Frozen Funds as an EU Enforcement Mechanism: Hungary as Test Case

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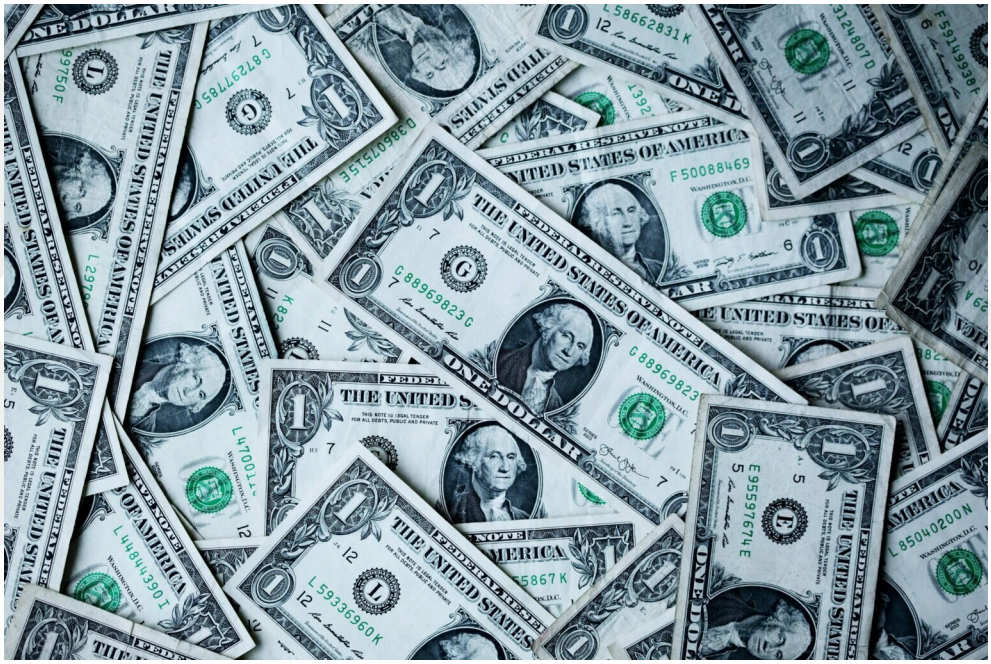


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When Péter Magyar's Tisza party ended Viktor Orbán's sixteen-year rule in the election of 12 April 2026, the EU treated it as more than a domestic transfer of power. Commission President Ursula von der Leyen framed it as Hungary choosing to "return to the heart of our Union" (European Commission, 2026), and within weeks, the Commission and Hungary had negotiated a roadmap to release roughly €16.4 billion in EU funds frozen since 2022 (European Commission, 2026). This sequence of election, political rapprochement, and rapid movement on frozen money invites a broader question that goes beyond Hungary. *When the EU freezes funds over rule-of-law concerns, is it operating a genuine legal enforcement mechanism, or a political sanction that gets legal justification attached afterwards?* Hungary is the clearest current illustration, but the question applies to any

Member State facing conditionality, including whatever precedent this sets for future cases.

This brief maps the three legal channels the EU has used against Hungary – Article 7 TEU, financial conditionality, and ordinary infringement proceedings – asks which one is actually doing the enforcement work, and closes with a forward-looking assessment of what unfreezing Hungary's remaining funds legally requires.

The EU's Legal Toolkit

Article 7 TEU

Article 7 TEU allows the Council to determine a "clear risk of serious breach" of Article 2 TEU values and, if a breach is confirmed unanimously by the European Council, to suspend a state's voting and other membership rights (Art. 7 (2)-(3)) (Council of the European Union, 2018). The European Parliament triggered the procedure against Hungary in September 2018. Seven years and multiple General Affairs Council hearings later, the Council has still never taken even the Article 7(1) TEU vote determining that a risk exists, let alone moved to sanctions. The structural flaw sits at the escalation stage: the unanimity requirement means the accused state's allies can block the procedure indefinitely. Poland shielded Hungary from 2018 until its own 2023 election, and Hungary has reciprocated for other states since. Since the April 2026 change of government, the Hungarian delegation has used the recurring hearings mainly to report on its cooperative posture and its interest in unlocking funds. The procedure continues formally, but it was never the lever that produced change.

Financial conditionality

Three distinct instruments, often collapsed together in public debate as "the Conditionality Regulation," have done the work usually associated with financial rule-of-law enforcement:

- **Regulation (EU, Euratom) 2020/2092** (the Conditionality Regulation proper) ties EU budget disbursement to rule-of-law breaches that affect or risk affecting sound financial management or the Union's financial interests (European Parliament and Council of the European Union, 2020). It requires a Commission proposal and a Council decision by qualified majority. The Commission first triggered it against Hungary in April 2022, citing public procurement corruption risks; the Council approved the suspension of 55% of three cohesion programmes, amounting to roughly €6.3 billion, in December 2022 (Council of the European Union, 2022).
- The **Common Provisions Regulation (CPR)** allowed the Commission, acting alone, to freeze cohesion funds tied to broader horizontal conditions – judicial independence, the "child protection law," and academic freedom at privatised universities. This resulted in the largest suspensions, amounting to an additional roughly €15.7 billion beyond the Conditionality Regulation freeze (European Commission, 2022).

- The **Recovery and Resilience Facility (RRF) Regulation** attached country-specific "super milestones" to Hungary's recovery grants and loans, 27 in total, covering judicial and anti-corruption reforms, whose non-fulfilment blocked €10.4 billion (European Commission, 2022).

Together, these three instruments suspended roughly €32 billion, about 16% of Hungarian GDP. Tellingly, the Conditionality Regulation itself accounts for only a modest slice of that figure; the CPR and RRF milestones, formally separate instruments with looser procedural safeguards, did most of the freezing. A partial release already occurred in December 2023, when the Commission judged paper reforms on judicial independence sufficient to unlock about €10.2 billion, a decision the European Parliament criticised as premature, since it preceded any actual restoration of independence in practice (European Parliament, 2024).

Ordinary infringement proceedings

The procedure under Article 258 TFEU is a purely legal instrument, not a political one. The purpose of the procedure is to address violations of EU law. Unlike Article 7, it does not concern violations of Article 2 TEU values as such. The European Commission, as the guardian of the Treaties, issues a reasoned opinion if it considers that a Member State has infringed the Treaties. It must first give the Member State an opportunity to present its observations. If the Member State fails to comply with the opinion within the time limit set by the Commission, the Commission may refer the matter to the Court of Justice of the European Union.

If a member state fails to comply with the measures ordered by the court to remedy the infringement, a penalty payment may be imposed under Article 260(2) TFEU. For example, in the CJEU Case C-123/22. (European Commission v. Hungary), a record amount of 200 million euros plus 1 million euros for each additional day was imposed.

However, there is no mechanism for enforcing payment against a Member State's assets. Consequently, the record-breaking sum remains unpaid to this day, as the relevant government refused to pay (COOK, L. (2024, September 18). *Hungary refuses to pay fines for breaking EU asylum rules. Brussels is taking the money anyway.* AP News.)

The developments in the new cases suggested that the scope of the proceedings would be expanded. The European Commission, for the first time, argued that Article 2 TEU values can themselves ground an infringement action rather than merely inform the interpretation of secondary law, and the court accepted the reasoning (CJEU, Case C-769/22 Commission v. Hungary). If this approach is followed in future cases, Article 258 TFEU could become a more direct option to enforcing Article 2 TEU than either Article 7 or the conditionality instruments have proven to be.

Furthermore, the duration of these proceedings is significantly too long. Consequently, the proceedings can be described as ineffective due to the lack of enforcement mechanisms. One could argue that they are primarily

symbolic and serve only to exert further pressure on the respective governments.

Which Mechanism is Actually Doing the Enforcement Work?

The record suggests financial conditionality functions less as an autonomous legal trigger and more as a legally structured channel for political bargaining. Three points support this reading.

First, the sequencing in 2026 reversed the formal legal order. The political agreement between Magyar and von der Leyen to release approximately €16.4 billion was announced on 29 May 2026, before the Commission had certified fulfilment of the underlying milestones (European Commission, 2026). The technical work of actually meeting the conditions came after the political announcement, not before it, with a hard 31 August 2026 deadline compressing what should have been a sequential legal assessment into a pre-agreed political timetable. That is the inverse of how a rules-based trigger is meant to operate.

Second, the Commission and Council retain wide discretion at every stage: which programmes to suspend, what percentage, and, crucially, what counts as sufficient remediation. The December 2023 partial release for Hungary was criticised on exactly these grounds by the European Parliament (2024), and litigation is now pending that challenges the extent of an EU institution's discretion to depart from the legal benchmarks it sets for itself (CJEU C-555/24 P Medel and Others v. Council). In addition, litigation now challenges the legality of that December release itself. Advocate General Ćapeta proposed in February 2026 that the Court annul the Commission's decision. (CJEU C-225/24 European Parliament v. European Commission). If that case is decided restrictively, it would be the clearest evidence that legal constraint, rather than political discretion, has genuine bite in this area.

Third, Article 7, the instrument explicitly designed as a legal-political sanction for breaches of values, produced no consequences over eight years. The financial instruments succeeded only because they targeted the money itself, and even then, only the state's domestic politics created an incentive to unlock it. The conditionality regime, therefore, looks like a lever the EU can pull effectively only once political conditions in the target state already favour compliance. At that point, the legal process ratifies and channels a political decision rather than compelling one in the face of resistance. This does not mean the legal framework is meaningless. It structures *how* and *how much* money moves, sets a public benchmark against which compliance can be measured, and creates a paper trail that can later be tested in court, as the pending litigation shows, but it does mean that the framework's trigger point has so far been political rather than strictly legal.

What still has to happen

The Commission has assessed the corrective measures notified by Hungary on September 9, 2026, and their implementation, and has concluded that Hungary has addressed the previously identified weaknesses and shortcomings in areas such as public procurement, the anti-corruption framework, the risk of conflicts of interest, and the effectiveness of law enforcement measures. (European Commission, 2026, 23. September) *Commission proposes to unlock €4.2 billion in Cohesion funding for Hungary and restore full access to Erasmus+ and Horizon Europe, Press Release* IP/26/1941).

However, it is questionable whether the Commission is permitted to release funds at all if the reforms have merely been initiated but not fully implemented. Looking back at the previous case involving Poland, it can be concluded that the funds were released too quickly and that the EU relinquished its leverage for sustainable reforms. This risk currently exists in the case of Hungary as well (Morijn, J., & Scheppele, K. L. (2026). *Unfreezing EU Funds Without Melting the Rule of Law*). In this case, it would at least make sense to monitor further implementation to ensure that a far-reaching reform is successfully carried out.

Conclusion

Compliance with European treaties must not depend on a future change in government. It must also be possible to ensure compliance within the respective legislative term in each country, above all to prevent measures that undermine the cornerstones of the rule of law as defined by European standards. In light of the situations in Poland and Hungary, it seems prudent to implement a general mechanism at the European level to ensure that such procedures can be carried out more efficiently and to strengthen their effectiveness in cases of flagrant violations of EU law. In addition, the mechanism should be able to support and monitor sustainable reform.

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