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Insight

Freezing EU funds: An effective tool to enforce the rule of law?

by Zselyke Csaky, 27 February 2025

The EU cannot operate unless member-states respect the rule of law. Withholding EU funds is a powerful tool to enforce compliance, but it has yet to show its teeth.

The rule of law, one of the EU's founding values, has deteriorated in several member-states. The worst declines have taken place in Hungary and Poland. The Hungarian government, under Prime Minister Viktor Orbán, has systematically undermined judicial independence, media freedoms and civil society, dismantling democratic institutions and consolidating power in its hands. Poland's previous Law and Justice government, in power between 2015 and 2023, similarly politicised the judiciary, introducing unconstitutional laws and tightening control over the courts; it also captured the public broadcaster and launched smear campaigns against critics.

The declines in the rule of law have far-reaching consequences that go beyond Hungary and Poland. The rule of law underpins the single market and is key for the EU's common legal and security framework: it fosters trust and transparency and allows citizens and companies to thrive. The EU has therefore introduced measures to tackle the deterioration, most significantly, it has started applying rule of law conditionality before handing out EU money.

The Commission has so far deployed rule of law conditionality twice, suspending EU funding to Poland and Hungary in late 2022. The suspensions covered only part of the funding due to them – the Recovery and Resilience Facility (RRF) and the Cohesion Funds, intended to ease regional disparities and help poorer member-states – but prompted Poland and Hungary to enact legal changes. These changes, however, failed to remedy the situation in full.

In late 2024, the new Commission announced plans to further strengthen rule of law conditionality. This insight looks at what we can learn from previous funding suspensions and what the future holds for the use of conditionality to enforce the rule of law.

How did we get here?

The EU has a collection of tools to address the deterioration of the rule of law within its member-states. The so-called rule of law toolkit includes preventive measures, such as monitoring and dialogue; and sanctions, such as the suspension of funds. Yet, as we argued in a previous insight, the EU has been reluctant to use the full scope of its toolkit.

The toolkit received a significant boost in 2020, when the EU adopted the so-called conditionality regulation, which allows the Commission to suspend funding to member-states that damage the rule of law. This was an important step forward because the regulation established a direct link between respect for the rule of law and access to EU funds. This added a new layer of protection to the EU budget, and it reinforced the idea that adherence to EU values and sound financial management are interlinked within the Union. It also complemented existing tools, adding an instrument that does not need unanimous support among member-states – the conditionality mechanism can be triggered with qualified majority in the Council. This differentiates it from the 'Article 7' procedure, the EU's 'nuclear option', which could lead to the suspension of a country's voting rights, but which has, in practice, been unusable because it requires the unanimous support of the member-states (minus the violator of EU values) to take action. Many in the rule of law community and civil society hoped that suspending EU money would be easier and would serve as a deterrent – unlike dialogue and monitoring, which had led to no change in the behaviour of the offending governments.

The conditionality regulation came into effect in early 2022, after the European Court of Justice (ECJ) dismissed actions brought by Hungary and Poland against it. The two countries argued that the EU had exceeded its authority, and that the mechanism was just a circumvention of Article 7, but the ECJ did not find their arguments convincing. The final version of the regulation, however, was less ambitious than original plans proposed by the Commission. The initial idea, first discussed in 2018, would have allowed for broad suspension of funds in case of rule of law violation. The current version targets breaches of the rule of law only if they impact the budget in a "sufficiently direct way" – though this clause has not yet been clearly defined.

The Commission triggered the conditionality regulation for the first time in late 2022. Following a decision in the Council, the EU suspended 55 per cent of three funding programmes for Hungary, amounting to €6.3 billion, due to breaches of the rule of law and concerns around corruption. Separately, the Commission excluded Hungary's public interest trusts – a legal arrangement used by the government to privatise two-thirds of the country's public universities, placing them under political control – from the Horizon and Erasmus programmes. While the suspended amount was significant, it was far from comprehensive. It was a little less than one-third of Hungary's cohesion funds and around 20 per cent of the total EU funding Budapest is eligible for under the current seven-year budget (the so-called Multiannual Financial Framework, MFF). In late 2024, Hungary permanently lost €1 billion of the suspended money due to a financing rule that requires countries to access the funds within two years or else lose a proportionate amount. Should Hungary fail to meet the conditions required to lift the freeze by the end of 2025, it will lose an additional €1 billion.

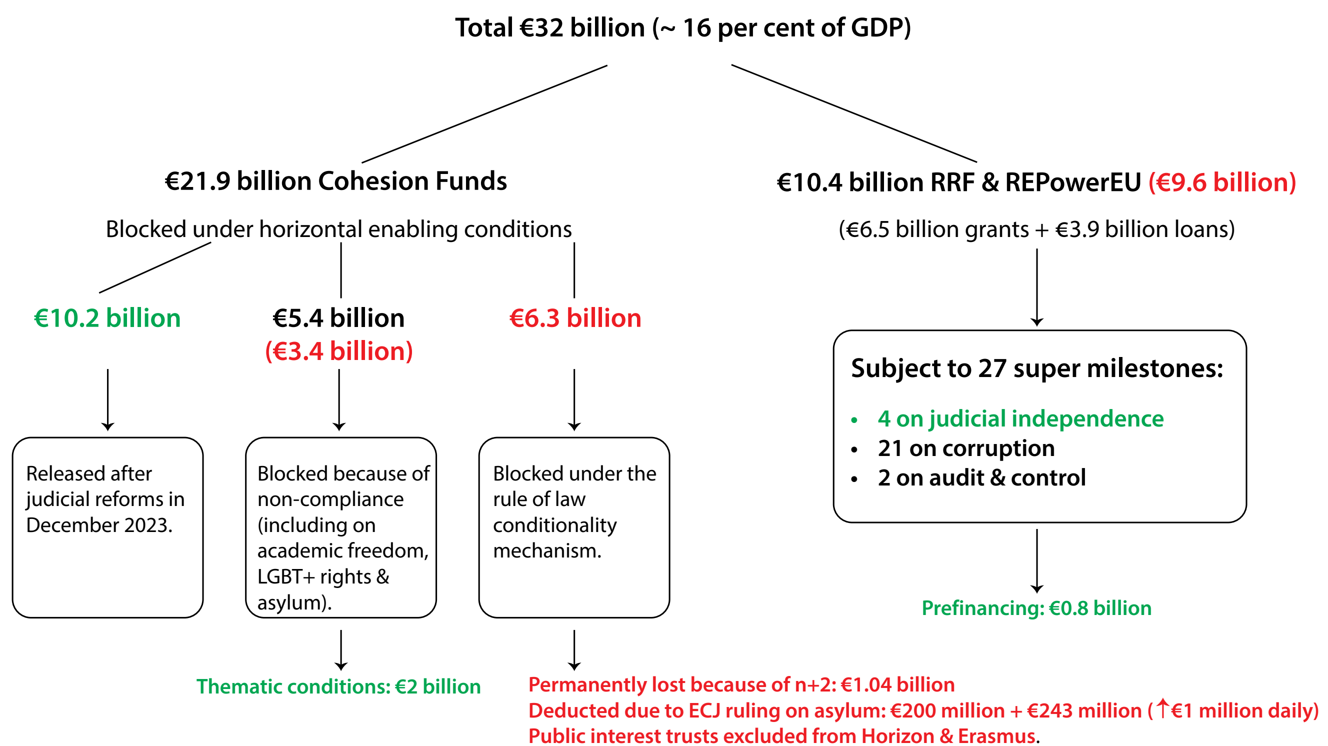
But the conditionality regulation, despite its name, was not the only instrument to attach rule of law conditions to the use of funds. The RRF grants and loans – aimed at reinvigorating the EU economy after the Covid crisis – also include country-specific 'super milestones', without which no payment can be disbursed. In 2022, the Commission designated 3 super milestones on judicial independence and audit

for Poland, and 27 super milestones on the judiciary and corruption for Hungary to complete. This led to the suspension of €59.8 billion and €10.4 billion for Poland and Hungary, respectively, in RRF grants and loans. Poland gained access to the funds in early 2024, after a new government came to power and proposed rule of law reforms, whereas for Hungary, the amount remains suspended, except for $800 million for prefinancing (the advance payment made at the beginning of a project or grant period).

The use of the conditionality regulation also emboldened the Commission to deploy a previously available but unused tool. Somewhat unexpectedly, this led to the suspension of the biggest chunk of funding so far. The so-called horizontal enabling conditions in the Common Provisions Regulation (CPR), the EU's rulebook for distributing cohesion funds and seven other smaller funds, require that member-states abide by the Charter of Fundamental Rights when using EU money. This requirement was introduced in 2018 and adopted just ahead of the current seven-year budget. In late 2022, the Commission used the CPR to suspend all money available to Poland and Hungary under the funds in question. This amounted to €76.5 billion and €21.9 billion, respectively.

Altogether, under the three conditionality instruments, the Commission suspended a total of €32 billion to Hungary, equalling roughly 16 per cent of its GDP, and €136 billion to Poland, amounting to around 17 per cent of its GDP (see Charts 1 and 2 for details).

Chart 1: Hungary: EU funds subject to financial sanctions 2021-27

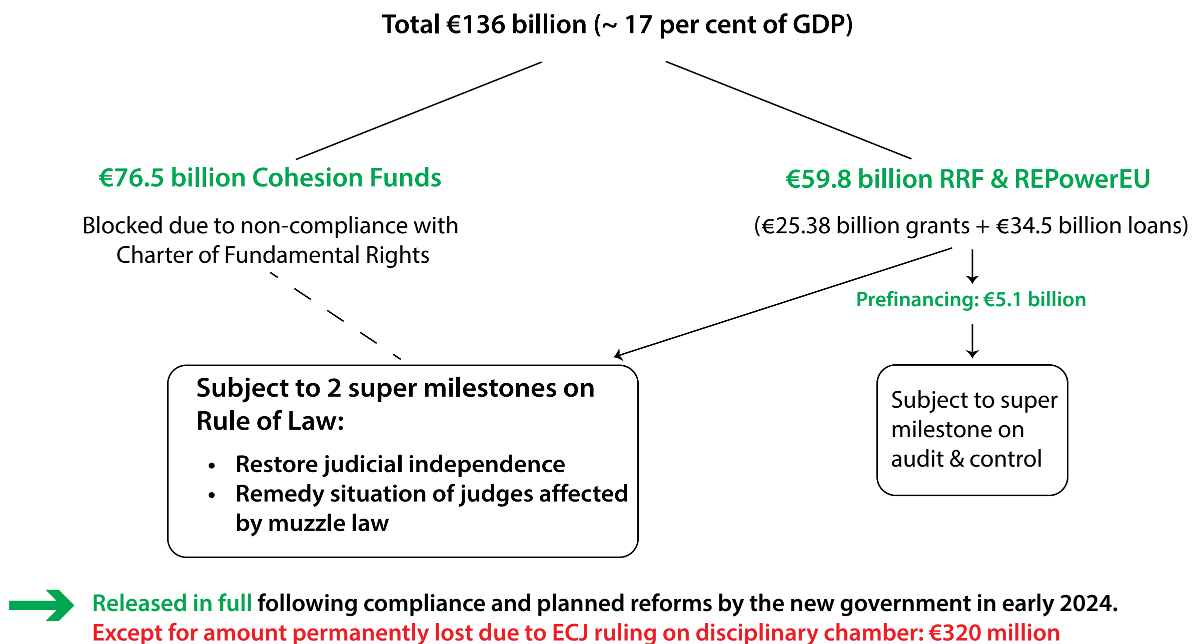


Note: Note: Author calculations based on European Commission data. Updated February 10th 2025
Numbers in red indicate suspended or lost funds, green indicates released amounts.

The new Polish government successfully unfroze all funding in early 2024 by halting previous rule of law violations and by preparing reforms on the judiciary. In Hungary's case, the Commission released €10.2 billion in cohesion funds following judicial reforms in December 2023. The decision coincided with Budapest lifting its threat to veto funding for Ukraine and many, including the European Parliament, criticised it as untransparent and 'political' – arguing it was part of a controversial deal to secure support for Ukraine from Viktor Orbán's government. As of February 2025, €19 billion remains suspended to Hungary, of which €1 billion is permanently lost.

Additionally, the Commission continues to deduct payments following a 2024 decision by the European Court of Justice (ECJ), which found that Hungary had violated EU law on asylum. The ECJ fined Hungary a lump sum of €200 million and a daily fine of €1 million until it complies. The Commission has been collecting these fines as part of an 'offset mechanism', which allows Brussels to deduct payments from EU disbursements if member-states refuse to pay. In February 2025, this fine stood at €443 million. Previously, Poland had lost €320 million following an ECJ ruling, which had found the country's disciplinary chamber violated judicial independence.

Chart 2: Poland: EU funds subject to financial sanctions 2021-27



Note: Author calculations based on European Commission data. Updated June 1st 2024.
Numbers in red indicate suspended or lost funds, green indicates released amounts. The dashed line connecting Cohesion Funds and the milestones indicates overlapping criteria.

What can we learn from the suspensions?

As detailed above, the funding suspensions were significant in size – each amounted to roughly one-sixth of the targeted country's GDP. They also demonstrated the EU's willingness to act, following years of monitoring and dialogue with governments violating the rule of law. But to what extent were these funding suspensions successful in protecting the rule of law? To evaluate the impact of conditionality, we should look at whether these moves led to legal or political improvements in the two countries on the ground.

In terms of legal changes, both Poland and Hungary took some steps in response to the suspensions – yet the impact of those steps has been unclear. Poland's new government proposed wide-ranging reforms to restore judicial independence but, as we wrote in an earlier insight, the majority of those reforms have yet to take effect. They are currently blocked by President Andrzej Duda, who is aligned with the previous government. The Hungarian government adopted legal changes to improve judicial independence, which led to the release of €10.2 billion in cohesion funds. But local civil society organisations evaluated the changes as "makeshift solutions" that failed to resolve long-standing concerns.

Politically, the suspensions have also spurred some action. An often-repeated counter-argument against sanctioning member-states is that it could lead to anti-EU backlash among their populations. However, there is little evidence from the recent past to support this theory. If anything, EU measures and the prospect of losing EU funds energised Poland's electorate to unite behind pro-EU candidates during the 2023 elections – and the change of government has improved the rule of law situation.

In Hungary's case, the government of Viktor Orbán had fostered anti-EU sentiment among Fidesz's voter base well before, and irrespective of, EU action. Cautious of a backlash, the EU waited to trigger the conditionality mechanism until after the Hungarian elections in 2022. It also released a significant chunk of the suspended money in late 2023, just as Hungary was about to run out of EU money. Up until then, Budapest had been able to tap into the remaining funds from the previous long-term budget (ending in 2020) due to a rule that allows countries to use allocated money for up to three years after the end of the MFF. This way, the Commission released funds before they had tangible impact – Hungary did not suffer a fiscal squeeze due to the suspensions. Still, in 2024, the suspensions coincided with the appearance of a new political force, Péter Magyar's Tisza party. Magyar, who has subsequently grown into Orbán's biggest challenger, has campaigned on a promise of leading Hungary "back to Europe", joining the European Public Prosecutor's Office (EPPO) – which would unveil the extent of corruption in Hungary and make cases directly prosecutable by the EU – and recovering the suspended funds.

Ultimately, it is too early to evaluate the full impact of the suspensions. As rule of law experts Kim Lane Scheppele and John Morijn point out, to assess the effectiveness of conditionality, the Commission should examine the reforms more closely or wait long enough for them to generate "real effects". On the legal side, there have been primarily token changes in both Poland and Hungary. The picture is more mixed on the political side – opposition forces have used the suspensions to illustrate that damaging the rule of law can hurt the economy – but any financial consequences of the freezes have not yet materialised.

What does the future hold for conditionality?

Despite the uneven implementation and results, conditionality remains the most powerful tool in the EU's rule of law toolbox. Its strength comes from its potential impact on a country's finances and the speed and flexibility with which it can be applied. Unlike Article 7, which needs the agreement of all

member-states (minus the target) before a member-state's violation of EU values can be punished, the conditionality mechanism requires a qualified majority, while the RRF milestones and the Common Provisions Regulation only need the Commission to trigger suspensions.

The Commission stated in its communication on the next MFF that "not a single euro should be spent for activities where the principles of the rule of law are not safeguarded". More specifically, it called for the Rule of Law Reports, which monitor member-states' performance every year, to include an assessment of rule of law breaches on the single market. Such an expansion would further underline the importance of the respect for values for the proper functioning of the EU. Additionally, the Commission also announced plans to establish a stronger link between the reports and the budget. In practice, this could mean that failure to implement a report's recommendations would automatically trigger funding suspensions. Such a direct link would introduce more transparency into the use of conditionality and reduce accusations of politicisation.

Previous ideas on strengthening conditionality included expanding it to other parts of the budget. In September 2024, the Finnish and Swedish governments recommended establishing a mechanism like the CPR for the Common Agricultural Policy (CAP). While this may be a duplication – the current CAP has its own mechanism to suspend a programme if fails to comply with the EU Charter on Fundamental Rights – a review of available processes seems necessary as the CAP's own procedure has not been used yet. In general, linking the CAP and the rule of law would have significant impact as CAP funds amount to roughly one-third of the EU budget.

Additionally, experts and the political group Renew Europe have recommended the use of 'smart conditionality' to enable the Commission to bypass national governments when distributing funds to civil society and other actors upholding EU values. While the protection of final beneficiaries is part of the conditionality mechanism – governments are required to distribute allocated money even if EU funding is frozen – smart conditionality would go further by side-stepping national governments. EU Budget Commissioner Piotr Serafin has indicated that the Commission would look into it, but the recommendation is unlikely to be popular with member-states.

In general, the three conditionality instruments – the rule of law conditionality mechanism, the milestones in the RRF, and the horizontal enabling conditions of the CPR – would benefit from more clarity and transparency in their use. The Commission should publish guidelines on when to trigger each instrument, highlighting potential synergies among the three. The upcoming drafting process for the next MFF also serves as a good opportunity to integrate rule of law conditionality more coherently into the EU budget.

Finally, one question that has not yet been considered in the discussion on conditionality is to what extent its leverage diminishes in richer member-states. Conditionality has so far been used in the case of poorer member-states, which are net beneficiaries of the EU budget. But the recent rise of the far-right in several countries that are net contributors, such as France, Austria or Germany, raises the prospect of rule of law deterioration in these countries. Additionally, the accession of new member-states – though currently some years away – could eventually mean that parts of Central Europe transition to net contributor status. The question then is whether governments, in such cases, will care about funding freezes.

In conclusion, while rule of law conditionality stands as the EU's most powerful tool to date, it is not a cure-all. However, strengthening it further and implementing it more coherently and stringently – particularly by ensuring that tangible improvements are made before unfreezing funds – would go a long way towards tackling the current deterioration.

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