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Didier Reynders
Vice President for Values and Transparency
European Commission

Rue de la Loi / Wetstraat 200
1049 Brussels
Belgium

September 20th, 2020

Subject: Ongoing disregard for CJEU judgment on ‘foreign agents act’ in Hungary and its impact on the rule of law

Dear Commissioner Reynders,

It is with profound concern that we write to you about a case of explicit disregard for the authority of the Court of Justice of the EU (CJEU), resulting in a new repressive measure deployed in Hungary against civil society organizations that have decided to stand up for the rule of law in the past years. Our organization, Az emberség erejével -- Cum Virtute Humanitatis Alapítvány, is based in Pécs, Hungary, and has been one of many civil society organizations that have been denied EU funding precisely due to our insistence to observe EU law and authority of CJEU.

As you will recall, in 2017, the Hungarian Parliament enacted Law No LXXVI of 2017 on the Transparency of Organisations which Receive Support from Abroad, a sweeping regulation that imposes obligations of registration, declaration and publication on certain categories of civil society organisations directly or indirectly receiving support from abroad exceeding a certain threshold and which provide for the possibility of applying penalties to organisations that do not comply with those obligations. This law did not spare those organizations either which received funds from EU sources, requiring such organizations to register upon receipt of a certain threshold of EU funding as “foreign agents”. On June 18th, 2020, however, in Case C-78/18, the CJEU found that by enacting the aforementioned regulations, Hungary has introduced discriminatory and unjustified restrictions on foreign donations to civil society organisations, in breach of its obligations under Article 63 TFEU and Articles 7, 8 and 12 of the Charter of Fundamental Rights of the European Union.

However, while the CJEU has already ruled on the unlawfulness of said regulation, we see a growing disregard for the Court’s authority in Hungary. While Parliament has not taken any steps to repeal the legislation that violates EU law, a manager and distributor of EU funds in Hungary has recently -- well after the Court’s judgment mentioned above -- decided to apply the law in question, as explained below. This not only shows disrespect for the European value of the rule of law (TEU 2), but also openly defies one of the foundational principles of the public law of the Union: the primacy of EU law over national law. As early as 1978, the Court made it clear that in cases of conflict between national law and EU law, the latter shall prevail and be applied, irrespective of whether provisions of the national law generating the conflict are still in effect (*Amministrazione delle Finanze dello Stato v. Simmenthal SpA* (1978), Case 106/77).



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On 3rd May 2020, our organization submitted an application for grants under the “Erasmus+” application scheme. Grants within this application scheme are financed by EU funds, with Tempus Közalapítvány, a foundation registered in Hungary, being responsible for the management and distribution of these grants. We were dismayed to receive an e-mail from Tempus Közalapítvány on 24th August 2020, which not only happily informed us that our application, upon evaluation, reached the grant eligibility threshold, but also requested us to declare that we fully comply with the provisions of Law No LXXVI of 2017 on the Transparency of Organisations which receive Support from Abroad, warning us that such declaration was a necessary condition for receiving the grant we applied for.

In response to this request, our organization respectfully informed Tempus Közalapítvány on 25th August 2020 that the legal provisions concerned had already been found to be in violation of EU law, and as such, are inapplicable in the Member States; and hence, that our organization refused to submit the declaration requested unlawfully. Tempus Közalapítvány responded, on 27th August 2020, that their Board of Trustees had decided on August 24th, 2020, “that only organizations operating lawfully, observing domestic law could receive funding”, and as Law No LXXVI of 2017 is “still in effect”, a declaration regarding compliance with it may be lawfully required. On 31st August 2020, the results of the application were announced, and our organization was denied funding.

We have also been informed that organizations which had applied for the same funds but whose application had received less favorable evaluation were not asked to provide evidence of or commitment to register as foreign agents in compliance with Law No LXXVI of 2017. This further testifies to the fact that we were asked for such evidence or commitment at a stage in the application process where our application already received favorable evaluation, and the grant would have been awarded, had it not been for our consistent refusal to commit to a stigmatizing national regulation which has already been found unlawful by the CJEU.

We respectfully ask you to investigate the case above, and to use all available means to ensure that the rule of law and the primacy of EU law are upheld in Member States, including the management and distribution of EU funds within the Member States, as well as to ensure that proper consideration is given to the facts described above in the European Rule of Law Mechanism.

Thank you for your consideration.

Sincerely yours,

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András Nyirati
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