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SENSITIVE*

COMMISSION DECISION

of 16.12.2024

pursuant to Article 7(2) 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, concerning a written notification from Hungary with regard to Article 2(2) of Council Implementing Decision (EU) 2022/2506 of 15 December 2022

(Only the Hungarian text is authentic)

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget¹ ('Conditionality Regulation'), and in particular Article 7, paragraphs 1 and 2 thereof,

Whereas:

1. PROCEDURE

- (1) Article 4(1) of the Conditionality Regulation provides that 'appropriate measures shall be taken where it is established in accordance with Article 6 that breaches of the principles of the rule of law in a Member State affect or seriously risk affecting the sound financial management of the Union budget or the protection of the financial interests of the Union in a sufficiently direct way.'
- (2) On 18 September 2022, considering that the conditions set by Article 4 of the Conditionality Regulation were fulfilled, the European Commission ('Commission') submitted a proposal for a Council implementing decision on measures for the protection of the Union budget against breaches of the principles of the rule of law in Hungary (the 'Commission's Proposal'), pursuant to Article 6(9) of the Conditionality Regulation.
- (3) The Commission's Proposal specified that Hungary had committed to take remedial measures to address the Commission's findings and, by 19 November 2022, implement key steps in accordance with specific timelines, and that the Commission considered that the proposed remedial measures, taken together, if correctly specified and implemented in accordance with the timelines, could in principle be capable of addressing the relevant issues.
- (4) On that basis, on 13 October 2022, the Council, following a request from Hungary, decided that exceptional circumstances existed pursuant to Article 6(10) of the Conditionality Regulation sufficient to justify extending the deadline for the adoption

¹ OJ L 433I, 22.12.2020, p. 1.

of the implementing decision by two additional months, so as to give the Commission and the Council sufficient time to assess the adoption and effective implementation of the remedial measures, taking into account their large number and technical complexity.

- (5) On 30 November 2022, the Commission issued a Communication to the Council on the remedial measures notified by Hungary, providing an assessment of the adequacy of the remedial measures as adopted by Hungary as of 19 November 2022 (the ‘Commission’s Communication’). Following a request made by the Council on 6 December 2022, the Commission, on 9 December 2022, provided an updated assessment on the further measures adopted by Hungary up to 7 December 2022 (the ‘Updated Assessment’).
- (6) On 15 December 2022, the Council adopted Implementing Decision (EU) 2022/2506 on measures for the protection of the Union budget against breaches of the rule of law in Hungary² (the ‘Council Implementing Decision’). According to Article 1 of the Council Implementing Decision, the conditions laid down in the Conditionality Regulation for the adoption of appropriate measures were fulfilled and ‘the remedial measures proposed by Hungary [...] are not fully adequate to address the findings set out in the Commission notification sent to Hungary on 27 April 2022’.
- (7) Article 2(2) of the Council Implementing Decision establishes that:

‘Where the Commission implements the Union budget in direct or indirect management pursuant to of Article 62(1) points (a) and (c), of Regulation (EU, Euratom) 2018/1046, no legal commitments shall be entered into with any public interest trust established on the basis of the Hungarian Act IX of 2021 or any entity maintained by such a public interest trust.’
- (8) Pursuant to Article 7(1) of the Conditionality Regulation, ‘the Member State concerned may, at any time, adopt new remedial measures and submit to the Commission a written notification including evidence to show that the conditions of Article 4 are no longer fulfilled’.
- (9) On 13 December 2023, in line with Article 7(2) of the Conditionality Regulation and in the absence of a written notification from Hungary to seek the lifting of the measures, the Commission adopted a decision on the reassessment of the situation (the ‘Commission’s Reassessment Decision’)³. Despite regular exchanges with the Hungarian authorities, the Commission’s Reassessment Decision found that Hungary had not remedied the situation that led to the adoption of the budgetary measures. As a consequence, the Commission did not propose the Council to lift or adapt the measures.
- (10) On 2 December 2024, Hungary submitted to the Commission a written notification pursuant to Article 7(1) of the Conditionality Regulation (‘Written Notification’) regarding amendments to the Hungarian Act IX of 2021. With the Written Notification, the Hungarian government requested that the measure under Article 2(2) of the Council Implementing Decision on public interest asset management

² OJ L 325, 20.12.2022, p. 94.

³ C(2023) 8999 final, Commission Decision on the reassessment, on the Commission’s initiative, of the fulfilment of the conditions under Article 4 of Regulation (EU, Euratom) 2020/2092 following Council Implementing Decision (EU) 2022/2506 of 15 December 2022 regarding Hungary, 13.12.2023, available at https://commission.europa.eu/document/83f08b3a-bf4a-4462-a361-88d44692452b_en.

foundations ('public interest trusts') be lifted in full or in part. In its Written Notification, Hungary did not notify the Commission of any other new remedial measures to address the situation that led to the adoption of the measure under Article 2(1) of the Council Implementing Decision. Therefore, the latter measure is not considered in this Commission Decision.

- (11) In line with Article 7(2) of the Conditionality Regulation, the Commission has reassessed the situation in Hungary regarding public interest trusts and entities maintained by them, taking into account the evidence submitted by Hungary and all relevant and available information, against the weaknesses identified in the Council Implementing Decision and in the Commission's Communication, to the extent the latter is referred to in the Council Implementing Decision.

2. COMMISSION'S ASSESSMENT

- (12) As set out in the Council Implementing Decision and in the Commission's Communication, despite the fact that many of the commitments undertaken by Hungary in the remedial measures may be considered fulfilled, important weaknesses, risks and shortcomings remained with regard to a number of remedial measures, including the one on public interest trusts.
- (13) Recital 11 of the Council Implementing Decision, in relation to public interest trusts, states that 'there are concerns regarding the non-application of public procurement and conflict of interest rules to 'public interest trusts' and the entities managed by them, and the lack of transparency with regard to the management of funds by those trusts. [...]'. Recitals 42 and 43 of the Council Implementing Decision refer to the remedial measure on ensuring the transparency of the use of Union support by public interest trusts proposed by Hungary and the assessment of its adequacy.
- (14) In particular, in recital 43 of the Council Implementing Decision, the Council found that, in line with the remedial measure, Hungary had introduced amendments that enlarged the scope of the rules on public procurement and on conflicts of interest to cover also public interest asset management foundations performing public duty. However, the Council added that 'the regulatory framework still does not prevent top-level officials, including senior political executives from the National Assembly and Hungary's autonomous bodies, from sitting on boards of public interest asset management foundations, as repeatedly requested by the Commission. Moreover, Hungary has reintroduced as of 1 November 2022 the possibility (by means of an exception from the general prohibition) for senior political executives to have other remunerated employment, including on boards of public interest asset management foundations. The Council considers that for these reasons as further set out in the Commission's communication, the weaknesses of the regulatory framework combined with the new legislative developments aggravate the possible conflict of interest that the remedial measure was meant to address and therefore renders it inadequate to address the concerns originally raised by the Commission'.
- (15) In that regard, paragraph 70 of the Commission's Communication states 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 [...] proposal [for a Council implementing decision] 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 from the general prohibition) for senior political executives to have other remunerated employments. This exception creates a situation in which senior political executives may participate in decision-making relating to the disbursement of public funds to entities, in which they themselves are employed and have key decision-making powers. Consequently, even though Hungary addressed the concerns raised in the [Commission’s proposal for a Council implementing decision] of 18 September 2022, the exception introduced on 1 November 2022 renders the implementation of the remedial measure nevertheless inadequate.’

- (16) Recital 62 of the Council Implementing Decision states that ‘[c]oncerning the identified breaches in relation to public interest trusts, the regulatory framework in Hungary has weaknesses, as set out above, which have not remedied the risk of conflict of interest that the remedial measure was meant to address. In light of the inadequacy of the remedial measure, a serious risk for the Union budget remains and can best be addressed by a prohibition on entering into new legal commitments with any public interest trust and any entity maintained by them under any programme under direct or indirect management [...].’
- (17) By referring to the Commission’s Updated Assessment, recital 57 of the Council Implementing Decision clarifies that the remedial measure submitted by Hungary as regards public interest trusts can be assessed separately from all other remedial measures⁴.
- (18) With the Written Notification, Hungary submitted new remedial measures in the form of Act LIII of 2024 amending Act IX of 2021 on public interest asset management foundations performing public duty (‘Act LIII of 2024’) whose content and main characteristics can be summarised as follows:
 - (a) Act LIII of 2024 would only enter into force on the date of the repeal or amendment of Article 2(2) of the Council Implementing Decision⁵.
 - (b) A new provision requires that members of the board of trustees and of the supervisory board of a public interest trust be ‘subordinated only to the law and the provisions of the deed of foundation’ and that they ‘shall not be instructed in relation to their activities’⁶.
 - (c) The following entities, if they comply with the requirements set out by the amendments to Act IX of 2021, are eligible to access EU financial support originated, in part or in whole, in the European Union (‘EU financial support’):
 - (i) public interest trusts maintaining a higher education institution referred to in Subtitle A) of Annex 1 of Act IX of 2021 (‘benefiting foundation’, as defined by the said act⁷), and
 - (ii) legal persons created in accordance with the

⁴ Recital 57 of the Council Implementing Decision states that ‘[a]s clarified by the Commission in its updated assessment of 9 December 2022, with the sole exception of the remedial measure relating to public interest asset management foundations, the remedial measures have to be assessed in their entirety, as a global package, in light of their overall adequacy to put an end to the situation and on the basis of a qualitative, and not merely quantitative, assessment.’

⁵ See Section 6 (1) of Act LIII of 2024.

⁶ See Section 1 of Act LIII of 2024, introducing paragraph (4) to Section 6 of Act IX of 2021.

⁷ See Section 25/A (1) of Act LIII of 2024.

Hungarian Civil Code and established or maintained by a benefiting foundation ('benefiting legal person', as defined by the said act)⁸.

- (d) Benefiting foundations and benefiting legal persons can 'be eligible to access' EU financial support only if they comply with the special rules introduced by Act LIII of 2024. At the same time, however, certain provisions establish requirements applicable only from the moment each benefiting foundation and/or benefiting legal person receives EU financial support⁹.
- (e) The length of the term of office of members of the board of trustees or of the supervisory board of a benefiting foundation is limited to six years after the term of office started, or in the case of incumbent members, six years after the foundation received EU financial support with a possibility of re-election/re-designation only once.
- (f) Certain categories of 'top-level' officials and senior political executives are excluded from sitting on the board of trustees or on the supervisory board of a benefiting foundation, as well as from acting as managing director of a benefiting legal person, thereby introducing a list of incompatibilities.
- (g) Former holders of public office cannot become member of the board of trustees or of the supervisory board of a benefiting foundation before the expiry of a cooling-off period of one year¹⁰. A similar prohibition applies to managing directors of benefiting legal persons¹¹. In addition, a member of the board of trustees or the supervisory board of a benefiting foundation or the managing director of a benefiting legal person 'shall not be the officer of another benefiting foundation or benefiting legal person insofar as holding these positions at the same time prevents or restricts the impartial, objective and unbiased discharge of his duties'¹².
- (h) Only candidates for the position of member of the boards of a benefiting foundation or for the position of managing director of a benefiting legal person exhibiting independence, probity, impartiality and integrity can be designated/re-designated or elected/re-elected, based on an assessment of the board of trustees of the benefiting foundation concerned, taking into account the position of the Hungarian State Audit Office (the 'State Audit Office')¹³.
- (i) The State Audit Office must verify compliance with the incompatibility and 'conflict of interests' rules for existing members within three months after the benefiting foundation received EU financial support¹⁴.
- (j) Officers (presumably only members of the board of trustees or of the supervisory board of a benefiting foundation, based on the letter of the Act) must make a declaration of assets in accordance with Annex 1 to Act XXXVI of 2012 on the National Assembly within thirty days from taking office or, for an existing member, from the date when the benefiting foundation received the

⁸ See Section 25/C (2) of Act LIII of 2024.

⁹ From a combined reading of Sections 25(B) (2), 25(C) (6), 25(E) (1), 31(D) of Act LIII of 2024.

¹⁰ See Section 25/C (1) of Act LIII of 2024.

¹¹ See Section 25/C (2) of Act LIII of 2024.

¹² Section 25/C (3) of Act LIII of 2024.

¹³ See Section 25/C (4) and Section 25/D (1) of Act LIII of 2024.

¹⁴ See Section 25/C (6) of Act LIII of 2024.

EU financial support, and within thirty days following the termination of the term of office¹⁵.

- (k) Should an officer fail to make the abovementioned declaration of assets, they cannot be allowed to exercise the rights arising from their office and must not be remunerated until they submit the declaration of assets¹⁶.
 - (l) The Integrity Authority must verify the abovementioned declarations of assets¹⁷.
- (19) According to the Hungarian government, the new provisions introduced by Act LIII of 2024, as notified, in combination with the provisions already in force in Hungary based on remedial measures adopted before the Council Implementing Decision, should lead to the lifting of the measure under Article 2(2) of the Council Implementing Decision entirely, or at least with regard to benefiting foundations and benefiting legal persons¹⁸.
- (20) Before assessing each of the points listed in recital (18) above, the Commission notes that as regards ‘managing directors’, the term used in Act LIII of 2024, *ügyvezető*, has a circumscribed scope, not comprising all the types of office possible for entities established or maintained by public interest trusts. For this reason, where the Commission refers in its assessment to ‘managing directors’ in the following recitals, that reference should be understood as comprising managing directors, managing officials or other similar top management positions in entities established or maintained by public interest trusts, or by benefiting legal persons.
- (21) With regard to point (a) of recital (18) above, the formulation of this clause makes the entry into force of Act LIII of 2024 conditional on a future and uncertain event, i.e. a (positive) assessment of the Council, based on a Commission’s proposal. This is not in line with Article 7(2) of the Conditionality Regulation which requires that the situation has been remedied before the Commission can propose to lift the protective measures. Moreover, the Council could not decide on whether to lift or adapt budgetary measures on the basis of national remedial measures that are not in force. The provisions underpinning the remedies notified by Hungary should be in force in order to address the outstanding concerns. The clause in question compromises the legal certainty of the effects of Act LIII of 2024 and thus the remedies notified by the Hungarian Government as a whole. This suspensive clause is also not in line with the spirit and objective of the Conditionality Regulation and the duty of sincere cooperation imposed on Member States by Article 4(3) Treaty on the European Union (‘TEU’). National measures aiming at remedying breaches of the principles of the rule of law affecting the Union budget should be in force before the Union protective measures are lifted.
- (22) As regards the substance of the new remedial measures, the Commission has conducted a comprehensive assessment thereof in order to verify, against the current circumstances in Hungary, whether the situation that led to the adoption of the measure under Article 2(2) of the Council Implementing Decision would be remedied in full or in part if and when Act LIII of 2024 would enter into force.

¹⁵ See Section 25/E (1) of Act LIII of 2024.

¹⁶ See Section 25/E (3) of Act LIII of 2024.

¹⁷ See Section 25/E (4) of Act LIII of 2024.

¹⁸ Written Notification, pages 12 and 13.

- (23) With regard to point (b) of recital (18) above, the Written Notification states that the new provision introduces further guarantees on the independence of the members of the boards of trustees and the supervisory boards of all public interest trusts. However, this provision is not sufficiently precise and effective, as it does not qualify or further specify the concept of “subordination to the law or the deed of foundation”, let alone establish any possibility of enforcement action, in case the requirement of independence is not respected. In addition, it cannot be excluded in principle that the deed of a public interest trust might prescribe that members of the boards act according to instructions of other bodies or people, making the requirement of non-subordination or independence even less effective.
- (24) As regards point (c) of recital (18) above, the material and territorial scope of application of Act LIII of 2024 as set out in Section 25/A is too limited as compared to Article 2(2) of the Council Implementing Decision, for the following reasons.
- (25) First, Article 2(2) of the Council Implementing Decision refers to all public interest trusts established on the basis of the Hungarian Act IX of 2021 or any entity maintained by such a public interest trust regardless of the sector of activity. However, Act LIII of 2024 as notified applies only to public interests trusts maintaining a higher education institution referred to in Subtitle A) of Annex 1 of Act IX of 2021 and to all legal persons established or maintained by such public interest trusts in accordance with the Hungarian civil code. There is no valid justification for the exclusion of public interest trusts active in areas other than education, whether they already exist or not. The reference to Subtitle A) excludes from the personal scope of the new provisions public interest trusts listed in Subtitle B) of Annex 1, without any explanation. These public interests trusts may also maintain entities (now or in the future), including higher education institutions, and could potentially receive EU financial support without being subject to any further conflicts of interest rules. Also, public interest trusts listed in Subtitle A) that do not maintain higher education institutions do not fall under the new regime, although they may also receive EU financial support.
- (26) Second, as regards legal entities established or maintained by a public interest trust maintaining a higher education institution referred to in Subtitle A) of Annex 1 of Act IX of 2021, the territorial scope of Act LIII of 2024 is limited to entities created under the Hungarian Civil Code, hence excluding all entities set up outside of Hungary. Therefore, also from this angle the scope of application of Act LIII of 2024 is too narrow and does not adequately and effectively remedy the concerns related to the Hungarian regulatory framework as regards conflict of interest.
- (27) As regards point (d) of recital (18) above, the application of requirements under the new regime on an ad hoc basis, only if and when Union funds are received, would not constitute an effective remedial measure, and it would unduly interfere with, and could negatively affect, the procedures for the award of Union funds. Sound financial management requires that risks of conflicts of interest be addressed as soon as they can arise. Such risks can pre-exist or materialise at the moment an entity decides to apply for EU financial support, even before such support is granted.
- (28) In this respect, while the Written Notification describes the new rules as applying for eligibility for accessing/applying/using EU financial support¹⁹, the notified remedial measure, i.e. Act LIII of 2024, contains provisions that lack the requisite coherence, and therefore legal certainty, when read together. While Section 25/A of Act LIII of

¹⁹ For instance, see pages 7 and 8 of the Written Notification.

2024 states that a benefiting foundation and a legal person created in accordance with the Civil Code and established or maintained by a benefiting entity is eligible to access EU financial support only if it complies with the requirements set in the said Act, other provisions setting those requirements are applicable only in case the benefiting foundation or the established/maintained entity have already ‘received’ EU financial support²⁰.

- (29) In order to effectively address the concerns related to risks of conflicts of interest affecting the implementation of Union funds, all the requirements under Act LIII of 2024 aiming at remedying the situation that led to the adoption of the measure under Article 2(2) of the Council Implementing Decision should apply as a minimum from the moment the benefiting foundation or the benefiting legal person applies or has applied for EU financial support, and should remain applicable throughout the implementation of the funding. In other words, there should be no doubt that compliance with the new rules constitutes an eligibility criteria to participate in the award procedures for Union funding. Furthermore, the provisions should apply also to benefiting foundations and to benefiting legal persons that are currently receiving EU financial support.
- (30) With regard to point (e) of recital (18) above, Section 25/B (1) of Act LIII of 2024 introduces a 6-year mandate, renewable once, for all members of the board of trustees and of the supervisory board of a benefiting foundation. The Commission notes that a shorter mandate could improve the effectiveness of the remedial measure. Furthermore, the new regime does not limit the term of office of managing directors of benefiting legal persons. For an incumbent member, paragraph (2) of Section 25/B links the starting date of the 6-year mandate (renewable only once) to the moment of receipt of EU financial support by the benefiting foundation concerned and paragraph (4) of Section 31/D links it with the entry into force of Act LIII of 2024 (which is uncertain at this moment – see recital (21) above). Therefore, the time of mandate spent preceding the reception of EU financial support would not be counted for existing members of the board of trustees or of the supervisory board who will have a 6-year mandate renewable once from the moment the public interest trusts receives the EU financial support or when Act LIII of 2024 enters into force.
- (31) While the limitation in the duration and succession of mandates contributes to addressing the risk of conflicts of interest, in order to effectively address such risks, the law should explicitly provide that a benefiting foundation or a benefiting legal person applying for EU financial support must be subject to the rules on the maximum duration of mandate(s), irrespective of whether part of the mandate precedes the entry into force of the new rules or the application for EU financial support.
- (32) The combined reading of paragraphs (1) and (2) of Section 25/B is also unclear, with regard to the starting point of the term of office for all members of the board of trustees and of the supervisory board. These provisions can give rise to different interpretations. While paragraph (1) provides that the term of office shall start running from the moment the person concerned is elected or designated as a board member, paragraph (2) provides in fact that the term of office starts running only from the moment the benefiting foundation receives the EU financial support, which of course is a different moment than the one stated in paragraph (1).

²⁰ See Sections 25/B (2), 25/C (6), 25/E (1), 31/D of Act LIII of 2024.

- (33) With regard to point (f) of recital (18), Section 25/C (1) of Act LIII of 2024 establishes that a person holding certain positions at the start of the term of office (or in the year preceding that date, see recital (35) below) shall not be a member of the board of trustees and the supervisory board of a benefiting foundation. The categories of persons who cannot sit on boards are: member of the National Assembly, senior political executive within the meaning of Act CXXV of 2018 on government administration (hereinafter the “Government Administration Act”), government commissioner within the meaning of the Government Administration Act, ministerial commissioner within the meaning of the Government Administration Act, senior professional executive within the meaning of the Government Administration Act, professional executive within the meaning of the Government Administration Act, public official employed at an organ within the meaning of Act CVII of 2019 on special status organs and the legal status of persons employed by them (hereinafter the “Special Status Organs Act”). In addition, the inclusion of other top-level officials such as ‘mayors’ in the aforementioned list could improve the effectiveness of the remedial measure.
- (34) Section 25/C (2) of Act LIII of 2024 provides that a person shall not be a managing director of a benefiting legal person if they hold any of the following positions at the start of the term of office: member of the National Assembly, senior political executive within the meaning of the Government Administration Act, government commissioner within the meaning of the Government Administration Act, ministerial commissioner within the meaning of the Government Administration Act, senior professional executive within the meaning of the Government Administration Act, professional executive within the meaning of the Government Administration Act, public official employed at an organ within the meaning of the Special Status Organs Act. Here as well, the inclusion of other top-level officials such as ‘mayors’ in the aforementioned list could improve the effectiveness of the remedial measure. Furthermore, the same provision states also that a person shall not be managing director of a benefiting legal person if they hold some of said positions in the year preceding that date (see recital (35) below).
- (35) With regard to points (g) of recital (18), Section 25/C (1) and (2) of Act LIII of 2024 introduce a cooling-off period on the basis of incompatibility of offices, as persons who have held a position within one of the categories referred to in those provisions cannot be appointed as members of boards within one year from terminating their mandate or legal relationship. The cooling-off period is a measure that contributes to enhancing detection and management of conflicts of interest situations, in line with Article 61 of the Financial Regulation²¹. However, the Commission notes that a longer cooling-off period could improve the effectiveness of the remedial measure. Also, in the case of managing directors of benefiting legal persons, the cooling-off period does not apply for all positions listed in Section 25/C paragraphs (1) and (2)²².

²¹ Regulation (EU, Euratom) 2024/2509 of the European Parliament and of the Council of 23 September 2024 on the financial rules applicable to the general budget of the Union (recast), OJ L, 2024/2509, 26.9.2024, ELI: <http://data.europa.eu/eli/reg/2024/2509/oj>.

²² The categories excluded from the cooling-off period, based on Section 25/C (2), are: senior professional executive within the meaning of Act CXXV of 2018 (the ‘Government Administration Act’); professional executive within the meaning of the Government Administration Act; public official employed at an organ within the meaning of Act CVII of 2019 on special status organs and the legal status of persons employed by them.

- (36) Therefore, Section 25/C (1) and (2) of Act LIII of 2024, as described above at points (f) and (g) of recital (18), would only address some of the weaknesses of the Hungarian legislative framework on public interest trusts as regards conflicts of interest, insofar as it prevents certain top-level officials, including senior political executives from the National Assembly and Hungary's autonomous bodies, from sitting on the board of trustees or the supervisory board of a public interest trusts and receive remuneration.
- (37) With regard to points (h) and (i) of recital (18), Section 25/C (3), (4), (5) and (6) of Act LIII of 2024 do not effectively exclude the risk of structural conflicts of interest with regard to the eligibility of the members of the board of trustees or of the supervisory board of a benefiting foundation or the managing director of a benefiting legal person. They fail to establish a transparent selection and appointment process that would allow for an effective scrutiny on how the eligibility checks are carried out by the State Audit Office and how appointments are made.
- (38) Those provisions introduce criteria for candidates to be eligible for membership of the boards or to become managing directors, namely independence, probity, impartiality and integrity taking into account the position of the State Audit Office. However, the lack of an explicit reference to an absence of conflicts of interest, whether actual or perceived, undermines the effectiveness of these criteria. The absence of conflict of interest should be declared, verified and enforced strictly. The submission of conflicts of interest declarations is necessary for the effectiveness of the rules and to ensure, inter alia, that when applying for Union funding there is no conflict of interest or risk thereof, including an objectively perceived risk. Declarations should furthermore be renewed on a regular basis. All those missing elements are needed to ensure transparency and accountability of the system.
- (39) In accordance with said provisions, the State Audit Office scrutinises compliance with the incompatibility and conflicts of interest rules for existing members within three months after the benefiting foundation receives EU financial support, without stating whether the State Audit Office should scrutinise compliance within the same term after a benefiting legal person, irrespective of the related benefiting foundation, has received EU financial support.
- (40) These provisions present a number of shortcomings. First, it is unclear which provision should be the benchmark to assess the eligibility of candidates. Second, from the letter of the provision, the opinion of the State Audit Office is not binding. Section 25/C merely states that 'the State Audit Office shall verify compliance with the conflicts of interest rules under this section'. It is not clear what is the legal nature of such verification, what are its legal consequences, whether it may be subject to judicial review and what the starting point of the 3-month transitional period would be. Third, the eligibility check is conducted only after the benefiting foundation receives the EU financial support. To be effective and to prevent risks related to conflicts of interest, the checks on the eligibility of new or existing board members and managing directors should be performed at least before any benefiting foundation and benefiting legal person is considered eligible to apply for EU financial support. Moreover, it is not clear what would be the legal consequences if a conflict of interest was found to exist. An appropriate methodology and procedure, including appropriate investigative and corrective measures such as disciplinary and/or criminal sanctions on the declarant would be appropriate measures effectively preventing conflicts of interest and enhancing transparency and accountability, as required by Article 61 of the Financial Regulation.

- (41) With regard to points (j), (k), and (l) of recital (18), Section 25/E of Act LIII of 2024 requires “officers” to make a declaration of assets within thirty days from taking office or, for existing members, from the moment the benefiting foundation received the EU financial support. Until the person concerned does not make the declaration of assets, they shall not be allowed to exercise the rights arising from the office to receive remuneration. The Integrity Authority shall verify the declarations in accordance with Act XXVII of 2022.
- (42) The personal scope of Section 25/E of Act LIII of 2024 is unclear: on the one hand, an officer is defined by Section 25/C of Act LIII of 2024 as a member of the board of trustees or of the supervisory board of benefiting foundation or a managing director of a benefiting legal person; on the other hand, the obligation to make a declaration of assets is triggered from the moment the benefiting foundation, i.e. a public interest trust, receives the EU financial support. On this basis, either managing directors of benefiting legal persons would not be concerned by the obligation to make a declaration of assets, or they would be only insofar as the related benefiting foundation has received EU financial support, without regard to the possibility that the benefiting legal person itself might already have received such financial support. Neither of these two scenarios would be satisfactory.
- (43) Section 25/E only provides for asset declarations thirty days after the appointment of the officer, or from the date of reception of the EU financial support by the benefiting foundation, and thirty days after the end of the term of office. These safeguards are not sufficient to effectively address the risk of conflicts of interest. The provision should require all members of the board of trustees or of the supervisory board of benefiting foundations or managing directors of benefiting legal persons to make asset declarations before applying for EU financial support, to address the risk of conflicts of interest before such applications. Asset declarations should also be renewed periodically in the course of the mandate. They should also be accessible by the Integrity Authority upon request and without undue delay. Finally, to address the risk of circumvention of the provision, relatives of the officer living in the same household should also be bound to file the asset declarations.
- (44) As to the Integrity Authority’s power to check asset declarations, Section 25/E of Act LIII of 2024 does not provide detailed procedural rules for this purpose, and it only cross-refers to the provisions of Act XXVII of 2022 setting up the Integrity Authority (the “Integrity Authority Act”), which does not provide that the authority carries out that verification itself, but it provides merely for the possibility to request the responsible body to do so. As a consequence, an amendment of the Integrity Authority Act appears to be necessary to allow this authority to carry out the verification of the asset declarations referred to in Section 25/E of Act LIII of 2024. This additional competence for the Integrity Authority should be coupled with the necessary safeguards to ensure that the said authority can effectively check asset declarations. For instance, the Integrity Authority should have direct and unlimited access to all the relevant databases and registries necessary to verify the veracity of the information contained in the asset declarations. Should access to relevant databases or information be denied, the Integrity Authority should also have legal standing to seek judicial review of a negative decision by the requested authority or of a failure to act having an equivalent effect of such a decision.
- (45) Another element missing from Section 25/E of Act LIII of 2024 is a clear formulation of the consequences of submitting a false asset declaration or other irregularities concerning those declarations. In order for the provision to be effective, there should

be legally enforceable consequences in ascertained cases of conflicts of interest or of false and/or incomplete asset declarations. The Commission considers that the absence of the above-mentioned elements renders the provision ineffective as to the prevention of risks related to conflicts of interest in public interest trusts and entities established or maintained by them. An effective procedure to address such situations, including appropriate investigative and corrective measures such as disciplinary and/or criminal sanctions on the person concerned would be appropriate to effectively prevent conflict of interest and enhancing transparency and accountability, as required under Article 61 of the Financial Regulation.

- (46) According to the transitional provision 31/D of Act LIII of 2024, in cases where EU financial support was received before the entry into force of the law, there is a period of thirty days to comply with the new legislation. To ensure effectiveness, those transitional provisions should apply to public interest trusts and legal persons established or maintained by them that already applied for EU financial support before the entry into force of the law, for procedures thus that are ongoing. Rules should apply *mutatis mutandis* both to new and existing members of the board of trustees or supervisory boards of benefiting foundations or managing directors.
- (47) Therefore, the remedial measure considered as a whole, as adopted by the Hungarian National Assembly on 4 November 2024 and notified to the Commission on 2 December 2024, is insufficient to address the shortcomings of the national regulatory framework as described in recital 62 of the Council Implementing Decision.

3. CONCLUSIONS

- (48) In light of the foregoing, and on the basis of a comprehensive assessment of the new remedial measure including all its aspects, the Commission finds that the grounds leading to the adoption of the measure under Article 2(2) of the Council Implementing Decision have not been remedied. As a consequence, the Union's budget remains at the same level of risk regarding the issue under consideration.
- (49) The following adaptations (or measures having an equivalent effect) would be needed to consider that the situation has been sufficiently remedied:
- The date of entry into force of the relevant provisions should not be made conditional on the date of repeal or amendment of Article 2(2) of the Council Implementing Decision. The remedial measure should be in force when it is submitted to the Commission.
 - The rules should apply to all entities that fall under the scope of Article 2(2) of the Council Implementing Decision, i.e. any public interest trust established on the basis of the Hungarian Act IX of 2021 or any entity maintained by such a public interest trust, irrespective of the sector of activity or place of establishment.
 - The rules should be applicable at least from the moment when a public interest trust and/or any maintained entity applies or has applied for EU funding, as a condition of eligibility, they should continue to apply throughout the implementation of the EU funding. Furthermore, the rules should apply also to benefiting foundations and to benefiting legal persons that are currently receiving EU financial support.
 - The duration of the mandate of a member of the board of trustees or of the supervisory board of a public interest trust, as well as of a managing director of

a maintained entity, that apply for EU funding should be limited in time, irrespective of whether part of the mandate precedes the entry into force of the new rules or the application for EU funding.

- The rules should apply both to new and existing members of the board of trustees or of supervisory boards of public interest trusts or to new and existing managing directors of maintained entities. In the case of existing members of public interest trusts or maintained entities that already receive EU financial support at the time of entry into force of the new rules, the rules could include the possibility of a short technical transitional period so that all the relevant requirements to ensure the absence of conflicts of interest risks are effectively fulfilled.
- The absence of conflict of interest for members of the board of trustees and of the supervisory board of public interest trusts and of managing directors of maintained entities needs to be declared, verified and enforced strictly, as general requirements of independence, probity, impartiality and integrity are not sufficient, if not adequately verified and addressed in case of deficiencies.
- The rules should provide that all members of the board of trustees and of the supervisory board of public interest trusts and of managing directors of maintained entities submit conflict of interest declarations and asset declarations before the appointment. This submission should be renewed periodically during the mandate, and not only at the end of the term of office. Asset declarations should be submitted also by relatives living in the same household of the board members or managing directors.
- Checks on the eligibility of new or existing board members or new or existing managing directors should be performed before a public interest trust or a maintained entity can be considered eligible to apply for Union funding.
- Eligibility checks on conflict of interest of new or existing board members or managing directors should be conducted by an independent body, issuing binding decisions before any appointment, confirmation or appointment for a second term could take place.
- The checks on conflict of interest declarations and asset declarations of new or existing board members or managing directors should be conducted by the Integrity Authority.
- The rules should provide that asset declarations should be accessible and verified by the Integrity Authority, which should be given by law all the necessary means (including direct and unlimited access to all relevant databases and registries and information) to effectively carry out such verification. Should access to relevant databases or information be denied, the Integrity Authority should also have legal standing to seek judicial review of a negative decision by the requested authority or of a failure to act having an equivalent effect of such a decision.
- An appropriate methodology and procedure, including appropriate investigative and corrective measures such as disciplinary and/or criminal sanctions on the declarant would be appropriate measures to effectively preventing conflict of interest as required under Article 61 of the Financial Regulation and enhancing transparency and accountability.

- (50) In addition, the effectiveness of the remedial measure could benefit from a shorter duration of the mandate (for instance, a 4-year term renewable only once), a longer cooling-off period (for instance, two years) and the inclusion of other top-level officials such as ‘mayors’ in the list of offices incompatible with membership in the board of trustees or supervisory board of public interest trusts and with the office of managing director in maintained entities.
- (51) Based on the above assessment, the conditions for a Commission proposal to lift or adopt the measure of Article 2(2) of the Council Implementing Decision are not met. As a consequence, the prohibition from entering into legal commitments with any public interest trust established on the basis of the Hungarian Act IX of 2021 or any entity maintained by such a public interest trust under direct or indirect management should remain in place.
- (52) This Decision is without prejudice to the requirement for Hungary to inform the Commission on a regular basis of the implementation of the remedial measures to which it has committed, and in particular of those which require to be substantiated in practice or which require a longer implementation period, in line with recital 64 and Article 3 of the Council Implementing Decision. This Decision is also without prejudice to further assessment of the regulatory framework in relation to public interest trusts under other EU law instruments, such as the EU Charter of Fundamental Rights horizontal enabling condition under the Common Provisions Regulation²³ and the Recovery and Resilience Facility Regulation²⁴.

HAS ADOPTED THIS DECISION:

Article 1

The situation leading to the adoption of measures under Article 2(2) of the Council Implementing Decision (EU) 2022/2506 of 15 December 2022 has not been remedied.

Article 2

This Decision is addressed to Hungary and shall take effect on the day of its notification.

Done at Brussels, 16.12.2024

For the Commission

Piotr SERAFIN

Member of the Commission

²³ Regulation (EU) 2021/1060 of the European Parliament and of the Council of 24 June 2021 laying down common provisions on the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund, the Just Transition Fund and the European Maritime, Fisheries and Aquaculture Fund and financial rules for those and for the Asylum, Migration and Integration Fund, the Internal Security Fund and the Instrument for Financial Support for Border Management and Visa Policy, OJ L 231, 30.6.2021, p. 159.

²⁴ Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 establishing the Recovery and Resilience Facility, OJ L 57, 18.2.2021, p. 17.