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COMMISSION DECISION

of 13.12.2023

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

(Only the Hungarian version 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, and in particular Article 7(1) and (2) thereof,

Whereas:

1. PROCEDURE

- (1) Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget² ('Conditionality Regulation') provides in its Article 4(1) 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 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 Hungary³ (the 'Commission's Proposal'), pursuant to Article 6(9) of the Conditionality Regulation.
- (3) 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 taken by Hungary up to 7 December 2022 (the 'Updated Assessment').
- (4) 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 Hungary (the 'Council Implementing Decision'). According to Article 1 of the

¹ OJ L 433I, 22.12.2020, p. 1.

² OJ L 433I, 22.12.2020, p. 1.

³ COM(2022) 485 final.

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 [...] were not fully adequate to address the findings set out in the Commission notification sent to Hungary on 27 April 2022’.

- (5) Article 2 of the Council Implementing Decision establishes that:
- ‘1. 55% of the budgetary commitments under the following operational programmes in Cohesion Policy, once approved, shall be suspended:
- (a) Environmental and Energy Efficiency Operational Programme Plus;
 - (b) Integrated Transport Operational Programme Plus;
 - (c) Territorial and Settlement Development Operational Programme Plus.
2. 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.’
- (6) Under Article 3 of the Council Implementing Decision, ‘Hungary shall inform the Commission by 16 March 2023, and every 3 months thereafter, of the implementation of the remedial measures to which Hungary committed with its second reply, including the additional commitments included in Hungary’s letter of 13 September 2022.’ Hungary submitted quarterly reports to the Commission pursuant to Article 3 on 16 March 2023 (‘First Quarterly Report’), on 16 June 2023 (‘Second Quarterly Report’) and on 18 September 2023 (‘Third Quarterly Report’)⁴.
- (7) 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’.
- (8) Pursuant to Article 7(2) of the Conditionality Regulation, ‘at the request of the Member State concerned, or on its own initiative and at the latest one year after the adoption of measures by the Council, the Commission shall reassess the situation in the Member State concerned, taking into account any evidence submitted by the Member State concerned, as well as the adequacy of any new remedial measures adopted by the Member State concerned.’ Furthermore, the same provision states that the Commission shall submit to the Council a proposal for an implementing decision ‘lifting the adopted measures’, where the Commission considers that the conditions of Article 4 are no longer fulfilled, or a proposal for an implementing decision ‘adapting the adopted measures’, where the Commission considers that the situation leading to the adoption of measures has been remedied in part. Finally, ‘where the Commission considers that the situation leading to the adoption of measures has not been remedied, it shall address to the Member State concerned a reasoned decision and inform the Council thereof.’

⁴ On 12 December 2023, Hungary sent a fourth quarterly report pursuant to Article 3 of the Council Implementing Decision. The Commission is analysing this report and its 16 annexes in the context of its regular exchanges with Hungary, in line with the principle of sincere cooperation. However, the report could not be taken into account for the purpose of the present decision due within a year from the adoption of the Council Implementing Decision.

- (9) Given that Hungary has not submitted to the Commission a written notification pursuant to Article 7(1) of the Conditionality Regulation, and given that it is almost one year since the adoption of the measures by the Council, pursuant to Article 7(2) of the Conditionality Regulation, the Commission is bound to reassess on its own initiative the situation in Hungary.
- (10) This reassessment is based on the weaknesses, shortcomings and risks identified in the Council Implementing Decision.
- (11) In addition, this reassessment also includes an analysis of the implementation of the remedial measures, taking into account the reports submitted by Hungary pursuant to Article 3 of the Council Implementing Decision as well as any other reliable sources of information available to the Commission.

2. COMMISSION'S REASSESSMENT

- (12) As set out in the Council Implementing Decision⁵ and the Commission's Communication⁶, despite the fact that many of the commitments undertaken by Hungary in the remedial measures were considered fulfilled, important weaknesses, risks and shortcomings remained with regard to a number of remedial measures. In particular, as stated in recital 56 of the Council Implementing Decision, 'significant weaknesses continue to seriously undermine the adequacy of the remedial measures which have horizontal, structural and systemic nature and are of central importance to remedy the systemic breaches of the principles of the rule of law concerning public procurement, the effectiveness of prosecutorial action and the fight against corruption in Hungary. Those weaknesses therefore jeopardise the effectiveness of the remedial measures taken as a whole.'
- (13) Against this background, the Commission has conducted an overall qualitative reassessment of the current situation for each of the measures contained in the Council Implementing Decision (under its Article 2, paragraphs (1) and (2)). It should be recalled that the breaches concerning public interest asset management foundations ('public interest trusts'), which led to the adoption of the measure contained in Article 2(2), are distinct from the breaches that were addressed with Article 2(1).
- (14) This reassessment verifies, against the current situation in Hungary, whether the situation that led to the adoption of measures by the Council has been remedied in the meantime and whether the remedial measures proposed by Hungary prior to the adoption of the Council Implementing Decision have been correctly and adequately implemented.

2.1. Remedial measures for which Key Implementation Steps were set

- (15) Following the adoption of the Council Implementing Decision, Hungary informed the Commission of the further steps it took to implement all the commitments it proposed under the remedial measures submitted by Hungary for which Key Implementation Steps were identified during the procedure that led to the adoption of the Council Implementing Decision.
- (16) For a number of remedial measures, Hungary has fulfilled some of its additional commitments under the remedial measures correctly and in a timely manner. For

⁵ See recitals 56–58 of the Council Implementing Decision.

⁶ See recital 156 of the Council Implementing Decision.

instance, the Commission takes note that the Anti-Corruption Task Force⁷ adopted its first annual report on 13 March 2023 and that the Hungarian Government presented its opinion, in line with the deadlines under the remedial measure in question.

- (17) In addition, the Commission notes that on 31 March 2023, the Integrity Authority published its first integrity risk assessment report on the Hungarian public procurement system on time. Furthermore, on 29 June 2023, in line with the commitments under the remedial measure, the Integrity Authority also published its first annual analytical integrity report. Lastly, on 7 December 2023 the Integrity Authority published its ad-hoc report on the asset declaration system⁸.
- (18) The Commission notes that the process to finalise the new National Anti-Corruption Strategy is still ongoing and certain shortcomings must be addressed before the Strategy can be adopted. While the Hungarian Government has consulted some stakeholders, it is not clear whether it has systematically consulted with the relevant stakeholders for the purposes of drafting the Strategy.
- (19) Moreover, the information provided by Hungary in the context of the quarterly reports pursuant to Article 3 of the Council Implementing Decision shows that not all of the commitments were implemented correctly or on time. For instance, as regards the Anti-Corruption Task Force, the Hungarian Government does not appear to have provided a detailed reasoning not to agree on measures proposed by the Anti-Corruption Task Force; the anti-corruption framework⁹ has not been strengthened as committed so far, as the adoption of the new National Anti-Corruption Strategy and the related Action Plan, including the adoption of a dissuasive sanctioning regime, are delayed¹⁰. In this respect, the Commission takes note of the informal exchanges with the Hungarian authorities, including the latest draft National Anti-Corruption Strategy with the related Action Plan. Furthermore, the Commission also notes that although Hungary reported to have reduced the share of tender procedures with single bids financed from EU funds to below 15% in 2022, to ensure that this level is maintained, and that the threshold is not exceeded, continuous monitoring of the implementation is required.
- (20) The Commission also has reservations on the effective fulfilment of the remedial measure on the application of Arachne¹¹, as not all the data for all Union funding appear to be uploaded by Hungary and the Commission's on-going preventive systemic audit under the Recovery and Resilience Facility found specific deficiencies in the use of Arachne in practice, as well as related to the control of conflict of interest situations. These deficiencies are being discussed with Hungary in the context of the said audit. In addition, the Commission also identified certain shortcomings in the implementation of several commitments under the remedial measure related to the sound use of Union support¹². Those shortcomings have been brought to the attention of the Hungarian authorities.

⁷ Remedial measure (b) under the Council Implementing Decision.

⁸ The Commission is currently analysing the Integrity's Authority assessment of the asset declaration system.

⁹ Remedial measure (c) under the Council Implementing Decision.

¹⁰ The deadline for the adoption of the new National Anti-Corruption Strategy and Action Plan was 30 June 2023.

¹¹ Remedial measure (o) under the Council Implementing Decision.

¹² Remedial measure (f) under the Council Implementing Decision.

- (21) In addition, since the adoption of the Council Implementing Decision, in line with the principle of sincere cooperation, the Commission and the Hungarian authorities have exchanged to explore appropriate new remedial measures, in the sense of Article 7(1) of the Conditionality Regulation, which would be sufficiently effective in addressing the outstanding weaknesses, risks and shortcomings identified. These outstanding issues were identified in paragraphs 153-154 of the Commission's Communication and in the Council Implementing Decision as follows:
- (i) The lack of a clear rule stating that the Integrity Authority will retain its competence after a project is withdrawn from Union financing¹³.
 - (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 Authority¹⁴.
 - (iii) The weaknesses of the dismissal procedure for members of the Integrity Authority¹⁵.
 - (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 officials¹⁶.
 - (v) The possibility that judicial decisions setting aside prosecutorial decisions would not be binding on the prosecutor¹⁷.
 - (vi) The inclusion of an additional step by the trial court, 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 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 2023¹⁸.
 - (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 register¹⁹.
 - (viii) The lack of clarity and legal certainty relating to the disclosure obligations for real estate including outside the jurisdiction of Hungary²⁰.
 - (ix) The lack of clarity on the personal, material and temporal scope of the declaration of assets, income and economic interests of certain executives,

¹³ See recital 36 (i) of the Council Implementing Decision.

¹⁴ See recital 36 (ii) of the Council Implementing Decision.

¹⁵ See recital 36 (iii) of the Council Implementing Decision.

¹⁶ See recital 36 (iv) and (v) of the Council Implementing Decision.

¹⁷ See recital 46 (i) of the Council Implementing Decision.

¹⁸ See recital 46 (ii) of the Council Implementing Decision.

¹⁹ See recital 54 of the Council Implementing Decision.

²⁰ See recital 41 (i) of the Council Implementing Decision.

officials and Members of the National Assembly, and for their spouses or cohabitants and child(ren) living in the same household²¹.

(x) The failure to include in the Act on Asset Declarations²² an explicit reference to the establishment of a system of asset declarations filed electronically in a digital format, to be stored in a public database searchable without fees or the need to register²³.

(xi) Weaknesses in relation to public interests trusts²⁴.

(22) Since the adoption of the Council Implementing Decision, Hungary has not notified the Commission of any adopted new remedial measures that would address any of the above listed issues.

2.2. Remedial measures for which no immediate Key Implementation Steps were set, as they require a longer implementation period²⁵

(23) For four remedial measures, at the time of the Commission's Proposal the Commission indicated that there were no immediate Key Implementation Steps, as those remedial measures require a longer implementation period. The Commission has monitored and continues monitoring their implementation on the basis of Hungary's quarterly reporting on the implementation of the remedial measures, reporting done pursuant to Article 3 of the Council Implementing Decision, as well as any other information available to it.

2.2.1. Reducing the share of tender procedures with single bids financed from the national budget²⁶

(24) The Hungarian Government undertook to gradually reduce the share of public procurement tender procedures financed from the national budget and closed in a calendar year with single bids, as measured with the Single Market Scoreboard Methodology. In accordance with the annual commitments, the Hungarian Government undertook to close: year 2022 with single bids below 32%; year 2023 with single bids below 24% and year 2024 with single bids below 15%. According to the First Quarterly Report, Hungary reported that the share of the single bid procurements financed from the national budget was 31.3% in 2022.

(25) Following further clarifications on the way Hungary has calculated the share, as provided in the Second Quarterly Report, the Commission considers that, at this stage, the implementation of this remedial measure is being carried out in a timely manner.

2.2.2. The adoption of an action plan to increase the level of competition in public procurement²⁷

(26) The Hungarian Government committed under this remedial measure to adopt, by 31 March 2023, a comprehensive action plan aiming at improving the level of competition in public procurement (the 'Action Plan'). Accordingly, by Government

²¹ See recital 41 (ii) of the Council Implementing Decision.

²² Act XXXI of 2022, adopted by the Hungarian National Assembly on 25 October 2022.

²³ See recital 41 (iii) of the Council Implementing Decision.

²⁴ See recitals 43 and 62 of the Council Implementing Decision.

²⁵ See recital 27 of the Council Implementing Decision.

²⁶ Remedial measure (h) under the Council Implementing Decision.

²⁷ Remedial measure (l) under the Council Implementing Decision.

Decision No 1118/2023 of 31 March, the Action Plan (scheduled between 2023 – 2026) was adopted²⁸.

- (27) In accordance with Hungary's Second Quarterly Report, the Action Plan includes 14 measures aimed at improving the competition in public procurement, measures that are linked to objectives to be achieved, deadlines, responsibilities and monitoring/verification methods. Furthermore, the measures were grouped in 4 categories, i.e. a) measures of horizontal nature, b) measures to reduce administrative burden, c) measures that support the access to and participation in public procurement procedures, and d) measures that focus on the development of skills regarding public procurement.
- (28) The Commission considers that the actions laid down in the Action Plan seem appropriate and give the impression that a genuine effort was taken to address many of the shortcomings that were identified in the past. If properly implemented, those actions are likely to enhance transparency, the quality of data and access to information. In particular, it is to be commended the intention to review the fees applicable for appeals and with the potential perspective of lowering the current fees that were often criticized in the past for being disproportionately high.
- (29) At the same time, the Commission notes that Hungary, as it has committed to under the remedial measure, should ensure the effective monitoring of progress in the implementation of the actions under the Action Plan. This would be achieved by setting out specific and measurable yearly objectives and by assigning relevant indicators to each of the actions.

2.2.3. *Training to be provided for micro, small and medium-sized enterprises on public procurement practices*²⁹

- (30) The Hungarian Government undertook to provide free-of-charge training occasions for at least 2 200 micro, small and medium-sized enterprises ('SMEs'), in order to facilitate their participation in public procurement procedures. The trainings are to be designed and hosted by public procurement experts, based on newly developed e-learning materials enabling individual participation or personal training occasions (either online or in-person), the development of which will be coordinated by the Ministry responsible for public procurement.
- (31) The first deadline to be met is 31 March 2024, by which the Government should provide training occasions for 1 000 SMEs. The Government also undertook to provide such trainings for at least a further 1 200 SMEs by 30 June 2026.
- (32) In the Third Quarterly Report, Hungary provided updates on the implementation of this remedial measure. It confirmed the completion of the three public procurement teaching materials that form the basis of the training system. Furthermore, the Hungarian Government informed the Commission services that in August 2023, information leaflets started being sent out to SMEs.
- (33) As a result, at this stage, the Commission finds that the implementation of this remedial measure is progressing in a timely manner.

²⁸ Published in No 47 of 2023 of the Hungarian Official Gazette.

²⁹ Remedial measure (m) under the Council Implementing Decision.

2.2.4. *Setting up a support scheme for compensating the costs associated with participating in public procurement of micro, small and medium-sized enterprises*³⁰

- (34) Under this remedial measure, the Hungarian Government committed to set up and launch by 31 March 2023 a support scheme providing 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 by 30 June 2026 for 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.
- (35) In its Second Quarterly Report, Hungary informed the Commission services that on 31 March 2023, the submission interface for the call for applications for participation in the support scheme was opened and therefore the application process is ongoing.
- (36) However, before opening the application process, the Commission sent comments to Hungary (on 15 March, 5 April and 20 October 2023), highlighting deficiencies in the design of the support scheme that put compliance with commitments in the remedial measure at risk. Currently, in line with the principle of sincere cooperation, discussions are on-going at expert level between the Hungarian authorities and the Commission services.

3. CONCLUSIONS

- (37) The Commission has exchanged with the Hungarian authorities since the adoption of the Council Implementing Decision regarding the appropriate new remedial measures that Hungary could adopt in order to solve the outstanding issues outlined therein, as required by Article 7(1) of the Conditionality Regulation. While the Commission is ready to continue these exchanges in a spirit of sincere cooperation, it takes note of the fact that Hungary has so far not submitted any written notification pursuant to Article 7(1) of the Conditionality Regulation. In addition, the Commission is not aware that Hungary has adopted any new remedial measures with a view to addressing those outstanding issues³¹.
- (38) In light of the foregoing, the Commission finds that, in the absence of any new remedial measure adopted by Hungary and notified to the Commission in accordance with Article 7(1) and (2) of the Conditionality Regulation, and in view of the assessment presented above, the situation leading to the adoption of the measures has not been remedied and the Union's budget remains at the same level of risk. Therefore, the measures under Article 2 of the Council Implementing Decision should remain in place.
- (39) This Decision is without prejudice to the obligation 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 Article 3 of the Council Implementing Decision,

³⁰ Remedial measure (n) under the Council Implementing Decision.

³¹ See recital 22 above.

HAS ADOPTED THIS DECISION:

Article 1

The situation leading to the adoption of measures under 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, 13.12.2023

For the Commission
Johannes HAHN
Member of the Commission