



Questions and Answers on Hungary: Rule of Law and EU funding

Brussels, 13 December 2023

HORIZONTAL ENABLING CONDITIONS

What is the horizontal enabling condition on the EU Charter of Fundamental Rights?

Enabling conditions are prerequisites, which Member States have to fulfil to ensure the effective and efficient implementation of the Cohesion Policy funds. There are **4 horizontal enabling conditions** in the areas of public procurement, state aid, compliance with the [EU Charter of Fundamental Rights](#), and the application of the United Nations Convention on Persons with Disabilities. There are also 16 thematic enabling conditions that apply to specific areas and sectors.

In order to have their expenditure reimbursed, Member States must fulfil all 4 horizontal enabling conditions, and the thematic ones which are relevant to their programmes. The conditions must be respected throughout the **entire programming period**.

The **horizontal enabling condition on the EU Charter of Fundamental Rights** requires Member States to establish effective mechanisms so that the implementation of their programmes complies with the Charter.

Why was Hungary previously deemed non-compliant with the horizontal enabling condition on the EU Charter of Fundamental Rights as regards to judicial independence?

In December 2022, the [Commission approved all 2021-2027 programmes under the Common Provisions Regulation for Hungary](#). The Commission raised concerns, within the framework of the horizontal enabling condition on the EU Charter of Fundamental Rights, on **four aspects related to judicial independence**, in Hungary:

- First, the absence of adequate supervision of the President of the National Office for the Judiciary exposed judges in Hungary to the risk of discretionary decisions about their career;
- Second, judicial independence, in particular for judges sitting in the Supreme Court (Kúria), was weakened by discretionary powers granted to the Kúria President in appointing judges and allocating cases;
- Third, the procedural rules in place allowed the Kúria to examine a reference for a preliminary ruling to the Court of Justice of the EU submitted by a lower court and declare that submission as unlawful; and
- Fourth, the independence of Hungarian courts was compromised as administrative authorities could challenge final judicial decisions before the Constitutional Court.

Which reforms introduced by Hungary led the Commission to conclude that the enabling condition on the Charter has been fulfilled as regards judicial independence?

Based on the latest information provided by the Hungarian authorities, Hungary's reforms strengthen the independence of its judiciary, namely:

- the **role and powers of the National Judicial Council**, whose members are elected by judges, have been strengthened. In particular, the National Judicial Council will be able to counter-balance the powers of the President of the National Office for the Judiciary, who is a top official in charge of court administration, elected by Parliament;
- the **independence and transparency of the Kúria** (Supreme Court) have been strengthened. In particular, the National Judicial Council and judicial bodies of the Kúria will be able to counter-balance the powers of the Kúria President, elected by Parliament. Also, case registration and case allocation in the Kúria will now follow clearer rules;
- the obstacles to references for **preliminary rulings to the Court of Justice of the EU** have been removed. In particular, the Kúria will no longer be able to review the lawfulness of such questions about EU law; and

- the possibility for public authorities to **challenge final judicial decisions** before the Constitutional Court has been removed. In particular, the Constitutional Court, elected by Parliament, will no longer be able to quash decisions of the ordinary courts upon request of public authorities.

How much funding will become available as a result of the fulfilment of the enabling condition on the Charter in the area of judicial independence? How much remains suspended?

The **total EU budget** for Hungary's programmes under the Cohesion Policy, the Maritime and Fisheries funds, and Home Affairs funds amounts to **€21.9 billion**. The lack of fulfilment of the horizontal enabling condition on the EU Charter of Fundamental Rights in relation to independence of the judiciary in Hungary blocked all these funds except for the technical assistance. Today's decision does **not entail immediate payments to Hungary**. So, at this point in time, the Commission may **reimburse eligible expenditure of up to around €10.2 billion** for its 2021-2027 Cohesion Policy, Maritime and Fisheries, and Home Affairs programmes.

However, **€11.7 billion remains suspended** given concerns in the following areas:

- the provisions of Hungary's so-called **child-protection law**, and the serious risks to **academic freedom** and to the **right to asylum**, meaning that the horizontal enabling condition related to the EU Charter of Fundamental Right in these areas is not yet fulfilled;
- **thematic enabling conditions** that are not yet fulfilled;
- budgetary commitments for three programmes under the **general regime of conditionality** that remain partially suspended, i.e. for an amount of **approximately €6.3 billion**.

When can we expect the first reimbursements?

To make reimbursements, the Commission must first receive payment claims from the Hungarian authorities for projects already implemented. Before submission to the Commission, the Hungarian authorities must check the legality and regularity of these claims.

When receiving a claim, the Commission assesses whether all payment conditions are met and will pay within 60 days from the date of receipt of the payment claim.

In which areas does Hungary not comply with the enabling condition on the EU Charter of Fundamental Rights?

The Commission considers that the provisions of Hungary's so-called **child-protection law**, and the **serious risks to academic freedom** and to the **right to asylum** have a concrete and direct impact on the compliance with the Charter in the implementation of certain specific objectives of three Cohesion programmes and of the Asylum Migration and Integration Fund respectively.

The Commission's concerns can be lifted when Hungary has put in place the necessary arrangements that will ensure that the implementation of the programmes respects the Charter, and when the Commission is satisfied with these arrangements.

What are the remaining rule of law issues with Hungary?

The Commission's concerns regarding the rule of law in Hungary are clearly stated in the Commission's annual [Rule of Law Report](#). In addition, the Commission continues to share several concerns expressed by the European Parliament in its reasoned proposal of 12 September 2018 triggering the Article 7(1) TEU procedure in Hungary. The procedure covers a wide range of rule of law issues. The Council has held six formal hearings on Hungary, most recently on 30 May 2023.

The Commission has also launched several infringement proceedings against Hungary. These relate to the rights of civil society organisations, academic freedom, media freedom, the rights of migrants and asylum seekers, and the rights of LGBTIQ people, as well as to the functioning of the Single Market. The Commission will not hesitate to take further action, if necessary, to ensure the respect for the rule of law and the proper functioning of the Single Market.

On 15 December 2022, based on a proposal from the Commission, the Council [adopted measures](#) to protect the Union budget from breaches of the principles of the rule of law in Hungary under the general regime of conditionality. These measures relate to the principles of the rule of law in Hungary in the areas of public procurement, prosecutorial action, conflict of interest and the fight against corruption. So far, Hungary has not adopted and formally notified the Commission of any new remedy to address these outstanding issues. As a result, these measures remain in place.

GENERAL REGIME OF CONDITIONALITY

What is the general regime of conditionality?

The [Regulation on a general regime of conditionality](#) applies since 1 January 2021. It equips the Union with a specific tool to protect its budget.

In case breaches of the principles of the rule of law in a Member State affect or seriously risk affecting the sound financial management of the Union's budget or the protection of the financial interests of the Union in a sufficiently direct way, the Commission proposes to the Council to adopt measures on the Member State concerned. The Council decides by qualified majority.

For measures to be lifted, the relevant breaches of the principles of the rule of law and/or their effects on risks for the Union budget must be remedied. The decision to adapt or lift measures is taken by the Council, on a proposal from the Commission.

The general regime of conditionality complements other tools and procedures to protect the EU budget, for example checks and audits or financial corrections, or investigations by the EU's anti-fraud office OLAF. The Commission can only initiate a procedure under it if the other Union budget protection tools cannot protect the Union budget more effectively.

The general regime of conditionality is different from the [European Rule of Law mechanism](#) (with the annual Rule of Law report at its core), which is a preventive tool, aiming to promote the rule of law and prevent challenges from emerging or deteriorating.

What is the state of play for Hungary under the general regime of conditionality and why has the Commission reassessed the situation in Hungary now?

On 15 December 2022, based on a proposal from the Commission, the Council [adopted measures](#) to protect the Union budget from breaches of the principles of the rule of law in Hungary under the general regime of conditionality. These measures relate to the principles of the rule of law in Hungary in the areas of public procurement, prosecutorial action, conflict of interest and the fight against corruption.

Pursuant to the Conditionality Regulation, at the request of the Member State concerned, or on its own motion and at the latest one year after the adoption of measures by the Council, the Commission has the obligation to reassess the situation in the Member State concerned. Since the adoption of the measures last year, the Commission has engaged in a dialogue with Hungary to find adequate solutions. However, Hungary has not adopted and formally notified the Commission of any new remedy so far.

In the absence of a written notification from Hungary, the Commission has therefore reassessed on its own motion the situation in Hungary based on the information available, within the deadline imposed by the Conditionality Regulation, i.e., by 15 December 2023.

Were there any improvements under the Conditionality Regulation procedure following the adoption of the Council Implementing Decision of 15 December last year? If so, why were they not taken on board by the Commission?

Since the adoption of the Council Implementing Decision, the Commission has engaged in a constant dialogue with the Hungarian authorities.

The Hungarian authorities informally proposed draft amendments to legal acts with a view to addressing the outstanding issues. Despite some constructive discussions, Hungary did not adopt, nor table for adoption in the Hungarian National Assembly any new remedial measures that would adequately address the outstanding issues.

In addition, the Commission also has reservations on a number of commitments that had an implementing period that went beyond the December 2022 Council Implementing Decision and that Hungary has not yet fulfilled in full (such as the adoption of a National Anticorruption Strategy and Action Plan or the full use of a data mining and risk-scoring tool called Arachne).

HUNGARIAN RECOVERY AND RESILIENCE PLAN

Where does Hungary stand in terms of the implementation of the Recovery Resilience Facility?

On 8 December 2023, the Council approved Hungary's revised recovery and resilience plan (RRP). In its original plan, Hungary committed to 27 "super milestones" to ensure the protection of the Union's financial interests, and to strengthen judicial independence. These "super milestones" remain unchanged in Hungary's revised plan, and also apply to the REPowerEU chapter included in the revised plan. This means that no disbursement following a payment request under the Recovery and Resilience Facility (RRF) is possible until Hungary has satisfactorily implemented these "super milestones".

The conditions to fulfil the four “super milestones” relating to judicial independence are the same under Hungary's recovery plan and Cohesion Policy programmes. Hence, the Commission's assessment on substance is the same for both.

What are the 27 “super milestones” Hungary must implement in a satisfactory manner before any payment following a disbursement request can be made?

The 27 “super milestones” relate to the protection of the Union's financial interests and to strengthening judicial independence. They include, in particular:

- **Effective implementation** of all **17 remedial measures under the General Conditionality Mechanism** (21 “super milestones”):
 - measures to **combat corruption**: these include setting up new, independent bodies and authorities – an Integrity Authority and an Anti-Corruption Task Force – equipped with the tools and capacity to act when public authorities fail to do so; introducing the possibility for anyone to challenge in court the decisions of investigators or prosecutors not to investigate or prosecute; significantly increasing the amount of information required from public officials when making asset declarations; and increasing transparency;
 - measures to improve competition and transparency in **public procurement**;
 - strengthened rules on **conflicts of interest**;
 - increased **audit and control requirements**;
 - the use of the Commission's Arachne **risk-scoring tool**, an IT tool that supports Member States in their anti-fraud activities, by enabling them to collect data on final recipients of funds, contractors, subcontractors and beneficial owners; and
 - ensuring that the **European Anti-Fraud Office** (OLAF) can effectively conduct investigations in Hungary.
- Measures to strengthen **judicial independence** (four “super milestones”), by:
 - increasing the powers of the independent **National Judicial Council**, to limit undue influence and discretionary decisions, and ensure a more objective and transparent administration of courts;
 - reforming the functioning of the **Supreme Court** to limit risks of political influence;
 - removing the role of the **Constitutional Court** in reviewing final decisions by judges on request of public authorities; and
 - removing the possibility for the Supreme Court to review questions that judges intend **to refer to the European Court of Justice**.
- **Audit and control measures**, similar to what is also required for some other Member States' RRFs (two “super milestones”):
 - fully functioning national system for monitoring the implementation of the plan; and
 - strategy setting out how the Hungarian audit authority will audit RRF funds, in line with international audit standards.

When can we expect a first payment following a disbursement request to Hungary under the RRF?

No disbursement following a payment request under the Recovery and Resilience Facility (RRF) is possible until Hungary has satisfactorily implemented all 27 “super milestones”.

Hungary has not submitted a first payment request so far.

Is there a link between today's finding of the Commission in relation to Hungary's justice reforms and any payment of pre-financing under REPowerEU to Hungary?

The RRF Regulation, as decided by the co-legislators, established the possibility for Member States to request pre-financing relating to the REPowerEU funds under the Recovery and Resilience Facility (RRF) to help kickstart the projects under the REPowerEU chapter.

Such pre-financing payments are equivalent to up to 20% of the additional funds requested to finance each Member State's REPowerEU chapter.

The RRF Regulation foresees safeguards for these payments. Any pre-financing amounts paid to a Member State will be either cleared against future payments or ultimately recovered entirely in case no payments under the RRF have taken place by end 2026, i.e. the end of the RRF lifetime.

Hungary submitted a request for pre-financing corresponding to 20% of its €4.6 billion REPowerEU chapter, i.e. €920 million, 85% of which consists of loans and 15% of which consists of non-repayable support.

In line with the RRF Regulation, as for all Member States, the first part of the pre-financing would be paid within two months of the signature of the financing agreement by the Commission and Hungary, which is a necessary step after the Council adoption of the revised plan, which includes a REPowerEU chapter. The second part of the pre-financing would be paid within 12 months after the financing agreement.

Today's decision of the Commission in relation to the fulfilment of the judicial independence dimension of the horizontal enabling condition on the EU Charter of Fundamental Rights is a different process, based on a separate legal framework from the RRF.

For more information

[Press release](#)

[Commission's assessment on rule of law conditionality](#)

QANDA/23/6466

Press contacts:

[Stefan DE KEERSMAECKER](#) (+32 2 298 46 80)

[Laetitia CLOSE](#) (+32 2 296 70 73)

[Balazs UJVARI](#) (+32 2 295 45 78)

[Christian WIGAND](#) (+32 2 296 22 53)

[Jördis FERROLI](#) (+32 2 299 27 29)

[Veerle NUYTS](#) (+32 2 299 63 02)

[Marajke SLOMKA](#) (+32 2 298 26 13)

[Veronica FAVALLI](#) (+32 2 298 72 69)

General public inquiries: [Europe Direct](#) by phone [00 800 67 89 10 11](#) or by [email](#)