Unfreezing EU Funds Without Melting the Rule of Law

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Three years ago, we wrote Frozen, a story about how EU institutions had blocked billions of euros in EU funds on rule of law grounds for Poland and Hungary. After the recent Hungarian parliamentary elections, a much happier scenario is visible in Budapest and Brussels: unfreezing those same funds. But how can this be speedily achieved while honouring the rule of law? This is far from straightforward.

While an election can be a celebratory occasion to revisit frozen funds, the Commission acted too speedily to unfreeze funds when Poland's 2023 election brought a pro-democratic government into power, thus losing any leverage the EU may have had to overcome roadblocks to reform within Poland which had powerful veto players left in place from the prior government. Re-democratisation does not instantly occur with a hopeful election. We cannot unscramble rule of law eggs, nor abandon the rule of law while restoring it. Recovering a democratic, rule of law state is a contentious but largely uncharted exercise, as we have each explained in respective critiques of the Venice Commission's wrong-headed approach to Poland (here and here). Re-democratisation and restoring the rule of law requires striking the right balance between legal, policy and political considerations, using strategic savvy as well as tactical sequencing.

Already with the new Hungarian transition, it is clear that actors, aims, interests and options diverge at EU-level and national level. At the EU-level the focus should be on safeguarding the integrity of the rule of law conditionality procedure (although the existing EU-record is decidedly mixed), not least because the Commission has announced it wants to keep and even extend it further in the next multi-annual budget. At the Hungarian national level, quick unfreezing is urgent, given the budget mess that the new Magyar government has inherited. In addition, Tisza's electoral promises centred on this, making swift delivery domestically desirable. But implementing and sustaining rule of law reforms is crucial there too. Meeting the conditions that the EU should require with a new government that is still finding its sea legs is not easy given the looming 31 August 2026 deadline for complying with substantive requirements under the Recovery and Resilience Funds (RRF) from which all final payments must be made by 31 December 2026 (Reg. 2021/141, art. 20(5)(d) and art. 24(1)).

So how can conditionality and the rule of law be now run in reverse? Once conditions have been laid down to receive EU money, what conditions have to be met in order for those EU funds to be released? In this essay, we lay out the ice cold and red hot complex legal and policy contours and state of play. We then describe the different interests and options available to national and EU actors, along with the best tactics to move forward if the strategy is unfreezing funds without melting the rule of law.

Frozen funds, high stakes, little time

Around €36 billion worth of EU funds earmarked for Hungary were frozen because of rule of law problems caused by the Orbán government. This freezing was legally arranged in surprisingly complex fashion, through the parallel invocation of no less than three different EU legal instruments. First, the Rule of Law Conditionality Regulation (CR) was triggered, due to the lack of anti-corruption measures combined with the creation of unaccountable so-called public interest trusts that converted public and publicly accountable institutions like universities and hospitals into unaccountable private foundations. Second, the Recovery and Resilience Facility (RRF)-conditionality contains 27 so-called super-milestones that must be met before funds would flow (for details, see here and here). Those milestones require restoring judicial independence

and installing anti-corruption measures (overlapping with CR requirement), among other things. Finally, the Common Provisions Regulation (CPR)'s Charter-conditionality was put in play because Hungary had infringed Charter rights in the course of spending EU money, principally with regard to the right to a fair trial (overlapping the judicial independence requirements flagged in the RRF freezes). CFR freezes also added in other concerns, such as academic freedom and the right to asylum. In other words, some issues were covered in two or three different ways, from different angles, on different legal bases. The image of frozen spaghetti comes to mind.

Given the enormity of the mess left behind by Orbán and the complex way that the EU singled out elements of that mess, it will inevitably take time to put repair measures in place. This will require withdrawing some laws while adopting new ones – and then demonstrating improvements in practice through a track record of application proving reforms are real. All this must be accomplished before Hungary can ensure that EU funds are released into a safe space. The new Hungarian prime minister, Péter Magyar, campaigned on a promise to get funds released as soon as possible, and needs to deliver on this to maintain credibility. The EU, too, has signalled that time is of the essence and has started a series of rapid-fire meetings to meet the end-of-summer deadline for compliance with RRF milestones.

That said, ensuring actual change on the ground in a short space of time is practically impossible, and yet the money will be lost unless the Commission authorizes its release in just a few months. Faced with the dilemma of big ask/short time, a classic trade-off between political expediency and a principled stance beckons. If only it were that simple. In fact, there are at least four reasons why this will be difficult to achieve.

Hot legal mess (largely of the EU's own making)

First, the current unfreezing effort starts against a background in which €10 billion of the cohesion funds initially frozen under the CPR were then partly *unfrozen* in December 2023, when the Commission proclaimed that some inadequate, paper-only reforms met the conditions. (At that time, the other freezes were maintained.) Handing over the money was clearly a political ploy at European Council level to get Orbán to lift his veto for support to Ukraine. While politically understandable, it dramatically complicates the current legal picture and possibilities.

First, if the Commission considered judicial independence issues solved under the CPR in December 2023 (which they were not), is it now still of that same view vis-à-vis the Recovery Funds, whose freeze contains the same precise conditions? The changes that allowed the Commission to claim that Hungary complied with the CPR in December 2023 were paper reforms not put into practice and worse things have happened since.

Even more importantly, in the interim, the European Parliament sued the Commission for this partial unfreezing under the CPR (Case C-225/24), on the argument that unfreezing was untimely and not substantively justified. The Advocate-General issued an Opinion in February 2026, siding with the Parliament in arguing that the Commission's discretion was quite limited (see here for insightful analysis by Veraldi). The Court's judgment is awaited any day now and could well occur before the 31 August 2026 deadline. Might any outcome in this case also affect what the Commission could justifiably release from the Recovery Funds, since precisely the same judicial independence issues are in play there?

Second, although surprisingly under-reported, six (!) captured Hungarian universities privatized as "public interest trusts" brought cases in Luxembourg after their funds were frozen under the Conditionality Regulation (See T-115/23, T-132/23, T-133/23, T-138/23, T-139/23 and T-140/23). The triggering decision (particularly Article 2(2)) suspended 100% of the funding to such entities. The captured universities have argued that blocking 55% of some of the cohesion funds (see Article 2(1)), but at the same time blocking 100% of the funds to public interest trusts violated the proportionality principle in the CR (Article 5(3)). At the very least, they say it was unevenly applied. (As it happens, this was precisely the reason why we,

together with R. Daniel Kelemen, argued in a 2022 study that an across-the-board 100% freeze for all programs would be easier to defend.) The outcome of these far-from-frivolous cases, heard as long ago as September 2025, is uncertain. If the Court finds in favour of the captured universities, it creates a mess out of the first application of the Conditionality Regulation and calls into question the viability of the remaining anti-corruption conditions – which, in turn, again also reappear in the RRF super-milestones which need to be complied with by 31 August 2026.

Third, of a totally different legal nature, the new Hungarian government does *not* have power over every part of the Hungarian constitutional system that is to deliver the required rule of law reform, as one of us recently argued. Even if it won a supermajority in parliament and can therefore formally propose to change the constitution, the new government does not control all levers needed. This is because the still captured presidency, two highest courts and the prosecution service, among others, still constitute potential veto points. The president has already made clear he is in no mood to cooperate, instead gearing up for lawfare couched in lofty rule of law language. Can the rule of law be guaranteed in Hungary if the government cannot follow through with actual on-the-ground reforms before the funds are released, though no fault of its own? This is hardly a detail if you are unfreezing €26 billion.

Fourth, we should consider what happened when the Commission unfroze €137 billion in EU funds for Poland in February 2024, funds that had been frozen under both the CPR and Recovery Fund because of damage to judicial independence. The release of funds was based on a certain eu-phoria at the Polish election results, but the judicial reforms were based only on a promise. After all, the Polish government then – like the Hungarian government now – could not easily follow through with legal change. The Polish presidency has been held ever since by someone from the pro-autocratic party who blocks all legislation reforming the judiciary so very little change has happened on the ground since. As a result, the EU gave up its €137 billion leverage with nothing to show for it, making it subject to credible accusations of having acted politically with little regard for law.

The Polish experience will be invoked by all sides for different purposes. Clearly, Magyar will refer to this and expect to rely on similar (party-political) favours. After all, like Tusk in Poland, and von der Leyen at the Commission, his Tisza party belongs to the European People's Party. But will the Commission have learned a different lesson, namely that it should be much more careful in cases where pro-autocratic veto players can still block reforms?

The Commission might be more cautious in releasing funds at the present moment because four judges' associations have sued for untimely release of RRF funds to Poland (see Case C-555/24 P), challenging the amount of discretion an EU institution has to move away from legal benchmarks it has itself proposed. This case, like the pending CPR case dealing with the release of funds to Hungary, argues that judicial independence was never really restored. The Advocate-General has issued her Opinion in this case in April 2026 (for analysis, see here), so a judgment of the Court could again be imminent, perhaps by 31 August 2026. It is possible that the first decision in this case will only address the issue of standing of the judges' associations and the case may be remanded to the General Court to deal with the substance. But as long as that case is pending, the Commission may be cautious about releasing funds without change in the precise conditions that led to the freezing.

Clearly, unfreezing funds without melting the rule of law is going to be extremely complex, much more so than has so far been acknowledged. As a starting point, this requires mapping relevant national and EU actors, their interests and options. It should take into account timing issues given the first deadline of 31 August 2026, and given the fact that no less than three sets of Court cases are pending that will bear on the lawful discretion the Commission has to release funds already frozen. These cases can be decided before the deadline, while the outcome in each can affect the whole chess board in an instant. So, who should do what, when?

Navigating conditionality confusion: who should do what, when?

In Poland, little progress was achieved after the funds were released because the EU lost its potential leverage over veto players. Knowing that, paradoxically, the Hungarian government might actually strengthen its position vis-a-vis the EU by being open about its limited control over the actors needed to get onside to deliver rule of law reforms. If the funds cannot be released until the Hungarian president signs the relevant legislation and the Constitutional Court upholds it, then the delay in the release of EU funds will be their fault. Withholding EU funds until the veto players sign on will empower the Magyar government, make the EU co-responsible for solving the issue, and keep Hungarian veto players under permanent pressure of the Hungarian electorate that gave Tisza a landslide.

EU institutions seem keen to help the Hungarian government deliver quickly, but they need to consider more than Hungary. They should take into account the integrity of rule of law conditionality at EU level, which would be in mortal danger if it were overtly politicised and deprived of substantive credibility by releasing funds without real reform.

Both the EU and the Magyar government should start from a clear-eyed analysis that it is in everyone's interests, including Hungary's, that conditionality mechanisms are applied in accordance with what the law requires: sound financial management (CR) and rights-based legality (CPR Charter-conditionality). All sides would also do well to await at least the judgment in C-225/24 (about the partial CPR-unfreezing to Hungary) so as to make sure that the Commission does not now release funds to Hungary, only to find out after the fact that the Court demands strict(er) insistence on delivering on rule of law progress. Imagine the even greater mess if unfrozen funds need to be refrozen.

Laying out the story since we published our analysis in Frozen, we hope we have provided a sense for how complicated the matter has become and also laid out a clearer picture of how tactics and timing of the release of funds could support the longer-term strategy of restoring Hungarian democracy. The EU should fully and openly support the new Hungarian government's ambition to restore the rule of law, while insisting that EU law must be respected so that EU monies will only be released if and when laws are on the books that are actually being applied. The EU should facilitate this by postponing the unrealistic deadline of 31 August 2026 for Hungary (while perhaps also delicately asking in return from the Hungarian government that the six captured universities withdraw their cases so that we do not end up with another Orbán hangover damaging the CR). This approach will have the additional advantage that any Luxembourg rulings can be incorporated in working methods before funds are released in cases where full compliance is in doubt.

Unfreezing funds, saving rule of law conditionality

The new Hungarian government has won an overwhelming mandate with huge public support for unfreezing EU funds. Every sign so far is that the Magyar team aims to work as fast as possible to meet the conditions necessary for the funds to be unfrozen, not least because the budget that the government has inherited is even worse than publicly advertised before the election. The EU institutions' aim should be to ensure that Hungarians have the benefit of EU funds that have remained reserved for them as soon as feasible.

But there is also a decisive Europe-wide interest in preserving credibility of EU rule of law conditionality that proved so influential in both the Polish and Hungarian elections. The EU must take its role in re-democratisation seriously in a strategic way and avoid throwing out a healthy new baby with newly unfrozen water. The EU must protect one of its most powerful tools on behalf of all. After all, non-Hungarian EU citizens might one day also need to benefit from their power. For that to be possible, these instruments need to be saved, not turned into political bargaining chips.

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