Three Readings of One Decision

Case C-225/24 and the Limits of Procedural Depoliticisation

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The dominant reading of the December 2023 unfreezing of funds for Hungary – most recently restated on this blog, following Advocate General Tamara Ćapeta's February Opinion proposing its annulment – describes that release as "clearly a political ploy at European Council level to get Orbán to lift his veto for support to Ukraine". The authors' concern, written in the shadow of the new Hungarian government's request for accelerated unfreezing of the remaining frozen funds, is that the Commission must now avoid repeating the error: the mechanism, they argue, must be insulated from political bargaining if it is to retain credibility. Their diagnosis of what went wrong is sharp. Their assumption about what would constitute going right may be less secure.

The remaining choice is not between political and depoliticised enforcement. It is between different forms of politicisation – the Commission's de facto exercise of discretion under political conditions, or the Parliament's and Court's ex post correction of that exercise through legal duties read into the procedural form. That choice is now being made slowly, and through litigation, in favour of the procedural-judicial pole – a settlement that would establish the Court as the principal agent once it issues its final decision in late 2026. Whether that answer is right is contestable. That it is an answer to the question – not the restoration of a prior settlement – is not.

The Background

On 13 December 2023, the European Commission announced that it would release €10.2 billion in cohesion funds to Hungary that had been frozen since late 2022. The justification was technical: Hungary had passed judicial reforms in May 2023 addressing concerns about political interference in the courts, and the Commission concluded that the four super milestones related to judicial independence – four of the twenty-seven such milestones agreed in Hungary's Recovery and Resilience Plan – had been substantively met.

The timing was less technical. The announcement came on the eve of a European Council summit at which Hungary was expected to block the opening of accession negotiations with Ukraine and a €50 billion financial support package for Kyiv. Viktor Orbán left the room to allow the accession decision to pass. He vetoed the financial package the following night. Six weeks later, he withdrew the veto. German Chancellor Olaf Scholz publicly denied any linkage between the funds release and Hungary's eventual consent. Commission officials maintained the assessment had been driven by the legal merits of the judicial reforms.

The European Parliament did not accept this account. On 18 January 2024 it adopted a resolution condemning the release as premature and politically motivated. On 25 March 2024 it filed suit before the Court of Justice in Case C-225/24, seeking annulment of Commission Implementing Decision C(2023)9014 on three grounds: manifest errors of assessment, breach of the duty to state reasons, and misuse of powers.

The Opinion

On 12 February 2026, Advocate General Tamara Ćapeta delivered an Opinion proposing annulment. The Commission, she found, had authorised disbursement before the required Hungarian reforms had entered into force or were being effectively applied. Moreover, the Commission failed to address subsequent legislative developments weakening the judicial protections being credited. Finally, it had provided no

public explanation for how it concluded that each condition it had set had been met. The duty to state reasons under Article 296 TFEU, she emphasised, exists not only to enable judicial review but to inform "not only the Member State concerned but all EU citizens" why public funds are being released.

The Opinion is non-binding. The Court will rule later in 2026. But the configuration the dispute has produced is already analytically significant: three EU institutions have articulated three incompatible interpretations of the same administrative act. The Commission treats it as technical assessment. The Parliament treats it as political bargaining. The Advocate General reframes the dispute in terms of legal justification and institutional reasoning rather than political intent.

These positions do not disagree about the facts. They disagree about what kind of act the Commission performed, and therefore about what standards properly govern it. The Commission's discretion under the Common Provisions Regulation, on its own account, allowed it to judge sufficient what its technical services assessed as sufficient. The Parliament's position is that this discretion has limits the Commission cannot define for itself. The Advocate General's position is that the limits exist as legal duties – entry into force, demonstrated application, public reasoning – regardless of whether political bargaining occurred.

The Dominant Reading

It is the assumption that repays scrutiny: what would a release the critics could accept as non-political actually have looked like? The Parliament's accusation of disguised bargaining, the Advocate General's demand for fuller reasoning, and Morijn and Scheppele's call for stricter procedural integrity share a premise: that conditionality enforcement can be insulated from political discretion through stricter procedural discipline. That premise deserves more scrutiny than it has received. The December 2023 case may not reveal a Commission that strayed from the mechanism's proper functioning. It may reveal that discretionary flexibility was always integral to how the mechanism was expected to function under real political conditions.

Discretion as a Constitutive Feature

The 2020 Conditionality Regulation reached the statute book through Qualified Majority Voting precisely because it offered something Article 7 could not: enforcement that did not depend on unanimous political will. What it offered instead was the Commission's discretion – authority to determine whether risks to the Union's financial interests warranted suspension, and whether subsequent reforms warranted release. The structure of the mechanism presupposed continued political judgement by the Commission rather than mechanically determinable review against fixed criteria. This discretion was not a procedural defect tolerated for political reasons. It was the institutional form that made the Regulation enforceable at all.

The December 2023 decision sits inside this design, not outside it. The Commission faced a borderline case: legislative reforms passed but unevenly implemented; an institutional context in which Hungary's continued blocking of major Union decisions had operational consequences for Ukraine policy; assessment criteria the Commission had itself set. It exercised the discretion the Regulation grants it – discretion the Advocate General now reads as bounded by procedural duties the Commission did not satisfy. Whether the exercise was wise is contestable. Whether it was structurally anomalous is not.

The Commission's decision itself, C(2023)9014, was not published as a reasoned act – a fact that illustrates the tension between the discretion the Regulation allows and the public justification later demanded of it. The procedural critique points to the absence of fuller public reasoning, to the timing, to the substantive gaps between paper reforms and implementation. Each of these observations is correct. But each presupposes that the Commission, exercising its discretion responsibly, would have produced a different result – a result that the critics could recognise as non-political. No outcome available to the Commission could plausibly escape political interpretation. Every disbursement decision under the Regulation involves judgement about the sufficiency of national reform, and every

such judgement is made in a political environment that the Commission cannot pretend not to inhabit. The choice was not between political and technical assessment. It was between a politically defensible technical assessment and a politically defensible decision to continue freezing. The Commission chose the former. The procedural critics would have preferred the latter. Neither choice is procedurally pure.

What the Advocate General Changes

Ćapeta does not demand the eradication of discretion. She demands its public exercise – reasoning capable of withstanding external scrutiny. The distinction matters. The Opinion does not return the mechanism to a depoliticised baseline; it requires that the political judgement embedded in every disbursement be made transparent. If the Court follows her, the mechanism will not simply become more procedurally disciplined. It will become institutionally different: more judicialised, more review-oriented, more dependent on litigation as a routine constraint on executive discretion. The Commission will be obliged to publish reasoned decisions capable of withstanding judicial scrutiny. Disbursement timelines will accommodate the possibility that any release may be challenged. The Court itself, through Article 263 actions, will become a recurrent participant in the application of conditionality rather than a residual reviewer of contested cases.

Whether this constitutes an improvement depends partly on what one believes conditionality enforcement is meant to achieve. A mechanism that requires Commission decisions to survive litigation by the Parliament will be slower, more cautious, and more procedurally defensible. It will also be less able to respond to the variable political conditions under which Member States actually reform – or fail to reform. The discretion that procedural critics treat as the mechanism's vulnerability is also what allows it to function in cases that resist categorical resolution. Constraining the former constrains the latter.

This is not an argument against the Ćapeta Opinion. It is an argument against the assumption that the Opinion, if adopted, will restore a mechanism to its proper functioning. There is no prior state of proper functioning to restore. The mechanism's procedural form has always rested on political discretion. The Opinion, if it becomes law, will produce a different mechanism – one with different strengths and different vulnerabilities.

The Tisza Test

This matters now because the question is no longer hypothetical. The April 2026 Hungarian elections have produced a government that has campaigned on accelerated unfreezing of remaining frozen funds. The Commission faces, again, a borderline case: a government substantively committed to reform, but operating against still-captured institutional veto points, under a deadline that makes full demonstration of compliance practically impossible. The procedural integrity that Morijn, Scheppele, the Parliament, and the Advocate General have insisted upon would require the Commission to withhold release until reforms are not merely legislated but applied – by institutions that the new government does not fully control.

This is the precise dilemma the December 2023 decision tried to resolve, in the opposite political direction. The procedural critique that condemned the earlier release may now require the Commission to delay a release the same critics support on substantive grounds. The mechanism's stability under either outcome is unclear. What is clear is that the procedural form alone will not generate the answer. Some judgement about the political conditions of Hungarian reform will be made. The only question is whether the Commission makes it visibly, or whether it is made implicitly through litigation timelines and dotted-line institutional pressures.

Coda

Rule-of-law conditionality has not collapsed. It is functioning. What Case C-225/24 has clarified is a tension the architects of the 2020 Regulation either did not anticipate or chose to leave unaddressed: a single mechanism cannot indefinitely sustain both a politically responsive instrument of executive judgement and a procedurally disciplined object of judicial review.

The fracture the case exposes is the moment at which the Union's institutions began choosing which of the two will prevail.

Neither pole is the apolitical one. They distribute political authority differently – the Commission deciding under live conditions, the Parliament and Court correcting after the fact through duties read into the procedural form.

Procedural critics may be right about the mechanism's instability and still mistaken about its nature – about what, exactly, they are trying to stabilise. The December 2023 case did not reveal a system deviating from its design. It revealed a design that always carried an unresolved question: in genuinely borderline cases, whom does the Union trust to exercise discretion? That question is now being settled, slowly and through litigation, in favour of the procedural-judicial pole. The case did not restore an old equilibrium. It forced the Union to answer one it had left open.

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