



Judgments of the General Court

in Cases T-115/23 | Debreceni Egyetem v Council, T-132/23 | Óbudai Egyetem v Council, T-133/23 | Állatorvostudományi Egyetem v Council, T-138/23 | Semmelweis Egyetem v Council, T-139/23 | Miskolci Egyetem v Council and T-140/23 | Dunaújvárosi Egyetem v Council

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Rule of law: the General Court dismisses actions brought by six Hungarian universities challenging the prohibition on funding, from the Union budget, public interest trusts or entities maintained by such trusts

In doing so, it clarifies the conditions for the adoption of measures to protect the Union budget taken on the basis of the rule of law conditionality regulation

In 2021, the founding and management rights of most higher education institutions in Hungary, previously maintained by the State, were transferred to public interest trusts.

In order to protect the Union budget against breaches of the principles of the rule of law in Hungary, the Council of the European Union adopted, under the rule of law conditionality regulation, ¹ a decision ² including a provision prohibiting the European Commission, in the context of the implementation of the Union budget, from entering into legal commitments with any public interest trust or any entity maintained by such a trust.

Against that background, six Hungarian universities applied to the General Court of the European Union to have that provision annulled. The pleas in law raised by them are largely similar, although some of those pleas were not raised in all the actions. The pleas allege, *inter alia*, that the Council lacked competence to adopt the contested provision (T-115/23); breach of the obligation to state reasons (T-132/23 and T-138/23); infringement of the rule of law conditionality regulation, and in particular a lack of individual breaches of the principles of the rule of law by the entities concerned (T-132/23 and T-138/23) and a lack of any link between the potential breaches of the principles of the rule of law and their impact on the Union budget (T-132/23 and T-138/23); breach of the principle of proportionality; interference with academic freedom ³ (T-115/23); and infringement of the freedom to provide services and of Articles 165 and 179 TFEU (T-115/23).

The General Court dismisses all six actions for annulment.

First, regarding the Council's alleged **lack of competence to adopt the contested provision**, the General Court finds that the Council exercised its exclusive competence relating to the establishment and implementation of the budget, and not a competence in the fields of education and research. Furthermore, since the European Union has, in any event, a supporting competence and a shared competence in those fields, it is necessarily able to suspend temporarily the implementation of its budget for programmes, such as Erasmus+ and Horizon Europe, vis-à-vis certain Member States, in particular in the event of breach of the principles of the rule of law.

Secondly, concerning the breach of the obligation to state reasons, the General Court states that **the Council set out in a sufficiently detailed and comprehensive manner the reasons for the adoption of the contested provision**. It is apparent from its decision that the breach of the principles of the rule of law stems **from a factual situation and from the regulatory framework in Hungary**, which does not prevent top-level officials, including senior political executives,

from sitting on the boards of public interest trusts. That breach is assessed by the Council from the perspective of the principle of legal certainty, the prohibition of arbitrariness of the executive and the principle of the separation of powers, and is manifested, in the present case, by the existence of possible conflicts of interest.

Thirdly, as regards the infringement of the rule of law conditionality regulation, the General Court recalls, first of all, that the **Courts of the European Union are to carry out a full review in the present case**, in particular of the conditions for the adoption of measures to protect the Union budget.

Next, as regards **the existence of a breach of the principles of the rule of law**, the General Court considers that the rule of law conditionality regulation covers both individual breaches of the principles of the rule of law and systemic breaches. It finds that the breach in the present case is systemic in nature, in that it results **from Hungary's systemic inability, failure or unwillingness to prevent decisions taken in breach of the applicable law on conflicts of interest**.

Therefore, the General Court holds that the finding of a breach of the principles of the rule of law did not require individual breaches to be established and that that breach was established to the requisite legal standard.

Lastly, the General Court takes the view that **there is a genuine and sufficiently direct link between the breaches of the principles of the rule of law and the impact on the Union budget** (T-138/23 and T-132/23). Public interest trusts and, consequently, top-level officials and senior political executives sitting on the boards of such trusts wield significant powers over the budgetary, operational and organisational affairs of higher education institutions, such as the applicants. There is therefore a genuine and serious risk that decisions on the development of programmes, university training courses and EU-funded research and development projects, as well as the hiring of staff, may be directly influenced by political considerations. In particular, the General Court finds that, as regards the Erasmus+ and Horizon Europe programmes, public interest trusts are able to play a role in the disbursement of EU funds to final beneficiaries. More specifically, in the context of the Erasmus+ programme, there is a risk that conflicts of interest could interfere with the selection of beneficiary students, including with the choice and mutual recognition of eligible courses taken in other Member States, thereby introducing into that selection process considerations going beyond the assessment of academic merit. In view of the pervasiveness of political control and the risk of conflicts of interest, the Council asserted before the General Court that all internal processes, university procedures and governance structures involved in the use of EU funds are susceptible to external influence, which could result in the inappropriate expenditure of EU funds. The protection of the financial interests of the Union is based on the premiss that its financial resources are not to be used to finance entities whose operating arrangements breach the principles of the rule of law.

Fourthly, as regards **the proportionality** of the contested provision, the General Court holds that that provision is proportionate and serves to achieve the general interest objective of protecting the Union budget. The General Court points out, first of all, that the purpose of the rule of law conditionality regulation is to protect the Union budget and not to penalise, as such, breaches of the principles of the rule of law in a Member State. It considers, next, that it has not been established that there was any other less onerous measure capable of achieving that objective. The contested provision applies only to new legal commitments and does not have any effect on programmes already in progress on the date of its taking effect. In addition, Hungarian universities which are not maintained by public interest trusts, as well as their students, teachers and researchers, continue to be able to benefit from EU-funded education and research programmes. Therefore, the overall allocation of funds is not affected. Lastly, the General Court rejects the argument that the potential impact on final recipients and beneficiaries was not taken into account. The fact that that matter was indeed taken into account is apparent, *inter alia*, from the fact that the contested provision is the least disruptive to the programmes already in progress on the date of its taking effect and that it does not affect Hungary's obligations relating to the implementation of the programmes and funds concerned, in particular its obligations towards final recipients and beneficiaries.

Fifthly, the General Court considers that **the measure at issue does not interfere with academic freedom**. In that context, the General Court recalls that academic freedom incorporates a requirement for higher education institutions to be autonomous vis-à-vis public authorities and, in particular, the executive. In the present case, it concludes that the contested provision constitutes a **measure of a financial nature** and does not contain **any prohibition or requirement relating to the academic or scientific activities of those institutions**. Thus, the fact that Member States may, in the event of serious breaches of the principles of the rule of law, including in the exercise of their powers in relation to the organisation of higher education, vocational training and research and development, be subject to remedial measures

does not, in itself, interfere with academic freedom. A refusal to allocate financial resources to a research and knowledge-dissemination organisation, such as a university or a research institute, or to researchers or research groups does not, in itself, constitute an interference with or a restriction of academic freedom, provided that any decision refusing to grant financial resources is based on scientific considerations or on policy guidelines in the fields of education and research and development drawn up by the legislature, or stems from objectives of general interest clearly laid down by law. In any event, the General Court makes clear that, even if the contested provision were to interfere with academic freedom, it would be justified and proportionate in the light of the objective of protecting the Union budget. That provision also contributes to preserving institutions' autonomy by minimising the scope for arbitrary interference by the executive in their organisation and is **thus conducive to ensuring respect for academic freedom itself and for the principles of the rule of law**.

Sixthly, concerning the infringement of the **freedom to provide services** and of Articles 165 and 179 TFEU, the General Court rejects that plea. As regards the freedom to provide services, it points out that, although the case-law has excluded from the concept of 'services' courses provided by certain publicly funded educational institutions, the Court of Justice has nevertheless included courses provided by educational institutions essentially financed by private funds. In the present case, however, none of the evidence adduced made it possible for the General Court to determine whether the teaching and research activities of the higher education institutions were essentially financed by private funds. Thus, the General Court concludes that those activities are not 'services' within the meaning of Article 57 TFEU. In any event, even if services were involved or even if there was a restriction on or obstacle to the freedom to provide services, the General Court points out that **the contested provision pursues an objective of public interest and is proportionate**.

With respect to **Articles 165 and 179 TFEU**, the General Court states that it is not possible to rely on those provisions in the present case, since they are not cross-cutting provisions having general application. Thus, the different elements, objectives and actions listed in those articles need not be taken into account in a binding manner in the application of the provisions of the FEU Treaty relating to the fundamental principle of freedom of movement. However, the General Court points out that the fundamental principle of freedom of movement is particularly important in the field of education, scientific research and technological development, in particular in the context of the objective of achieving a European research area in which researchers, scientific knowledge and technology circulate freely. The General Court makes clear that, since the European Union established and financed the Erasmus+ and Horizon Europe programmes, it must ensure not only that the allocation or withdrawal of grants and programmes designed to facilitate the mobility and freedom of movement of the beneficiaries of those programmes does not create an unjustified restriction on the right to cooperate freely across borders and to move and reside in the territory of the Member States; it must also ensure that countries in receipt of funds under the Erasmus+ and Horizon Europe programmes respect academic freedom, in order to guarantee scientific and academic excellence.

NOTE: An action for annulment seeks the annulment of acts of the institutions, bodies, offices and agencies of the European Union that are contrary to EU law. The Member States, the European institutions and individuals may, under certain conditions, bring an action for annulment before the Court of Justice or the General Court. If the action is well founded, the act is annulled. The institution concerned must fill any legal vacuum created by the annulment of the act.

NOTE: An appeal, limited to points of law only, may be brought before the Court of Justice against the decision of the General Court within two months and ten days of notification of the decision.

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The full text and, as the case may be, an abstract of the judgments ([T-115/23](#), [T-132/23](#), [T-133/23](#), [T-138/23](#), [T-139/23](#) and [T-140/23](#)) is published on the CURIA website on the day of delivery.

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¹ [Regulation \(EU, Euratom\) 2020/2092](#) of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget.

² [Council Implementing Decision \(EU\) 2022/2506](#) of 15 December 2022 on measures for the protection of the Union budget against breaches of the principles of the rule of law in Hungary.

³ Article 13 of the [Charter of Fundamental Rights of the European Union](#).