crimes related to the exercise of public authority or the management of public property presents itself certain deficiencies.

- (32) The Commission also notes that, since the Integrity Authority will in most cases be empowered to issue recommendations to contracting authorities, if those recommendations are not followed and the ensuing situation is unlawful, it is essential that the Integrity Authority is able to initiate swift and effective judicial proceedings to ensure legality and effectively prevent damage to the Union's financial interests. This is crucial to ensure that the Integrity Authority would be in a position to remedy the structural breaches that led the Commission to open the procedure under the Conditionality Regulation. Section 15 (4) refers to the possibility for the Integrity Authority to 'initiate proceedings at the competent organ or court, and in particular, as regards an illegality relating to public procurement, it may initiate the proceeding of the Public Procurement Arbitration Board', also being able to request the adoption of interim measures. Section 27 (1) allows the Integrity Authority to challenge, in an administrative court action, the decisions of the Public Procurement Arbitration Board ('PPAB') or of another authority concerning public procurement that relates to Union funds, including the possibility of applying for interim measures.
- (33) The Commission notes that the Integrity Authority may initiate the proceeding of the PPAB and that the applicable rules foresee that the duration of such proceedings is limited to up to 25 days with one specific and limited exception<sup>16</sup>. The Integrity Authority may request the review of the decision of the PPAB at the competent court immediately after its review procedure is terminated. However, some important aspects are not clearly articulated in the Integrity Authority Act: the necessary suspension of the public procurement procedure while the PPAB procedure is ongoing and the possibility of judicial review if the time limit for a decision of the PPAB expires without one having been taken. The Commission also notes that the Integrity Authority does not have the option to seize courts directly which might be more effective in some cases. Consequently, there are doubts about the effectiveness of the judicial review of cases in which the contracting authority does not follow the recommendation of the Integrity Authority.

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<sup>16</sup> The time limits for the PPAB to take a decision are set by Section 164 of Act CXLIII of 2015 on Public Procurement, as follows: (1) When no hearing is held in the case, the PPAB shall be required to finish the case within 15 days counted from the launch of the proceeding, save for the case specified in paragraph 2. (2) If the PPAB has held a hearing in the case, it shall be required to finish the case within 25 days counted from the launch of the proceeding, save for the case specified in paragraph 3. (3) The PPAB shall conclude the case concerning an amendment or performance violating this Act of the contract concluded on the basis of the procurement procedure and concerning the bypass of the procurement procedure within 60 days from the launching of the procedure. (5) The time limit referred to in paragraphs 1 and 3 may be extended with up to 10 days on one occasion, in justified cases. Parties must be notified. (7) Time limit for arrangement of para. 1-3 shall start from the day where all the documents were available (if they were requested).

(34) Importantly, as regards the powers of the Integrity Authority related to the verification of asset declarations, contained in amendments to be adopted on 6 December 2022, Section 5, paragraphs (6), (6a) and (7) set a regime by which:

(i) for the public asset declarations of certain individuals<sup>17</sup>, the Integrity Authority would be entitled to conduct an unspecified ‘asset declaration examination procedure’. On the basis of its result, the Authority could initiate the procedure related to the asset declaration before the relevant body, which should inform the Integrity Authority of the results of such procedure;

(ii) for the public asset declarations of other individuals<sup>18</sup>, the Integrity Authority would be entitled only to initiate the verification procedure related to the asset declarations before the relevant body tasked with their verification, which should inform the Integrity Authority of the results of such procedure; and

(iii) for the (non-public) asset declarations of individuals who are obliged to make declarations of assets based on their advisory, decision making or control powers in relation to Union funds, the Integrity Authority would be able to initiate a verification procedure before the relevant body and be informed about its result and the initiation of investigation of asset enrichment.

(35) As the Commission services explained to the Hungarian authorities in their comments of 18 November 2022, such a regime is not fully in line with the remedial measure, by which the Hungarian Government committed to transfer to the Integrity Authority competences related to the verification of asset declarations filed under Section 183 of Act CXXV of 2018 (i.e. senior political leaders not having a mandate as members of the National Assembly: Prime Minister, ministers, the Prime Minister’s political director, secretaries of state). Under that commitment, the Integrity Authority should be the only body to have the power to verify, directly, such asset declarations. Moreover, this regime also appears not to fulfil the further commitment set in the September Letter, by which the Integrity Authority shall have the power to verify public asset declarations of all high-risk officials and have access to relevant databases and registries for the purpose of verifying the veracity of the information contained in the declarations. It limits the powers of the Integrity Authority to a right to request other bodies to verify the asset declarations and to receive information about the results of such verifications. Furthermore, the personal scope of the individuals for which the Integrity Authority is competent does not include all officials that would fall within the concept of ‘high-risk’ officials<sup>19</sup>. The procedure for verification of non-public asset declarations is limited to individuals in charge of advising on, managing or controlling Union funds, whereas such delimitation is not foreseen in the commitments taken by the Hungarian Government<sup>20</sup>.

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<sup>17</sup> E.g. president and vice-president of the Hungarian Competition Authority, member of the Competition Council, president and vice-president of the State Audit Office, president, vice-president and member of the Council under the Public Procurement Authority, person entrusted with senior political function who does not have a mandate as a member of the National Assembly (i.e. Prime Minister, ministers, the Prime Minister’s political director, secretaries of state).

<sup>18</sup> E.g. President of the Republic, members of the National Assembly, judges.

<sup>19</sup> See footnote 50 in the Explanatory Memorandum.

<sup>20</sup> In spite of the provisions described in paragraph (34) above and of the Commission services’ comments described in this paragraph, in a written reply of 19 November 2022 to the Commission regarding

- (36) As regards the procedure for the dismissal of members of the board of the Integrity Authority, the Commission positively notes that Hungary has agreed to reverse the initially proposed dismissal procedure to give competence to a court for the decision on the dismissal. However, the Commission notes that the procedure is short, of thirty days only between the application and the judicial decision at first instance. Such time limit would make it difficult for the member of the board concerned by a dismissal procedure to organise his or her defence in an effective way, and for the competent court to ensure the exchange of pleadings, to hold hearings and to protect defence and procedural rights. In addition, the effects of the appeal for the position of the concerned member, and in particular, whether an appeal would have suspensory effect, are unclear in the Integrity Authority Act. Since the first instance judgment seems to lead to the dismissal immediately after a short procedure, the effectiveness of the appeal appears to be limited. The way the dismissal procedure is organised as a whole does not sufficiently protect the members of the Integrity Authority from undue influence and risks undermining the independence of the Integrity Authority.
- (37) The Commission thus finds that the regulatory framework for the Integrity Authority as set out in the Integrity Authority Act does not fully fulfil the commitments taken under the remedial measure, which, therefore, cannot be considered fully effective and adequate pursuant to the Conditionality Regulation. The weaknesses, risks and shortcomings of the remedial measure, which compromise the effectiveness and independence of the Integrity Authority and its capacity to address the Commission's findings, are the following: (i) the lack of a clear rule stating that the Integrity Authority will retain its competence after a project is withdrawn from Union financing; (ii) the weaknesses of the system for the judicial review of the decisions of contracting authorities that do not follow the recommendations of the Integrity Authority; (iii) the weaknesses of the dismissal procedure; (iv) the direct as opposed to the supervisory powers of the Integrity Authority in relation to the different groups of declarants and the lack of the transfer of competence to the Integrity Authority to verify the asset declarations of members of the government; (v) the limited scope related to lack of inclusion of all 'high-risk officials' in the scope of the Integrity Authority's verification powers in relation to asset declarations; (vi) limited international experience of an appointed candidate to the Board of the Integrity Authority which could pose a risk to the effective functioning of the body.

## **ii. Anti-Corruption Task Force**

- (38) The Hungarian Government undertook to establish an Anti-Corruption Task Force by 1 December 2022 ("new Anti-Corruption Task Force") with the following tasks:
- (i) examining the existing anti-corruption measures and elaborating proposals concerning the improvement of detection, investigation, prosecution and sanctioning of corrupt practices;
  - (ii) proposing measures aimed at improving corruption prevention and detection;

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comments about verification of asset declarations by the Integrity Authority, the Hungarian Government confirmed at State Secretary level that 'the Authority will have the power to directly verify asset declarations submitted by persons listed in Section 5 (6)'.

- (iii) drafting an annual report analysing the risks and trends of corruption and corrupt practices, proposing effective countermeasures and best practices for and assessing their effective implementation.
- (39) The regulatory framework of the new Anti-Corruption Task Force would be included in the Act establishing the Integrity Authority (see remedial measure (i.) described above) and the chair of the Integrity Authority would be the chair of the Task Force. Other key elements of the remedial measure concerned the participation of non-governmental actors active in the field of anti-corruption independent from the government, public authorities, political parties and business interests along with government representatives in a full, structured and effective manner. This should ensure parity between both governmental and non-governmental actors by means of number of members and voting power. Moreover, provisions should provide for the follow-up of the new Anti-Corruption Task Force's reports and recommendations by the Hungarian Government. The new Anti-Corruption Task Force should hold its first meeting before 15 December 2022. It should adopt its first report for the year 2022 and send it to the Government by 15 March 2023.
- (40) The Key Implementation Steps for this measure were (i) the adoption of the Government Decision by 5 September 2022 repealing Government Decision 1337/2022 of 15 July 2022 on the basis of which the Anti-Corruption Task Force established by the latter would be discontinued, and (ii) the submission to the National Assembly of a draft Act on the establishment of the Integrity Authority by 30 September 2022, setting out the regulatory framework for the new Anti-Corruption Task Force.
- (41) Hungary took the following steps to address the Key Implementation Steps.
- (42) On 5 September 2022, the Hungarian Government repealed Government Decision 1337/2022 of 15 July 2022 on the Anti-Corruption Task Force with the adoption of Government Decision 1424/2022 on tasks relating to setting up an independent authority operating to prevent, detect and correct illegalities and irregularities concerning the implementation of EU funds. This Government Decision set out the commitment for Hungary to establish a new Anti-Corruption Task Force by 1 December 2022 in a manner that ensures participation, by means of number of members and voting power, on a parity basis of both governmental and non-governmental actors, and with the administrative support of the Integrity Authority. Government Decision 1424/2022 entered into force on 6 September 2022.
- (43) On 23 September 2022, the Hungarian Government submitted to the National Assembly the draft Act aiming at establishing the Integrity Authority. On 4 October 2022, the National Assembly adopted the Integrity Authority Act, which also established the new Anti-Corruption Task Force. The Integrity Authority Act was promulgated on 10 October 2022 and entered into force on 11 October 2022. On 15 November 2022, the Hungarian Government submitted to the National Assembly an amending bill concerning the Integrity Authority Act, as part of the service package. Following the submission of the service package to the National Assembly, the Commission received the revised legal text with the November Letter. The amending Act was adopted on 22 November 2022 and it reflects the changes included in the legal text received by the Commission on 19 November 2022.

- (44) In the preparation of this draft Act, the Hungarian Government had committed to consult extensively with national and international stakeholders, to seek the OECD's policy advice and to take into account the related recommendations. In addition to consulting the Commission, the Hungarian Government effectively consulted the OECD, as well as the Council of Europe. It informed the Commission of how it addressed the organisation's opinions and/or drafting suggestions as described in paragraph (24). On this basis, the Commission considers that the Hungarian Government fulfilled the relevant commitments in the remedial measure. The consultation of the OECD and the Council of Europe contributed to improve the regulatory framework for the set-up of the new Anti-Corruption Task Force to the extent that some recommendations were accepted and reflected in the legal text. Nevertheless, the Commission notes that some concerns expressed, e.g. a risk of duplication with existing work<sup>21</sup> although acknowledged by Hungary, or the lack of tools to request or obtain information from other institutions necessary for the preparation of the Task Force's work were not addressed in the legal texts.
- (45) Part Two of the Integrity Authority Act describes the regulatory framework for the new Anti-Corruption Task Force. It sets out the tasks of the new Anti-Corruption Task Force (Section 50) with explicit mention to situations of conflict of interest as defined in relevant EU provisions, which shall be taken into account by the new Anti-Corruption Task Force, in line with the remedial measure. The chair of the new Anti-Corruption Task Force shall be the President of the Integrity Authority (Section 59). It also lays down the process on the follow-up of the new Anti-Corruption Task Force's annual reports and recommendations, by which the Hungarian Government shall discuss the report and the proposals included therein within two months. If it decides not to implement a proposal, it shall send a detailed reasoning for its decision to the Chair of the new Anti-Corruption Task Force within one month (Section 52). The composition (Section 54) and voting rules (Section 61) of the new Anti-Corruption Task Force are described in the Act. In line with the remedial measure, the number of non-governmental members shall be 50% of the members of the new Anti-Corruption Task Force, excluding the chair. If the 50% representation cannot be reached, the voting powers of such members are modulated so as to cast 50% of the votes, the chair excluded. The members representing non-governmental actors shall be selected based on an open, transparent, non-discriminatory selection process with objective criteria related to expertise and merit. The Eligibility Committee shall be involved as referred in paragraph 11 (Section 57). It shall be entitled to prepare a shadow report to be made publicly available on the website of the Task Force where the report of the new Anti-Corruption Task Force would also be published (Section 53). Finally, Part Four of the Act lays down that the new Anti-Corruption Task Force shall be established by 1 December 2022 and shall hold its first meeting before 15 December 2022. The new Anti-Corruption Task Force shall adopt and send to the Government its first report for 2022 by 15 March 2023 (Section 77).
- (46) The Commission finds that Hungary took the Key Implementation Steps. The regulatory framework for the new Anti-Corruption Task Force as set out in the Integrity Authority Act fulfils the commitments set by the remedial measure.

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<sup>21</sup> In particular, the National Protective Service which is mandated with preparing the government Strategy against corruption and submitting it to the Ministry of Interior and is also responsible for the harmonisation and development of an integrity management system of public administration organisations.

- (47) The Commission notes that an open call for application to select the members representing non-governmental actors of the new Anti-Corruption Task Force was launched on 11 November 2022, with a deadline to apply set on 24 November 2022.

### **iii. Strengthening the Anti-Corruption Framework**

- (48) The Hungarian Government undertook to adopt by 30 September 2022 anti-fraud and anti-corruption strategies defining the tasks of entities involved in the implementation of any Union financial support in relation to the prevention, detection and correction of fraud, conflict of interest and corruption. The strategies were to include the assessment of the main risks, factors and practices of fraud, conflict of interest, and corruption. The Hungarian Government also committed to adopt a new National Anti-Corruption Strategy (“NACS”) and Action Plan (“AP”) by 30 June 2023. Special attention should be given to the strengthening of the institutional and normative framework for the fight against high-level corruption, by enhancing the transparency of the work of public authorities including at the senior political level. The Hungarian Government also committed to fully implement by 30 June 2023 all actions of the existing National Anti-Corruption Strategy for the period 2020-2022.
- (49) As the establishment of the Integrity Authority, this remedial measure has a horizontal and systemic nature in order to fight against corruption and ensure transparency in the political sphere. It is one of the central remedial measures proposed by Hungary in the procedure under the Conditionality Regulation.
- (50) In the September Letter, the Hungarian Government also undertook further commitments on the personal and material scope of asset declarations. In this respect, it committed to submit to the National Assembly draft legislation (to be effective as from 1 November 2022) that should extend the personal scope of the asset declaration system to (i) persons entrusted with senior political functions under Sections 183 and 184 of Act CXXV of 2018 on government administration and their relatives living in the same household with the person concerned, and (ii) members of the National Assembly and their relatives living in the same household with the person concerned. Hungary also committed to widen the material scope to include not only revenues but also assets<sup>22</sup>.
- (51) Additionally, with the September Letter, Hungary committed to establish by 31 March 2023 a system of asset declarations filed electronically in a digital format, to be stored in a public database that will be searchable without fee or the need to register. Finally, the Integrity Authority would be tasked with the review of both the regulatory framework and the functioning of the asset declarations system, including its scope and verification processes, which shall be included in a review report by 31 December 2023.
- (52) The Key Implementation Steps for this measure were (i) the adoption of the anti-fraud and anti-corruption strategies defining the tasks of entities involved in the implementation of any Union support by 30 September 2022 and (ii) the submission to the National Assembly of the draft legislation, including on the extension of the personal and material scope of asset declarations, effective from 1 November 2022.

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<sup>22</sup> In this respect, the September Letter mentions real estate properties; other valuable properties (vehicles, vessels, valuable antiques and work of art, etc.); savings in bank deposits and in cash; assets in stocks, securities and private equity funds; life insurance policies; trusts, and beneficial ownership of enterprises.



- (53) Hungary took the following steps to address the Key Implementation Steps.
- (54) On 30 September 2022, the Hungarian Government adopted the strategy against fraud and corruption for the 2021-2027 programming period and for the implementation of the Recovery and Resilience Plan (Government Decision 1470/2022). The Strategy was subsequently amended and a new version was adopted and published on 15 November 2022 (Government Decision 1540/2022, the “Strategy”). The strategy was renamed to “Strategy against fraud and corruption for European Union funds”. The Strategy is comprehensive, as it covers the implementation of financial support from the EU budget under the 2014-2020 and 2021-2027 programming periods, in particular Cohesion policy funds, the European Agricultural Fund for Rural Development, and the Recovery and Resilience Facility. The European Agricultural Guarantee Fund is covered, but with fewer details. The Strategy defines, in general terms, the tasks of entities involved in the implementation of Union financial support in relation to the prevention, detection and correction of fraud, conflict of interest and corruption (chapter III Analysis of situation and in particular 3.2 Institutional environment for combating fraud). The Strategy also includes an assessment of the main risks, factors and practices of fraud, conflict of interest and corruption in Hungary with regards to Union funding (chapter 3.3 Data on fraud and corruption in Hungary and 5.1.3 Risk analysis and risk management to avoid fraud). Chapter V of the Strategy sets out in general terms the envisaged measures, which are listed in more detail in an Action Plan (Annex 3 of the Strategy). One of the actions is to prepare a yearly risk assessment of fraud, conflict of interest and corruption. Several actions of the Action Plan stem from commitments under other remedial measures, including reviewing the Strategy in parallel with drafting the NACS by 30 June 2023. Hungary will prepare and publish an annual report on the implementation of the Strategy.
- (55) On 27 September 2022, the Hungarian Government submitted to the National Assembly a draft Act with the aim of extending the personal and material scope of the current system of asset declarations. In the preparation of this draft Act, the Hungarian Government consulted the Commission, as required by the remedial measure. On 25 October 2022, the National Assembly adopted Act XXXI of 2022 amending certain Acts on declaration of assets relating to the control of the use of European Union budget funds, which was promulgated on 26 October 2022 (the “Act on Asset Declarations”). The Act on Asset Declarations entered into force on 1 November 2022 with certain exceptions. On 15 November 2022, the Hungarian Government submitted to the National Assembly an amending bill concerning the Act on Asset Declarations, as part of the service package. Following the submission of the service package to the National Assembly, Hungary sent the Commission services amendments to the legal text on 16 November 2022; a consolidated version of the legal text was submitted with the November letter. The current assessment is based on the latter legal text, although this has not been adopted yet. The amending bill is scheduled for adoption on 6 December 2022.
- (56) In line with the remedial measure, the Act on Asset Declarations extends the personal scope of asset declarations to include persons entrusted with senior political functions<sup>23</sup> and members of the National Assembly, as well as relatives living in the same

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<sup>23</sup> Under Sections 183 and 184 of Act CXXV of 2018 on government administration.

household<sup>24</sup>. The Act also extends the material scope of asset declarations to include all relevant assets (Annex I of the Act on Asset Declarations).

- (57) Regarding the latter, the Commission notes that Annex I, Part A of the Act on Asset Declarations provides for an exception concerning the real estate reserved for exclusive use of the declarant and his or her spouse or cohabitant and child(ren) living in the same household. Annex I further clarifies that on this basis, up to one real estate may be excluded from the disclosure obligation and thus not be declared. The Commission regrets that this exception does not regard solely the primary residence, with the consequence that it may be used to hide luxury real estate. Hungary indicated in various calls at State Secretary level that this issue would be addressed in the legal texts but this has not been implemented to this date. In addition, despite explanations provided confirming that the disclosure obligations would also include real estate outside the jurisdiction of Hungary, appropriate wording has not been reflected in the relevant legal text<sup>25</sup>. These are gaps in the system of asset declarations that risk undermining its effectiveness.
- (58) At the same time, the Commission notes the draft amendments to all relevant acts<sup>26</sup> that apply the obligation to make a declaration of assets as on 1 November 2022 (instead of 31 December 2022) by 31 January 2023 in accordance with the provisions introduced by the Act on Asset Declarations. This will ensure that the new rules would also apply to any changes occurring between 1 November 2022 and 31 December 2022. However, the relevant legal text does not provide sufficient clarity and legal certainty as it does not explicitly provide that the period November-December 2022 shall be covered by asset declarations to be made in 2024 which would then exceptionally cover a period of 14 months (i.e. from November 2022 until December 2023).
- (59) Finally, the Commission notes that the commitment by the Hungarian government to establish by 31 March 2023 a system of asset declarations filed electronically in a digital format, to be stored in a public database searchable without fee or the need to register is not yet reflected in the regulatory framework. According to Hungary, the rules on the system will be elaborated and adopted later on, by 31 March 2023. The Commission regrets the lack of inclusion of an explicit reference to this public database in the Act on Asset Declarations by Hungary. These shortcomings could also undermine the effectiveness of the system of asset declarations.

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<sup>24</sup> In this respect, relevant amendments were introduced in Act LVII of 1996 on the prohibition of unfair and restrictive market practices, Act CLXXXV of 2010 on media services and mass communication, Act LXVI of 2011 on the State Audit Office, Act CX of 2011 on the legal status and remuneration of the President of the Republic, Act CXI of 2011 on the Commissioner for Fundamental Rights, Act CXII of 2011 on the right to informational self-determination and on the freedom of information, Act CLI of 2011 on the Constitutional Court, Act CLXIV of 2011 on the legal status of the Prosecutor General, prosecutors and other prosecution service employees and the prosecutor career, Act CXCIV of 2011 on the economic stability of Hungary, Act XXXVI of 2012 on the National Assembly, Act XXXVI of 2013 on election procedure, Act CXXXIX of 2013 on the Hungarian National Bank, Act CCXLI of 2013 on the Committee of National Remembrance, Act CXLIII of 2015 on public procurement, and Act CXXV of 2018 on government administration.

<sup>25</sup> This is also in line with the provisions in the Integrity Authority Act, stipulating that the Authority can enter into agreements with foreign entities to obtain information for its verification tasks.

<sup>26</sup> See acts under footnote 24.

- (60) As regards the introduction of a sanctioning regime for breaches of asset declaration obligations, the Commission notes that the Strategy against fraud and corruption for European Union funds (adopted per Government Decision 1540/2022) referred to in paragraph (54) above refers to the specific commitment to set out a concrete measures in the Action Plan accompanying the new NACS beyond 2022 to develop an effective, proportionate and dissuasive system of administrative and criminal sanctions in relation to asset declarations, by 1 October 2023 at the latest, in line with the remedial measure.
- (61) On 23 September 2022, the Hungarian Government submitted to the National Assembly the draft Act aiming at establishing the Integrity Authority. On 4 October 2022, the National Assembly adopted the Integrity Authority Act, which was promulgated on 10 October 2022 and entered into force on 11 October 2022 (see remedial measure (i.) described above). In compliance with the remedial measure, Section 75 of the Integrity Authority Act established that the Integrity Authority must prepare an ad hoc report by 31 December 2023, which would survey the regulatory framework and operation of the Hungarian system of declarations of assets, including its scope and control process.
- (62) As regards the anti-fraud and anti-corruption strategies, the Commission finds that Hungary took the Key Implementation Steps, despite the adoption of a revised strategy by Government Decision on 15 November 2022 instead of the set deadline of 30 September 2022. The Commission finds that the Strategy fulfils the commitments set by the remedial measure. As regards the Action Plan accompanying the future National Anti-Corruption Strategy beyond 2022, providing for the implementation of the commitment to set out concrete measures to develop an effective, proportionate and dissuasive set of sanctions, the Commission reserves the right to assess its transposition and implementation in 2023 and beyond. Hungary agreed in this context to consult the Commission on the draft National Anti-Corruption Strategy by 31 January 2023. The Commission also recalls the commitment by the Hungarian Government to report to the Commission on the implementation of all remedial measures on a quarterly basis, as noted in paragraph (17).
- (63) Regarding asset declarations, the Commission finds that the regulatory framework on those declarations as set out in the Act on Asset Declarations to be effective from 1 November 2022 does not completely fulfil the commitments on the asset declaration system as set out in the September Letter, since the framework leaves out an important category of assets, as mentioned in paragraph (57). The Commission considers that the issues raised in that paragraph represent a loophole in the law and may undermine the effectiveness of the remedial measure.
- (64) For these reasons, the Commission finds that the relevant legal texts do not fully ensure the adequacy of the remedial measure, in view of the weaknesses, risks and shortcomings noted in paragraphs (57) to (59) above.

**iv. Ensuring the transparency of the use of Union support by public interest asset management foundations**

- (65) The Hungarian Government committed to adopt by 30 September 2022 an amending act to ensure the generalised application of public procurement rules to public asset management foundations performing public interest activity and legal persons established and maintained by them. It also committed to adopt by the same date an amending act in order to ensure full compliance with Article 61 of the Financial

Regulation<sup>27</sup>, as well as align the instructions and practice to the Commission Guidance Notice on the avoidance and management of conflicts of interest under the Financial Regulation<sup>28</sup>. This would improve and clarify general conflict of interest rules related to public interest asset management foundations and the members of their boards.

- (66) The Key Implementation Step for this measure was the adoption of the two amending acts mentioned in the preceding paragraph by 30 September 2022.
- (67) Hungary took the following steps to address the Key Implementation Step.
- (68) On 4 October 2022, the National Assembly adopted Act XXIX of 2022 amending certain Acts concerning public interest asset management foundations performing public duty, the National Tax and Customs Administration and the checks of the European Anti-Fraud Office in relation with the control of the use of European Union budget funds. This Act was promulgated on 10 October 2022. The provisions of the Act relating to the public interest asset management foundations performing public duty entered into force on 13 October 2022.
- (69) In line with the remedial measure, Act XXIX of 2022 introduced amendments to Act CXLIII of 2015 on public procurement and Act IX of 2021 on public interest asset management foundations performing public duty. In Section 5 of Act CXLIII of 2015 on public procurement, a new point f) was added to paragraph (1) stipulating that public interest asset management foundations performing public duty and legal persons established or maintained by them were subject to the obligation to conduct procurement procedures in accordance with the aforementioned Act. Paragraph (3) of Section 15 of Act IX of 2021 on public interest asset management foundations performing public duty was also modified establishing conflict of interest rules. This paragraph now includes an explicit mention of family, emotional life, political or national affinity or any other direct or indirect personal interest, for public interest asset management foundations performing public duty and legal persons established or maintained by them, including the chairs and members of the board and supervisory board, as well as their employees. Furthermore, the Act amended provisions in other pieces of legislation<sup>29</sup> aligning with the modification in Section 15 (3) of Act IX of 2021.
- (70) The Commission notes, however, 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 CID 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<sup>30</sup> from the general prohibition<sup>31</sup>) for senior political executives to have other

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<sup>27</sup> 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, OJ L 193, 30.7.2018, p. 1.

<sup>28</sup> OJ C 121, 9.4.2021, p. 1.

<sup>29</sup> Act CLXXXIX of 2011 on Local Governments in Hungary (Sections 6 and 7), Act CXCIX of 2011 on Public Servants (Sections 9 and 10), Act XXXVI of 2012 on the National Assembly (Section 12), Act CXXV of 2018 on government administration (Sections 15, 16 and 17), Act CVII of 2019 on bodies with special legal status and the status of their employees (Sections 18 and 19).

<sup>30</sup> Section 182 (3a) of Act CXXV of 2018 on Government Administration.

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<sup>32</sup>. 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.

**v. Introduction of a specific procedure in the case of special crimes related to the exercise of public authority or the management of public property**

- (71) The Hungarian Government committed to amend the Code of Criminal Procedure with the aim of establishing a new procedure concerning special criminal offences related to the exercise of public authority or the management of public procurement. Under the remedial measure, the new procedure must provide for the judicial review of the decision of the prosecution service or the investigating authority to dismiss a crime report or terminate the criminal proceedings (i.e. to close a criminal investigation without an indictment) regarding corruption and corruption-related practices as defined in Article 4(2) of Directive (EU) 2017/1371<sup>33</sup> and in Chapter III of the United Nations Convention Against Corruption. The new procedure must confer on an investigating judge the authority to order the commencement or the continuation of the criminal proceedings. Any natural person and legal person, with the exception of public authorities, could file motions under the procedure, which could also lead to the possibility to file an indictment before a court. The Hungarian Government also committed to ensure that the new procedure would be applicable from 1 January 2023. It committed to allocate additional dedicated posts by 31 December 2022 to the court responsible for the judicial review of the decision of the prosecution service or the investigating authority to dismiss a crime report or terminate the criminal proceedings.
- (72) The September Letter included the commitment to identify in the Act on Judicial Review the Buda Central District Court as the court having exclusive jurisdiction over the Hungarian territory to review such decisions and order the commencement or the continuation of criminal proceedings. It also confirmed that all courts in Hungary, including investigating judges in the context of the procedure under this remedial measure, should comply with the requirements of independence, impartiality, being established by law in accordance with Article 19(1) Treaty on European Union (“TEU”) and with the relevant EU acquis.
- (73) This remedial measure is a horizontal measure that aims at remedying structural problems with effectiveness of prosecutorial action in Hungary and to ensure that effective and deterrent measures are taken to ensure the protection of the Union’s financial interests, in line with Article 325 TFEU.
- (74) The Key Implementation Steps for this measure were (i) the finalisation of the draft text of implementing regulations (necessary for the application of the review procedure) and

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<sup>31</sup> Section 182 (1) of Act CXXV of 2018 on Government Administration.

<sup>32</sup> Senior political executives are not ex officio members but they sit on the boards of trustees in their personal capacity; while public interest asset management foundations are private entities without any control by the state.

<sup>33</sup> Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law, OJ L 198, 28.7.2017, p. 29.

adoption immediately after the entry into force of the new law by 31 October 2022 and (ii) the entry into force of the new law amending the Criminal Procedure Code following an *ex ante* review by the Constitutional Court (initiated by the Government) by 15 November 2022.

- (75) On 3 October 2022, the National Assembly adopted a first version of the Act to amend Act XC of 2017 on the Code of Criminal Procedure (the “Act on Judicial Review”); these provisions entered into force on 15 November 2022. On 14 November 2022, the Hungarian authorities shared a revised version of the Act on Judicial Review with the Commission services; the same version was also contained in the act of the service package of 15 November 2022 whose adoption was scheduled for 22 November 2022<sup>34</sup>. The amending Act was adopted on 22 November 2022 and reflects the changes included in the legal text received by the Commission on 14 November 2022. In the decision on the *ex ante* review of the Act on Judicial Review, the Hungarian Constitutional Court found that the Act on Judicial Review is not in breach of the principle of the prosecution monopoly of the prosecution service, as laid down in Article 29(1) of the Hungarian Fundamental Law<sup>35</sup>.
- (76) On 11 October 2022, Hungary submitted to the Commission (i) the draft Government Decree amending Government Decree 100/2018 (8 June) laying down the detailed rules of investigation and preparatory procedure, and (ii) the draft Decree of the Minister of Justice amending Decree 12/2018 (12 June) IM laying down rules for certain acts, and persons participating, in criminal procedure. Those draft decrees represent the draft implementing regulations (‘Implementing Regulations’) necessary for the application of the review procedure as set in the Key Implementation Steps. The Hungarian Government submitted to the Commission the latest draft of these implementing regulations, whose entry into force is scheduled for 1 January 2023, with the November Letter.
- (77) The Act on Judicial Review implements most of the commitments proposed in the remedial measures by introducing relevant amendments to Act XC of 2017 on the Code of Criminal Procedure. In particular, the new procedure concerns the relevant criminal offences as proposed under the remedial measure (Section 817/A (1)). It allows natural and legal persons to submit a motion for revision (Section 817/C) and, provided certain conditions are fulfilled, it allows the filing of a motion for prosecution (Section 817/H). The Buda Central District Court will have exclusive jurisdiction over the new review procedure (Section 817/E (1)).
- (78) The Commission also welcomes certain provisions introduced after the first version of the Act on Judicial Review was adopted by the National Assembly, as they are intended to contribute to the effectiveness of the remedial measure. According to those provisions, the Integrity Authority (see above remedial measure (i.)), which in principle will have in-depth knowledge about issues that are relevant for the investigation and prosecution of the criminal offences covered by the new procedure, can also file a motion for revision and for repeated revision (Section 817/C (7); Section 817/H (3)). The Integrity Authority, as a public body, cannot submit a motion for prosecution, not

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<sup>34</sup> The Commission services commented on the revised Act on Judicial Review on 16 November 2022, before receiving from Hungary the information and acts of the service package.

<sup>35</sup> Decision I/2252/2022, available in English at [https://hunconcourt.hu/uploads/sites/3/2022/11/sz\\_i\\_2252\\_2022\\_eng\\_final.pdf](https://hunconcourt.hu/uploads/sites/3/2022/11/sz_i_2252_2022_eng_final.pdf).

to prejudice the Hungarian constitutional principle that public prosecution is reserved for the prosecution service<sup>36</sup>. However, any natural or legal persons will be able to file a motion for prosecution following a motion for review filed by the Integrity Authority (Section 817/I).

- (79) In addition, under the new procedure there is the possibility, including for the Integrity Authority, to file a motion for repeated revision, in case, even after a first motion for review, the prosecution service or the investigating authority decides again to dismiss a crime report or to terminate the criminal proceedings (Section 817/H). This possibility is open only for a person who earlier in the case filed a motion for revision. The Commission also welcomes the removal from Section 817/V of the provision that would have allowed the Prosecutor General to file an extraordinary remedy against decisions taken in the course of the procedure.
- (80) At the same time, other commitments have not been correctly reflected into the Act on Judicial Review or in the implementing regulations, namely:
- (i) the commitment to provide, by 31 December 2022, sufficient human, infrastructural and other resource allocations to ensure the proper functioning of the procedure (including additional dedicated posts for at least two judges and at least two legal secretaries) within the Buda Central District Court, and
  - (ii) the commitment to conduct a review on the functioning of the procedure by 31 December 2023, and, if necessary, to provide for the adoption of amendments to the legislative framework following consultations with the Commission by 30 June 2024.
- (81) As regards the first commitment, the Hungarian authorities informed the Commission that such measures are not for the Hungarian Government to take, but for the body of the judiciary in charge of the administration of courts. The Commission has not been informed of any concrete implementation of this commitment. For the second commitment, the Commission has not been informed of any concrete provision that would set out the obligation to conduct the review of the procedure and amend it if necessary. These elements may still be materially fulfilled after the entry into force of the new legislation and thus do not prejudice at this stage the possible effectiveness of the implementation of the remedial measure. The Commission will therefore remain vigilant on these issues and will monitor the situation closely based on the quarterly reporting from Hungary referred to in paragraph (17) above, or any information it may obtain otherwise. Failure to fulfil these elements as of 1 January 2023, when the new procedure will be applicable, could risk undermining the effectiveness of the procedure.
- (82) At the same time, the Commission finds that specific provisions introduce a margin of discretion in the procedure, which could be used to affect the outcome of the new procedure following a motion for revision (or repeated revision) or for prosecution, compromising the effectiveness of the remedial measure.
- (83) In particular, the legal consequences for the prosecutor of a judicial decision setting aside its decision following a motion for revision are not clearly stated in the applicable rules. Section 817/G (3) provides that, '[i]n the case of an investigation commencing or

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<sup>36</sup> However, the Integrity Authority can report information that is relevant to start investigations regarding criminal offences to the prosecution service.

the proceeding continuing, the prosecution service or investigating authority shall continue the proceeding *taking account of the statement of reasons for the decision by the court*, and, where any issue remained undetected, *endeavouring to remedy the deficiencies indicated therein*' (emphasis added). The language of the provision suggests a certain margin of discretion for the prosecutor, which would not be legally bound to take a decision that is fully in line with the judicial decision and could simply take it into account or simply 'endeavour' to remedy the illegalities found by the reviewing court. The Commission proposed more stringent language by which the prosecutor would be bound to take a decision 'in full respect of the grounds of the decision by the court' and that it 'shall remedy the deficiencies indicated therein'. The Commission considers that the discretion granted to the prosecutor by the applicable rule weakens the effectiveness and thus the adequacy of this remedial measure, since there is no guarantee that judicial review decisions will be duly followed up through correct prosecutorial action.

- (84) Furthermore, for the cases where a motion for prosecution may be filed, the Act on Judicial Review requires an examination of the ground for the motion for prosecution (Sections 817/O and 817/P) by the trial court in camera and without hearing evidence, which is additional to the preliminary examination of formal grounds established under the new procedure.
- (85) The Commission notes that such an examination by the trial court of the ground for the motion for prosecution does not exist under the general rules (where the public prosecutor files the bill of indictment) and under the substitute private prosecution procedure (where the victim files the bill of indictment). In the view of the Commission, it amounts to a substantive filtering by the trial court that presents the risk of having a statement by the trial court as regards the merits of the case before hearing evidence. Such a filtering would risk anticipating or preventing a ruling on the merits, without the possibility to seek and hear evidence in the case<sup>37</sup>. It may also in practice reverse the assessment of the Investigating Judge Department of the Buda Central District Court: if proceedings are terminated again after the investigating judge had set aside the initial decision to dismiss the crime report or terminate the proceedings and without taking into account the decision of such investigating judge, the examination by the trial court might have the effect of discarding the investigating judge's findings, without any further evidence being heard by the trial court. For these reasons, and considering the key role of the investigating judge in the pre-trial stage, this further filtering by the trial court is unnecessary and undermines the effectiveness of the remedial measure.
- (86) Furthermore, the final provision of the legal text made available to the Commission services did not set out clearly the scope of application *ratione temporis* of these new rules. In fact, the text does not set out clearly that the new procedure will be applicable to crime reports filed after 1 January 2023 covering crimes allegedly committed also before that date, with the exception of time-barred crimes (see Section 876/C (2)). In particular, the text does not clarify that the existence of a decision dismissing a crime report or a decision terminating the proceedings, adopted before 1 January 2023 (related to an alleged crime that is not time-barred due to the statute of limitations) does not

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<sup>37</sup> In recital (95) of the Explanatory Memorandum, the Commission stated explicitly that the draft law would also require in particular that the trial court does not decide on the merits of the indictment without having considered evidence.



remove the obligation of the investigating authority or the prosecution service to adopt a new decision under Section 379 of the Criminal Procedure Code<sup>38</sup>, which can be subject to a (repeated) motion for review under the new procedure. Also, the text does not provide that the new procedure can apply to crime reports filed before 1 January 2023, awaiting a decision by the investigating authority or the prosecution service.

- (87) On this basis, the Commission finds that the regulatory framework for the introduction of a specific procedure in the case of special crimes related to the exercise of public authority or the management of public property as set out in the amendments to Act XC of 2017 on the Code of Criminal Procedure does not fulfil the commitments set by the remedial measure and contains rules that undermine its effectiveness. As explained in the Explanatory Memorandum (paragraph 96), Hungary was required to correctly specify its commitments in detailed rules in order to ensure the effectiveness of the measure. The manner in which Hungary has currently specified its commitments in law does not allow the Commission to establish that this remedial measure can effectively address the issues of ineffective investigation, prosecution and sanctioning. Consequently, the remedial measure as implemented is not adequate to sufficiently address the Commission’s findings under the Conditionality Regulation.

**vi. Strengthening audit and control mechanisms to guarantee the sound use of EU support**

- (88) The Hungarian Government committed to establish a working group by 31 August 2022 to include provisions in relevant Government Decrees on the implementation of Union support. These provisions should aim at strengthening the rules and procedures to more effectively prevent, detect and correct conflict of interest in accordance with the definition contained in Article 61 of the Financial Regulation. These provisions should include an effective control mechanism over the validity of conflict of interest declarations. The provisions should also aim at increasing procedural capacities of managing authorities, intermediate bodies and the national authority of the implementation of the Hungarian Recovery and Resilience Plan, to apply strengthened risk management and prevention, detection and correction of fraud, corruption and double funding. The Hungarian Government also committed to establish a Directorate of Internal Audit and Integrity (“DIAI”) responsible for regularly checking the validity of conflict of interest declarations and interest declarations. It committed to provide the Directorate with the relevant guarantees for its independence (e.g. nomination of high-ranking staff, duration of the director’s mandate without possibility to dismiss them) and to establish rules for regular control of the validity of declarations. The Hungarian Government also committed to provide the necessary financial and human resources to the EUTAF, to guarantee the sound use of Union support, to safeguard its independence and enable it to carry out its current tasks and the additional tasks allocated by a number of the remedial measures.
- (89) The Key Implementation Steps for this measure were (i) the establishment of the working group by 31 August 2022, (ii) the establishment of the DIAI in the Prime Minister’s Office by 30 September 2022 and (iii) the adoption of amendments to the relevant Government Decrees by 30 September 2022.

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<sup>38</sup> The prosecution service or the investigating authority shall examine, within three working days after receipt of the crime report, if an investigation is to be ordered in the case, if the crime report is to be supplemented or dismissed, or if the case is to be transferred.

- (90) Hungary took the following steps to address the relevant Key Implementation Steps.
- (91) In line with the remedial measure, a working group was established within the applicable deadline with the participation of the services of the Prime Minister's Office responsible for the management, control and audit of the use of EU funds and the EUTAF. The working group met with the Commission services for the first time on 8 September 2022 and on average twice a week until the beginning of November 2022.
- (92) On 30 September 2022 the Hungarian Government adopted:
- (i) Government Decree 374/2022 (30 September) amending Government Decree 272/2014 (5 November) on Rules of the Use of Funds from Certain European Union Funds in the 2014-2020 Programming Period and Government Decree 256/2021 (18 May) on Rules of the Use of Funds from Certain European Union Funds in the 2021-2027 Programming Period, and
  - (ii) Government Decree 373/2022 (30 September) on the rules and responsible institutions of implementing Hungary's Recovery and Resilience Plan.

The decrees entered into force on the same day, with certain exceptions in particular regarding certain provisions related to conflict of interest declarations.

- (93) On 15 November 2022, the Hungarian Government adopted Government Decree 463/2022 amending Government Decrees 373/2022, 256/2021 and 272/2014, which brought forward the entry into force of the aforementioned provisions on conflict of interest declarations to 15 November. Lastly, Act XXVIII of 2022 on amending certain acts related to the control of the use of European Union budget funds, which established the DIAI in the work organisation of the Minister responsible for the use of European Union funds (i.e. the Prime Minister's Office), was adopted by the National Assembly on 4 October 2022 and promulgated on 10 October 2022. It entered into force on 13 October 2022. On 15 November 2022, the Hungarian Government submitted to the National Assembly an amending bill concerning this Act, as part of the service package. Following the submission of the service package to the National Assembly, the Hungarian authorities sent the Commission services a revised legal text as an annex to the November Letter. The amending Act was adopted on 22 November 2022 and it reflects the changes included in the legal text received by the Commission on 19 November. The acting director (for the period of 1 October 2022 to 31 December 2022) of the DIAI was appointed on 30 September 2022.
- (94) In line with the remedial measure, Government Decree 373/2022, amending decree 374/2022 as well as Government Decree 463/2022 introduce provisions to strengthen rules and procedures to more effectively prevent, detect and correct conflict of interest in accordance with Article 61 of the Financial Regulation and the Commission Guidance Notice on the avoidance and management of conflicts of interest under the Financial Regulation<sup>39</sup>. The new provisions cover the notion of perceived conflict of interest and ensure an effective control mechanism over the validity of conflict of interest declarations. The amended Government Decrees set out that the relevant staff

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<sup>39</sup> See Chapter VI on Conflict of Interest of Government Decree 272/2014, Chapter IV on Rules on the operation of the development policy institutional system, including on conflict of interest, of Government Decree 256/2021 and sub-chapter 15 on conflicts of interest of Government Decree 373/2022.

members of national authorities shall file a general declaration of conflict of interest and a declaration of interests when establishing a legal relationship or before commencing an activity with an actor of the institutional system. They shall also file a declaration of conflict of interest before commencing any procedural act<sup>40</sup>. Final recipients, contractors, sub-contractors and persons involved in the preparation and implementation of a project shall declare any conflict of interest in the cases provided for by the Commission Guidance Notice<sup>41</sup>. The new provisions set out that the DIAI shall verify the veracity of the declarations with the exception of declarations made by its own staff and the members of the audit authority (which will instead be verified by the Integrity Authority), on a sample basis, and based on a two-year audit plan, covering at least 5% of the number of persons required to submit a declaration of conflict of interest each year<sup>42</sup> as well as any suspicion of conflict of interest reported to it. The obligation by all actors to file conflict of interest declarations and by the DIAI to perform checks applies since 15 November 2022.

- (95) The amended Decrees set out that regular and effective oversight and regular rotation of staff in sensitive positions shall be ensured, in particular those dealing with irregularity management, control or risk assessment. This will be further developed in a dedicated methodology<sup>43</sup>. The Commission will follow-up on the implementation of this commitment in practice. Moreover, in line with the commitment to ensure appropriate data collection and with the remedial measure on Arachne (see a more detailed assessment below), the amended Decrees include provisions to ensure the transmission of data to Arachne and set out in their annexes the relevant data fields that need to be transmitted to Arachne<sup>44</sup>. Furthermore, the amended Decrees have provisions to consistently, systematically and extensively apply and take into account all the functions of Arachne in the preparation and adoption of the decisions regarding EU funding<sup>45</sup>.
- (96) Section 81 on the Amendment to Act CXLIII of 2015 on public procurement of the Integrity Authority Act, which was adopted on 10 October 2022 and entered into force on 11 October 2022 sets a provision to prevent bidders from participating in tenders in public procurement procedures if they are in a situation of conflict of interests relevant in the specific tender.
- (97) In line with the remedial measure, the legislation on the DIAI outlines the fully independent role of the DIAI, with relevant guarantees (e.g. as regards the dismissal procedure). It also outlines its competence relating to actors involved in EU budget implementation of any fund (Section 29/B (3) of Act CXXV of 2018 on government administration). Moreover, the relevant legislation clearly sets out that the director shall carry out the tasks without any interference from any other institution, body, political

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<sup>40</sup> See Section 39 (6) of Government Decree 272/2014, Section 52/A (1) of Government Decree 256/2021 and Section 34 (1) of Government Decree 373/2022.

<sup>41</sup> See Section 39 (8) of Government Decree 272/2014, Section 52/A (6) of Government Decree 256/2021 and Section 34 (6) of Government Decree 373/2022.

<sup>42</sup> See Section 39 (7) of Government Decree 272/2014, Section 52/A (2) of Government Decree 256/2021 and Section 34 (2) of Government Decree 373/2022.

<sup>43</sup> See Section 8 (3) 13. of Government Decree 272/2014, Section 7 (1) m) of Government Decree 256/2021 and Section 5 21. of Government Decree 373/2022.

<sup>44</sup> See Section 22 (1) 22. of Government Decree 272/2014, Section 19 (2) c) of Government Decree 256/2021 and Section 9 (1) i) of Government Decree 373/2022.

<sup>45</sup> See Section 10 (2) 9. and Annex 7 of Government Decree 272/2014, Section 13 (1) h) and Annex 4 of Government Decree 256/2021 and Section 5 23. and Annex 2 of Government Decree 373/2022.

party, economic entity, association or legal or physical person (Section 29/B (5)). The DIAI's employees will be selected based on an objective set of criteria that will be approved by the Integrity Authority. The Authority will also control the recruitment process of the government officials and employees of the Directorate (Section 29/B (6)). Furthermore, the Integrity Authority will control the functioning of the Directorate, as well as the compliance with rules of procedure and guidelines (Section 29/B (9)). The Authority will be competent to verify declarations of conflict of interest and declarations of interest of the DIAI director and its employees (Section 29/B (9c)). In case of serious or recurrent compliance issues, the Integrity Authority will be able to audit the DIAI (Section 29/B (9)). The DIAI is obliged by law to provide the Integrity Authority upon its request with full access to any declarations of conflict of interest and of interest handled by the Directorate. The DIAI should also provide all documents managed by the Directorate that are necessary for the Authority's exercise of powers (Section 29/B (9b) b)). The Directorate will submit an annual report to the Integrity Authority informing about its activities and in particular the results of checks carried out, measures taken, number of reports received and cases investigated (Section 29/B (10)). Finally, the Commission welcomes that Hungary has agreed<sup>46</sup> that the Integrity Authority would not be required to prove the intent of the declarant in case of false or incorrectly filled out declarations. This was confirmed in amendments adopted as part of the service package on 22 November 2022.

- (98) On 15 November 2022, the Hungarian Government submitted to the National Assembly a bill concerning the change in status of the EUTAF, as part of the service package. The bill was adopted on 22 November 2022. EUTAF will be transformed from its current status as a central budgetary organisation operating under the authority of the Minister responsible for public finances into an autonomous state administration organ as of 1 January 2023 (Section 1 (1) and Section 35 (1)). EUTAF will have a separate heading in the structure of the central budget. It will submit the proposal for its budget, which the Government shall transmit without change to the National Assembly as part of the legislative proposal on the central budget and its implementation. Its budget may be modified only with consent of the Directorate-General if the modification is duly and publicly justified and does not jeopardise the effective and timely performance of the tasks of the Directorate-General (Section 2). The remuneration of the Director-General and of the Deputy Director-General shall be equal to respectively 8.4 times and 7.4 times the average monthly gross earnings in the national economy (Section 30). The Director-General shall decide on the principles of the remuneration policy of the Directorate-General and non-wage benefits (Section 31). The functional and professional independence of the EUTAF will be maintained. The staff of EUTAF will continue not to seek or accept instructions regarding its audit work. The Commission welcomes the above changes to the regulatory framework governing EUTAF, which effectively implement the commitment submitted by Hungary in the September Letter.
- (99) The Commission finds that Hungary took the Key Implementation Steps and that the relevant legislative texts fulfil the commitments set by the remedial measure.

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<sup>46</sup> By e-mail of 18 November 2022.

**vii. Reducing the share of tender procedures with single bids financed from Union funds**

- (100) The Hungarian Government undertook to reduce the share of tender procedures financed from Union funds and closed in the year of 2022 with single bids below 15%, as measured with the Single Market Scoreboard methodology, by 31 December 2022. It committed to fulfil this target unconditionally and maintain it without a time limit. The Hungarian Government committed also to take additional measures within four months, in case the share of single bids exceeds 15% in any given calendar year, to facilitate the reduction of the single bid procurements and to bring them back below the threshold of 15%. In such a case, the Hungarian Government undertook to inform the Integrity Authority and the Commission accordingly.
- (101) The Key Implementation Step for this measure was the performance of the first audit by the EUTAF on the compliance with the Single Market Scoreboard methodology (and on individual data provision to the Commission and to the public, if applicable) by 30 September 2022.
- (102) On 7 October 2022, the Hungarian authorities sent to the Commission services the audit report on the adequacy of the single bid methodology issued by the EUTAF. Following comments from the Commission services, the EUTAF amended its report and issued a revised final audit report on 3 November 2022. The audit concluded that the used methodology was adequate and in line with the methodology used by the Single Market Scoreboard, with one exception for which EUTAF has formulated a recommendation. The Commission will monitor the follow-up to the EUTAF recommendation as part of the reporting from the Hungarian Government in accordance with paragraph (17) above.
- (103) The Commission finds that Hungary took the Key Implementation Step and has received sufficient assurance from the EUTAF audit report that the used methodology is in line with the methodology used by the Single Market Scoreboard, as required by the remedial measure. This assessment is without prejudice to the achievement of the 15% threshold set in accordance with paragraph (100) above. The Commission will monitor the implementation of this remedial measure as part of the reporting from the Hungarian Government in accordance with paragraph (17) above.

**viii. Reducing the share of tender procedures with single bids financed from the national budget**

- (104) Similarly to the preceding remedial measure (vii.), the Hungarian Government undertook to reduce in three steps the share of tender procedures financed from the national budget and closed in a calendar year with single bids below 15%, as measured with the Single Market Scoreboard methodology, by 31 December 2024. It committed to fulfil this target unconditionally and maintain it without a time limit. The Hungarian Government also committed to propose additional measures within four months in case the share of single bids exceeds 15% in any given calendar year, to facilitate the reduction of the single bid procurements and to bring them back below the threshold of 15%. In such case, the Hungarian Government undertook to inform the Integrity Authority and the Commission accordingly.
- (105) In line with the Annex to the Explanatory Memorandum, there were no immediate Key Implementation Steps for this remedial measure. The Commission will monitor the

implementation of this remedial measure as part of the reporting from the Hungarian Government in accordance with paragraph (17) above.

**ix. Development of a single-bid reporting tool to monitor and report on public procurements closed with single-bids**

(106) In addition to the remedial measures related to the reduction of single-bid procedures described above (vii. and viii.), the Hungarian Government committed to develop a new monitoring and reporting tool for measuring the share of procurement procedures resulting in single bids financed from national resources or from EU support or from both by 30 September 2022. It committed to maintain it for an unlimited period of time. The Hungarian Government also undertook to publish an annual written report based on the information gathered by the single-bid reporting tool, to be prepared by the Ministry responsible for public procurement and published by 15 February each year on the website of the Electronic Public Procurement System (EPS).

(107) The Key Implementation Steps for this measure were (i) the development of a new monitoring and reporting tool based on data sourced from the EPS by 30 September 2022 and (ii) the confirmation by the EUTAF that the tool would be fully functional and operational by 30 September 2022.

(108) On 7 October 2022, the Hungarian authorities sent to the Commission services the audit report of the monitoring and reporting tool on single-bid procurements issued by EUTAF. Following comments from the Commission services, EUTAF issued a revised final audit report on 3 November 2022. The report finds that the single-bid reporting tool is in place, operational, functional and capable of monitoring the ratio of single bid procurement procedures. The report finds that consistency with the EPS data could in principle be established. In line with the remedial measure, the reporting tool shall be developed further by 31 December 2022 to include data on geographic indications. The first report shall be published by 15 February 2023.

(109) The Commission finds that Hungary took the relevant Key Implementation Steps and that the single-bid reporting tool has been developed. Its operability and functionality were confirmed by the EUTAF report, as required by the relevant remedial measure. This assessment is without prejudice to the further developments and the publication of the first report, which will substantiate the remedial measure in practice, which require a longer implementation date in line with the remedial measure.

**x. Development of the Electronic Public Procurement System (EPS) to increase transparency**

(110) The Hungarian Government committed to create and publish on the EPS website a database, containing information on all contract award notices of public procurement procedures in a structured form, including company identification numbers and the names of each individual member of the consortia and the subcontractors. This database would be updated regularly (at least quarterly) and would be available to the public free of charge. It would have to be fit to be processed by machine means and in particular allow for structured research and bulk export of data related to procurement procedures. The Hungarian Government also undertook to take all the necessary measures to develop the EPS and to ensure that the newly developed functions were fully operational by 30 September 2022. Furthermore, the Hungarian Government committed

to maintain the EPS and relevant functions unconditionally and for an unlimited period of time.

- (111) The Key Implementation Step for this measure was to ensure the full operability of newly developed functions allowing for the structured search and export of data in the EPS, in a format that can be processed by machine means, by 30 September 2022.
- (112) On 7 October 2022, the Hungarian authorities informed the Commission services that the new function of the EPS allowing for the structured search and export of contract award notice data in the EPS in a format that can be processed by machine means, was completed by 30 September 2022 and is publicly available at <https://ekr.gov.hu/portal/kozbeszerzes/eredmeny-tajekoztato-hirdetmenyek>.
- (113) The new EPS function allows the structured search and bulk export of all contract award notice data available in the EPS (including company identification numbers) in a format that can be processed by machine means (.csv or .xlsx). The database contains data on members of consortia<sup>47</sup> and subcontractors, the latter currently only available in free-text format. In line with the remedial measure, the function will be further developed to include structured data on subcontractors by 30 November 2022. Data are updated twice a month; the new function is available to the public free of charge and without registration. Data is available from April 2018 onwards, in compliance with the remedial measure; data from January 2014 shall be made available by 31 March 2023. Furthermore, on 5 November 2022, upon request of the Commission, Hungary provided the Commission with the internal instruction issued by the Prime Minister's Office to the company operating and updating the database, the company's ISO certificates and the Customer Support Group's Code of Conduct, which confirm the periodicity of the publication and the process for rectification of information.
- (114) The Commission finds that Hungary took the Key Implementation Step. The new function of the EPS has been developed and it allows to search in a structured manner and export in bulk contract award notice data in the EPS, in a format that can be processed by machine means, in accordance with the remedial measure. This assessment is without prejudice to the further developments in relation to the EPS, which require a longer implementation date in line with the remedial measure (see also paragraph (113) above).

**xi. Development of a performance measurement framework assessing the efficiency and cost effectiveness of public procurements**

- (115) The Hungarian Government committed to develop a performance measurement framework to assess the efficiency and cost effectiveness of public procurements by 30 September 2022. The performance measurement framework shall be operational by 30 November 2022. The Hungarian Government also undertook to maintain unconditionally the regular use of the performance measurement framework and the publication of its results for an unlimited period of time.

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<sup>47</sup> Upon request from the Commission, on 29 October 2022 the Hungarian authorities provided further clarification on the processing by machine methods of data relevant to the EPS downloadable data when a consortium wins a public procurement.

- (116) The Key Implementation Step for this measure was the development of the performance measurement framework itself, including the adoption of the relevant Government Decision by 30 September 2022.
- (117) Hungary took the following steps to address the Key Implementation Step.
- (118) On 5 September 2022, the Hungarian Government adopted and published Government Decision 1425/2022 on the development of a performance measurement framework assessing the efficiency and cost effectiveness of public procurements.
- (119) Government Decision 1425/2022 sets out the obligation of the Minister for Regional Development regarding the collection of data and examining the possible reasons for single bid public procurements. The Minister for Regional Development is responsible to select non-governmental organisations (NGOs) and public procurement experts to take part in the setting up and operations of the performance measurement framework. The proposals and opinions of such NGOs and experts must be taken into account during the setting up and operation of the framework. Under the Government Decision, the performance measurement framework will enable in particular the annual analysis of the (i) level of unsuccessful public procurement processes and the reasons thereof, (ii) share (number and value) of contracts cancelled during contract execution, (iii) share of occurrence of delays in contract completion, (iv) share of occurrence of cost overruns, (v) share of awarded procurement contracts in which life-cycle or life-cycle costing is taken into consideration, (vi) share of successful participation of micro and small enterprises (across and per sector), (vii) value of procedures with single bids financed from national resources and from Union funds separately and/or both and how that value compares to the total value of public procurement procedures financed from national resources and Union funds separately and/or both. In line with the remedial measure, the performance measurement framework shall be operational by 30 November 2022. By 28 February each year, the results of the performance measurement shall be made publicly available.
- (120) The Commission finds that Hungary took the Key Implementation Step and fulfilled the commitments related to the operational framework within which the remedial measure shall be established and implemented. This assessment is without prejudice to the actual establishment of the performance measurement framework and the publication of the first report, which will substantiate the remedial measure in practice and which requires a longer implementation period (see also paragraph (119) above).
- (121) The Commission notes that the call for application for NGOs and experts, the draft text of which was sent to the Commission, was announced on 11 October 2022 with the deadline of 26 October 2022. 15 applications were received, of which two by organisations and 13 by individuals. Therefore, while three posts were reserved for organisations, only two could actually be filled by organisations. For the third post, one individual applicant from a university was selected; however, according to the information available to the Commission, that person does not seem to have demonstrated public procurement related experience. Additionally, four independent experts were selected.



**xii. Adoption of an action plan to increase the level of competition in public procurement**

- (122) The Hungarian Government undertook to adopt, by 31 March 2023, a comprehensive action plan aiming at improving the level of competition in public procurement with clear and ambitious deadlines for implementing each of the actions set in the action plan. The action plan should take into account, inter alia, the first results of the performance measurement framework, to be operational by 31 December 2022.
- (123) In line with the Annex to the Explanatory Memorandum, there were no immediate Key Implementation Steps for this remedial measure. The Commission will monitor the implementation of this remedial measure as part of the reporting from the Hungarian Government in accordance with paragraph (17) above.

**xiii. Training to be provided for micro, small and medium-sized enterprises on public procurement practices**

- (124) The Hungarian Government committed to provide, by 31 March 2024, free of charge training in public procurement for at least 1 000 micro, small and medium sized enterprises (with particular focus on micro and small enterprises) with the aim to facilitate their participation in public procurement. By 30 June 2026, the Hungarian Government undertook to provide such training occasions for at least an additional 1 200 micro, small and medium sized enterprises (hence, a total of at least 2 200 enterprises). Furthermore, the Hungarian Government committed to monitor and evaluate the efficiency and added value of the trainings.
- (125) In line with the Annex to the Explanatory Memorandum, there were no immediate Key Implementation Steps for this remedial measure. The Commission will monitor the implementation of this remedial measure as part of the reporting from the Hungarian Government in accordance with paragraph (17) above.

**xiv. Setting up a support scheme for compensating the costs associated with participating in public procurement of micro, small and medium-sized enterprises**

- (126) In addition to the preceding remedial measure (xiii.), the Hungarian Government committed to launch a support scheme for micro, small and medium-sized enterprises with regard to public procurement procedures, by 31 March 2023. This scheme should provide a lump sum compensation, based on objective, non-discriminatory and transparent selection criteria, for at least 1 800 eligible micro, small and medium-sized enterprises, with focus on micro and small enterprises. This scheme would cover their costs associated with their participation in public procurement procedures, with the aim of facilitating their participation in public procurement and reducing their entry barriers. A mid-term evaluation should be performed by 30 September 2024 and a final evaluation should be completed by the end of the support programme on 31 July 2026.
- (127) In line with the Annex to the Explanatory Memorandum, there were no immediate Key Implementation Steps for this remedial measure. The Commission will monitor the implementation of this remedial measure as part of the reporting from the Hungarian Government in accordance with paragraph (17) above.

## xv. Application of Arachne

- (128) The Hungarian Government undertook to apply procedures for the systematic and extended use of all the functionalities of the single data-mining and risk-scoring tool Arachne, which the Commission puts at the disposal of the Member States, in the implementation of any Union support and for all programming periods, to effectively prevent and detect conflict of interest, fraud, corruption, double funding and other irregularities. The Hungarian Government committed to unconditionally maintain the full and effective application of the Arachne tool for an unlimited period of time. All the relevant audit and control bodies shall also have full access to the data sets uploaded into Arachne. The Commission notes that it understands this commitment to apply also to potential successor systems of Arachne.
- (129) The Key Implementation Step for this measure was the application of the procedures for the systematic and effective use of Arachne by 30 September 2022.
- (130) Hungary took the following steps to address the Key Implementation Step.
- (131) On 30 September 2022, the Hungarian Government adopted Government Decree 373/2022 and amending decree 374/2022, which entered into force on the same day, with certain exceptions in accordance with the remedial measure.
- (132) The Government Decrees set out provisions to ensure the transmission of data to Arachne on a bi-monthly basis and in their annexes set out the relevant data fields that need to be transmitted<sup>48</sup>. Moreover, the Decrees set out provisions to develop and regularly review a methodology for the use of Arachne and its results<sup>49</sup> and to ensure that the relevant authorities consistently, systematically and extensively apply and take into account all the functions of Arachne in the preparation and adoption of the decisions regarding EU funding<sup>50</sup>. The Government Decrees also ensure access to the functionalities and data of Arachne for relevant actors, including the relevant audit authorities<sup>51</sup>. The first package of data was transmitted to the Arachne tool on 30 September 2022. Arachne now includes data from almost 65 000 projects in Hungary with over 41 000 beneficiaries and almost 6 000 contracts. The next upload by Hungary is envisaged to take place by 30 November 2022, in line with the remedial measure. The Commission will continue to monitor the timely performance of any data uploads.
- (133) The Commission finds that Hungary took the Key Implementation Step and the relevant Government Decrees set out the detailed rules for the systematic and effective use of Arachne, in line with the remedial measure.

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<sup>48</sup> See Section 10 (2) 9. and Annex 7 of Government Decree 272/2014, Section 13 (1) h) and Annex 4 of Government Decree 256/2021 and Section 5 23. and Annex 2 of Government Decree 373/2022.

<sup>49</sup> See Section 10 (2) 3. of Government Decree 272/2014, Section 13 (1) c) of Government Decree 256/2021 and Section 5 22. of Government Decree 373/2022.

<sup>50</sup> See Section 20 (1) 22. (e) of Government Decree 272/2014, Section 19 (2) c) of Government Decree 256/2021 and Section 9 (1) i) of Government Decree 373/2022.

<sup>51</sup> See Section 10 (2) 10. of Government Decree 272/2014, Section 13 (1) i) of Government Decree 256/2021 and Section 5 24. of Government Decree 373/2022.

## **xvi. Strengthening cooperation with OLAF**

- (134) The Hungarian Government undertook to submit to the National Assembly a draft act on the amendment to Act CXXII of 2010 on the National Tax and Customs Administration (*Nemzeti Adó- és Vámhivatal*), which shall be adopted by 30 September 2022 and shall designate the National Tax and Customs Administration as the competent national authority to assist OLAF when carrying out on-the-spot checks in Hungary and when an economic operator subject to those checks refuses to cooperate. It also committed to submit to the National Assembly a draft act on the amendment to Act XXIX of 2004 to introduce a dissuasive financial-type of sanction to be imposed in case an economic operator refuses to cooperate with OLAF for the purposes of on-the-spot checks and inspections.
- (135) The Key Implementation Step for this measure was the adoption of the two above-mentioned acts by 30 September 2022.
- (136) Hungary took the following steps to address the Key Implementation Step.
- (137) On 4 October 2022, the National Assembly adopted Act XXIX of 2022 amending certain Acts concerning public interest asset management foundations performing public duty, the National Tax and Customs Administration and the checks of the European Anti-Fraud Office in relation with the control of the use of European Union budget funds, which was promulgated on 10 October 2022. The provisions of the Act relating to OLAF entered into force on 26 October 2022.
- (138) In line with the remedial measure, Act CXXII of 2010 was amended to designate the National Tax and Customs Administration (*Nemzeti Adó- és Vámhivatal*) as the competent national authority to assist OLAF when carrying out on-the-spot checks and inspections in Hungary and when an economic operator subject to those checks refuses to cooperate. The Act also describes the procedure to follow. It also introduced the possibility of the presence of a finance guard at the request of OLAF. Act XXIX of 2004 was amended to introduce a dissuasive financial type of sanction to be imposed in case an economic operator refuses to cooperate with OLAF for the purposes of OLAF's on-the-spot checks and inspections.
- (139) The Commission finds that Hungary took the Key Implementation Step, and that the amendments introduced with the aforementioned Act fulfil the commitments set by the remedial measure.

## **xvii. Adoption of a legislative act ensuring enhanced transparency of public spending**

- (140) The Hungarian Government committed to submit to the National Assembly a legislative act setting out an obligation for all public bodies to proactively publish a pre-defined set of information on the use of public funds into a central register, and to have the act adopted by the National Assembly, by 31 October 2022. The Hungarian Government also undertook to provide information on the subcontractors in the central register. Furthermore, it committed to unconditionally maintain in force the above-mentioned Act for an unlimited period of time. It also committed to ensure its enforcement, and in particular that public bodies upload all relevant data in full and in a timely manner to the registry.

- (141) The Key Implementation Steps for this measure were (i) the sending to the Commission of the advanced draft of the legislative act setting out an obligation for all public bodies to proactively publish a pre-defined set of information on the use of public funds by 30 September 2022, and (ii) the adoption of this legislative act by 31 October 2022.
- (142) Hungary took the following steps to address the Key Implementation Steps.
- (143) On 15 September, the Hungarian Government sent to the Commission the draft text of the Act to set out an obligation for public bodies to proactively publish a pre-defined set of information on the use of public funds for consultation.
- (144) On 8 November 2022, the National Assembly adopted Act XL of 2022 amending Act CXII of 2011 on the right to informational self-determination and on the freedom of information, which was promulgated on 14 November 2022 and will enter into force on 29 November 2022, with certain exceptions. On 15 November 2022, the Hungarian Government submitted to the National Assembly two amending bills concerning Act XL of 2022 and Act CXII of 2021, as part of the service package. Most of the amendments from the Hungarian Government were introduced in the part of the service package on which the final vote took place on 22 November 2022. The amendments concerning the new rules for enforcement of the obligation to proactively publish a pre-defined set of information on the use of public funds, including sanctions ('administrative procedure for transparency'), were inserted in the part of the service package with a final vote set for 6 December 2022. Following the submission of the service package to the National Assembly, the Hungarian authorities sent the Commission services a revised legal text of Act XL amending Act CXII of 2011 on the right to informational self-determination and on the freedom of information on 18 November 2022. That legal text was also contained in the November Letter. The amending act regarding most of the amendments was adopted on 22 November 2022 and it reflects the changes included in the legal text received by the Commission. The Commission cannot at this juncture assess the amendments regarding the administrative procedure for transparency, scheduled for vote in the National Assembly for 6 December 2022. The Commission's assessment is therefore based on the legal text received on 19 November 2022.
- (145) Act XL of 2022 sets out an obligation for budgetary organs under the Act of Public Finances to publish, on a bi-monthly basis and in a manner ensuring availability for at least ten years from publication, data relating to the use of public funds on the platform of the Central Information Register of Public Data. This central register is available to everyone for free, without the need to create accounts to access the data and in a machine-readable format, which allows bulk download and data to be sorted, searched, extracted and compared. A reference will indicate if a procurement is financed, in whole or in part, from Union support. For procurements not exceeding the national threshold under the Public Procurement Act, Hungary shall indicate this for procurements starting from 31 March 2023, in line with the remedial measure. The platform shall be established by the maintainer of the platform by 31 December 2022 at the latest and publish the data sheet required for publication on the platform. Entities required to publish on the platform shall publish data on the platform continuously. The first publication shall take place no later than 28 February 2023, also in accordance with the remedial measure. Moreover, as mentioned above, new rules for enforcement of the obligation, including sanctions, would be created by means of a new administrative procedure for transparency to be carried out by the National Authority for Data

Protection and Freedom of Information to investigate cases of non-compliance, which would enter into force on 28 February 2023. On 14 November 2022, the Hungarian authorities also sent to the Commission services the draft Decree of the Government laying down detailed rules for the Central Information Register of Public Data, which contains the data sheet required for publication on the platform.

- (146) The Commission notes that not all contracting authorities defined in Section 5 (1) of Act CXLIII of 2015 on public procurement (PPA) are subject to the obligation to publish information pursuant to the Act. However, the Commission notes that data for public procurement procedures carried out by the entities referred in section 5 (1) of the PPA, including public interest asset management foundations, are displayed in the EPS system fulfilling the requirement for transparency. The Commission also notes that the legal text provided by Hungary is not in line with the remedial measure, as it does not include data provided from all public bodies in the minimum set of data to be uploaded in the central system including on the contracting authority or service providers, suppliers, and capacity providers. This data is instead to be made available, according to Hungary, only on contract-by-contract basis. The lack of these elements risks incomplete implementation of the remedial measure, which could weaken its effectiveness.
- (147) The Commission finds that Hungary has taken the Key Implementation Steps, despite the delay in the implementation of the Key Implementation Step relating to the adoption of the Act and that the legal framework on enhanced transparency of public spending as set out in Act XL of 2022 and Act CXII of 2021 fulfils the commitments set by the remedial measure, with the exception of the elements referred to in paragraph (145) above. The Commission will remain vigilant on the issues set out in paragraph (146) above for future implementation, and will monitor the situation closely based on the quarterly reporting from Hungary referred to in paragraph (17), or any information it may obtain otherwise.

## CONCLUSION

- (148) In recital 38 of the CID Proposal, the Commission found that the remedial measures proposed by Hungary would in principle be capable of addressing the Commission's findings presented in the Notification, provided that all the said measures were correctly and effectively implemented.
- (149) Recital 39 added that the detailed implementing rules for the remedial measures were still to be determined, notably how key elements of the measures would be transposed in the actual legal texts to be adopted for the implementation of the remedial measures. That recital also recalled that, given that several of the issues identified in Hungary are not only about changes in the legal framework, but more prominently about the concrete implementation of changes in practice, the latter requiring a more extended timeframe to produce concrete results, pending the implementation of at least the key elements of some of the remedial measures at that stage, as indicated in the timelines of the remedial measures submitted by the Hungarian Government on 22 August, a risk for the Union budget remained. Pending the entry into force of key legislative texts that would implement many of the remedial measures and taking into account the assessment carried out by the Commission, as well as the possibility that the measures may not be correctly implemented, or that their effectiveness would be weakened in the details of the measures, the Commission's reasonable estimation of the level of risk for the Union

budget corresponded to 65% of the programmes concerned, i.e. 5 percentage points less than the risk estimated in the absence of remedial measures.

- (150) The Commission concludes its assessment of the remedial measures in the light of the Key Implementation Steps as well as the details of the legal acts proposed or entered into force and further procedures and measures set by Hungary to implement the remedial measures, where applicable, and as notified by Hungary to the Commission by 19 November 2022.
- (151) The Commission notes that Hungary took a number of steps to address the (legislative and non-legislative) Key Implementation Steps listed in the Annex to the Explanatory Memorandum, and, as set out in this assessment, many of the commitments undertaken by Hungary in the remedial measures may be considered as fulfilled.
- (152) Nevertheless, important weaknesses, risks and shortcomings remain in the key remedial measures, including in relation to central aspects of those remedial measures, which as set out above, could seriously undermine their effectiveness.
- (153) The Commission has identified important weaknesses in relation to which Hungary has not introduced the changes that were required in the relevant legal texts to ensure that the measures are adequate under the Conditionality Regulation. These are:
- (i) the possibility that the Integrity Authority may not automatically retain its competence once a project is withdrawn from Union financing (see paragraph (30) above);
  - (ii) the weaknesses of the system for the judicial review of the decisions of contracting authorities that do not follow the recommendations of the Integrity Authority;
  - (iii) the weaknesses of the dismissal procedure for members of the Integrity Authority;
  - (iv) the absence of the transfer of competence to the Integrity Authority for the verification of asset declarations of senior political executives (i.e. Prime Minister, Ministers, the Prime Minister's political director, Secretaries of State, as covered by Section 183 of Act CXXV of 2018 on Government Administration) and the lack of clarity in the legal text as regards the power of the Integrity Authority to verify public asset declarations of all high-risk officials (see paragraph (35) above);
  - (v) the possibility that judicial decisions setting aside prosecutorial decisions would not be binding on the prosecutor (paragraph (83) above);
  - (vi) the inclusion of an unnecessary step by the trial court ('filtering'), in the context of the new procedure for the judicial review of the decision of the prosecution service or the investigating authority to dismiss a crime report or terminate the criminal proceedings (see paragraph (85) above), and the absence of clear rules confirming the possibility to apply the new procedure also to (non-time-barred) criminal offences committed before 1 January 2023 (see paragraph (86) above);

- (vii) the lack of an obligation for all contracting authorities to publish information in the absence of data on the ‘responsible body’ for public expenditure, contracting authority or service providers, suppliers, and capacity providers in the minimum set of data to be uploaded in the central register (see paragraph (146) above).

(154) Furthermore, important risks remain as regards a number of other issues, namely:

- (i) the lack of clarity and legal certainty relating to the disclosure obligations for real estate including outside the jurisdiction of Hungary (see paragraph (57) above);
- (ii) the lack of clarity on the personal, material and temporal scope of the declaration of assets, income and economic interests of certain executives, officials and Members of the National Assembly, and for their spouses or cohabitants and child(ren) living in the same household (see paragraph (57) above);
- (iii) the electronic submission and publication of asset declarations of members of the National Assembly and persons entrusted with senior political functions in a publicly searchable database (whose access must be free of charge and without the need of registration) (see paragraph (59) above);
- (iv) the lack of a clear commitment for a review on the functioning of the procedure of judicial review of prosecutor decisions by 31 December 2023, and, if necessary, to provide for the adoption of amendments to the legislative framework following consultations with the Commission by 30 June 2024 (see paragraph (81) above);
- (v) provisions on an ‘administrative procedure for transparency’, whose purpose is to ensure the enforcement of the requirements of transparency and correctness of the data to be published pursuant to the remedial measure on the enhanced transparency of public spending, and their adoption on 6 December 2022, for entry into force on 28 February 2023 (see paragraph (144) above);
- (vi) the further facilitation, after the Commission’s September assessment of the proposed remedial measure, of the presence of top-level officials on boards of public interest management foundations whose purpose it is to disburse large amounts of public funds.

(155) In summary, the overall assessment presented above does not allow the Commission to conclude that the remedial measures notified by Hungary, considered as a whole, as adopted and in view of their details, and the ensuing uncertainty about their application in practice, would put an end to the relevant breaches of the principles of the rule of law and/or to the impacts or risks for the sound financial management of the Union’s budget and for the Union’s financial interests. This is aggravated by concerns about the administrative practices in Hungary. Therefore, the conditions for the application of the Regulation remain.

(156) In the light of the above assessment and the continued risk for the budget, notwithstanding the steps taken by Hungary, and given the structural and horizontal nature of the remedial measures which remain to be fulfilled, the Commission maintains its proposal for measures for the protection of the Union budget against breaches of the principles of the rule of law and invites the Council to proceed on this basis.