

Hungary after Orbán?: The case for phased rule-of-law conditionality

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INTRODUCTION

Hungary's upcoming elections on 12 April 2026 could mark the first real attempt to dismantle an entrenched illiberal system from within the European Union. This would be a turning point for the EU. But removing an illiberal government is easier than rebuilding the rule of law.

Since Orbán's return to power in 2010, domestic rule-of-law backsliding has had spillover effects across the Union. Hungary is now widely considered to be in violation of core EU principles, including loyal cooperation,¹ and to pose a challenge to the Union's political cohesion and security.²

A defeat of Viktor Orbán's could open the door to restoring democratic standards in Hungary, with implications for the Union's unity and credibility. However, a government led by his main challenger, Péter Magyar, would not automatically resolve all tensions between Budapest and the rest of the EU. Some of his positions remain close to Orbán's on key policy issues, including support for Ukraine, the EU budget, agriculture policy and EU integration.³

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It would nevertheless be in the Union's interest to support a democratic transition and Hungary's reintegration into the community of liberal democracies.

If Magyar wins, the EU will face a fundamental dilemma: how to support democratic transition while preserving the credibility of its rule-of-law enforcement. While the EU has developed tools to sanction democratic backsliding, it lacks a clear framework to support and verify democratic recovery.

This paper argues that the EU should adopt a principled but pragmatic approach based on a phased conditionality – understood here as a sequencing approach whereby financial support is progressively unlocked in parallel with verifiable institutional reforms rather than frontloaded or withheld entirely.

The EU should agree with a new Hungarian government on a binding rule-of-law restoration plan with clear milestones and timelines, while adapting implementation to political and institutional constraints. In doing so, it should be ready to take into account the political and institutional obstacles left by the Fidesz regime and calibrate milestones to allow for progressive disbursements. At the same time, Hungary should serve as a pilot case to strengthen the EU's rule-of-law toolbox and develop a structured mechanism for democratic restoration.

BACKGROUND

Hungarian Prime Minister Viktor Orbán has been in power for 16 years. Over this period, Hungary has experienced sustained and systematic rule-of-law backsliding.⁴ Judicial independence and media pluralism⁵ have been undermined by political control and economic pressure.

Electoral law has been tailored to favour Orbán's Fidesz party,⁶ while parts of the Hungarian economy have been captured by Fidesz allies.⁷ Hungary is now what the European Parliament has dubbed a "hybrid regime of electoral autocracy", characterised by a "systemic failure" to comply with the rule of law.⁸

Hungary is the member state most extensively subject to EU rule-of-law procedures. The European Parliament launched the ongoing Article 7 procedure in 2018. Approximately €18 billions in EU funds, mainly from cohesion programmes and the post-Covid-19 Recovery and Resilience Facility (RRF),⁹ are currently blocked under EU budget conditionality mechanisms.¹⁰ Hungary has also been incurring penalties of €1 million a day since 2024 for failing to comply with a ruling of the European Court of Justice (ECJ) on asylum.¹¹

With the elections scheduled for 12 April 2026, Orbán faces, for the first time since 2010, a credible risk of defeat by Péter Magyar, leader of the Tisza party. A political transition in Hungary would mark the second case – after the defeat of the Law and Justice (PiS) party in Poland in 2023 – in which the EU is faced with the electoral defeat of an illiberal government while the country remains subject to rule-of-law procedures.

The Article 7 procedure was also launched against Poland in 2017, and €137 billion in EU funds were frozen under conditionality mechanisms. In 2024, the European Commission unblocked the funds¹² and closed the Article 7 procedure¹³ on the basis of a rule-of-law action plan presented by the new government led by Donald Tusk,¹⁴ as well as remedial measures already adopted by the PiS government.

Three years later, however, the Polish action plan has still not been fully implemented. The Tusk government has been constrained by the lack of a two-thirds parliamentary majority required for constitutional amendments, as well by vetoes from the PiS-aligned president, leaving it unable to dismantle the illiberal system established by its predecessor.

The prospect of Orbán losing and Magyar taking office raises a key question: how should the EU support rule-of-law restoration in Hungary? More particularly, under which conditions should the EU lift ongoing procedures and release frozen funds?

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conditions should the EU lift ongoing procedures and release frozen funds? If Orbán is defeated, the EU will face a dilemma between supporting the democratic change and preserving the credibility of its rule-of-law toolbox.

More broadly, while the toolbox provides instruments to address backsliding, it lacks clear mechanisms to monitor and secure rule-of-law restoration in the long term. A potential Magyar government would therefore raise the question of how to adapt, or extend, the toolbox for that purpose.

STATE OF PLAY

Magyar's promises

Running against Orbán, Péter Magyar has promised "regime change" in Hungary.¹⁵ He has put the fight against corruption and state capture by the Fidesz party at the core of his campaign.¹⁶ He has promised to boost economic growth, increase funding for public services and social policies, and improve wages and pensions. In this context, restoring the rule of law is partially framed as a means to unlock the EU funds, support Hungary's economy and restore the state's redistributive functions.

In its election manifesto,¹⁷ Magyar's Tisza party commits to restoring checks and balances and strengthening the independence of courts, the prosecutor's office and constitutional bodies. It promises to establish a new body to investigate corruption cases – the National Asset Recovery and Protection Office – and to reform procurement rules. It also pledges to reform media laws to ensure pluralism and ownership transparency, draft a new constitution and limit the prime minister's tenure to two terms. Regarding the EU, Tisza commits Hungary to recognising the primacy of EU law and to joining the European Public Prosecutor's Office (EPPO).

A former Fidesz member, Magyar may nevertheless prove a difficult partner for the EU. Tensions over policy issues, including his opposition to the next EU budget or the Migration Pact – could complicate dialogue on rule-of-law restoration. This may also be the case given his stated positions on continued non-support for Ukraine and reliance on Russian gas until 2035.¹⁸

Time pressure for EU funds

The largest share of currently blocked funds relates to the RRF. Hungary's share of the post-Covid-19 fund amounts to €10.4 billion, including €6.5 billion in grants, equivalent to 5.3% of its GDP.

The RRF will expire at the end of 2026. Member states must achieve milestones and targets by 31 August to claim a final disbursement by 31 December. Hungary's recovery plan includes 368 milestones and targets, none of which have been assessed by the Commission.¹⁹ A new government in Budapest would therefore have very little time to claim RRF funds, and securing the whole allocation appears highly unlikely.

In Hungary's case, RRF disbursements are conditional on the fulfilment of 27 'super-milestones', covering anti-corruption measures, public procurement, judicial independence, as well as audit and control systems. No payment can be made unless the super-milestones are achieved first.

Other frozen funds relate to cohesion policy. They will be released when required conditions are met, notably concerning provisions of the so-called child protection anti-LGBT law, as well as risks to academic freedom and the right to asylum. These funds are also subject to time pressure, as Hungary is set to lose €1 billion in cohesion funds at the end of the year, as already occurred in 2024 and 2025.²⁰

Hungary's €17.4-billion share of the Security Action for Europe (SAFE) programme is also on hold, although not formally linked to rule-of-law.²¹ A decision on disbursement must be taken before the end of June 2027.

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Political and institutional obstacles

In its effort to restore the rule of law, a Magyar government would face many political, legal and structural obstacles. After 16 years in power, successive reforms and politicised appointments have weakened checks and balances and entrenched Fidesz influence in the judiciary, the media and the economy.²² But rolling back reforms and renewing the highest judicial appointments will prove difficult.

A post-Fidesz government would still be confronted, at least until 2029, with a Fidesz president with the power to veto legislation, refer it to the Constitutional Court and appoint judges.

In addition, undoing illiberal reforms would require constitutional amendments or so-called cardinal acts, a category of fundamental legislation in Hungary.²³ Both would require a two-thirds majority in parliament, which Tisza may not be able to reach. This applies to areas such as electoral rules, organisation and powers of the judiciary, media regulation, as well as provisions regarding local governments, regulatory organs and the bodies that manage state assets.²⁴ Reforming or abolishing the Sovereign Protection Office would also require new cardinal laws.²⁵

A narrow electoral victory on 12 April, resulting in only a slim parliamentary majority, or contestation of the results by Fidesz, would further constrain Magyar's room for manoeuvre. Fidesz's entrenched media dominance, economic networks and influence within parts of the state apparatus would add further political pressure – with potentially paralysing effects.

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The Polish warning

A Magyar government without a two-thirds majority in Parliament would be in a similar situation to the Tusk government after the 2023 elections in Poland. Even with a strong popular mandate, it has been unable to overcome institutional obstruction from former President Andrzej Duda and current President Karol Nawrocki, as well as from the captured Constitutional Tribunal, to restore judicial independence.²⁶ Consequently, it lost both political momentum and public support.²⁷

The Polish case illustrates the difficulty of restoring the rule of law once institutions have been captured. The ECJ ruled in 2025 that neither the Constitutional Tribunal nor the Supreme Court's Chamber of Extraordinary Control and Public Affairs constitute "independent and impartial" courts,²⁸ yet they both remain unreformed.

Similarly, the ECJ considers the National Council of the Judiciary (NCJ) not lawfully established and therefore unable to guarantee independence and impartiality.²⁹ Yet the NCJ continues to oversee the appointment of judges. Around a third of currently serving Polish judges were appointed under its supervision, including 60% of the Supreme Court.³⁰ It can therefore be argued that the "clear risk of a serious breach" of the rule of law, which justified the launch of the Article 7 procedure, has not disappeared.

The Polish case highlights three structural limits of post-illiberal transitions:

- ▶ Institutional lock-in: captured courts and veto players constrain reform capacity;
- ▶ Temporal mismatch: EU expectations often outpace domestic political feasibility;

- Premature normalisation: early release of funds reduces EU leverage before reforms are secured.

These lessons suggest that regime change alone is insufficient to ensure systemic transformation.

Lessons for the EU

The Commission's successive decisions to unfreeze EU funds and close Article 7 in 2024 anticipated a hypothetical restoration of the rule of law by the Tusk government that ultimately did not materialise.

These decisions were criticised as premature³¹ and politically motivated, given that Commission President Ursula von der Leyen, like Tusk, belongs to the European People's Party (EPP) and had indicated her intention to release funds even before the Polish elections.³² They have proved ultimately ineffective.

The Polish government's action plan was comprehensive but depended on the compliance of institutional players.³³ The EU frontloaded the release of funds without establishing mechanisms to monitor implementation or address a lack of progress.

International pressure – in particular EU procedures, complemented by support to civil society – have been recognised as an important factor in sustaining resistance to backsliding under PiS governments.³⁴ Closing Article 7 and unblocking all EU funds at once deprived the EU and civil society of a means to maintain pressure on illiberal actors in Poland. While it would still be legally possible to reactivate conditionality³⁵ or reopen Article 7, doing so would prove politically difficult with the same Tusk government in place.

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From an EU perspective, the Polish case demonstrates that leverage should not be abandoned too early and that a clear, structured process for exiting rule-of-law procedures that takes domestic realities into account is needed.

PROSPECTS

If Péter Magyar wins the 12 April elections, the challenge for the EU – both its institutions and member states – will be to strike the right balance between, on the one hand, supporting a government that promises a more democratic and reliable Hungary, and, on the

other, maintaining pressure and preserving leverage to secure rule-of-law restoration.

To deliver on his core campaign promises, Magyar would need access to EU funds currently blocked. The question will be how to achieve this given that he may not be able to meet the EU's requirements in the short term due to domestic political and legal obstacles. This will pose a dilemma for both Magyar and the EU.

THE EU FACES A LOSE-LOSE SCENARIO:

Too strict → risks weakening a reformist government

Too lenient → risks undermining the credibility of its rule-of-law toolbox

The EU's priority should not be rapid normalisation, but credible and sustained rule-of-law restoration.

To address this dilemma, the EU should adopt a principled but pragmatic approach. It should provide incentives to a potential Magyar government while strictly monitoring progress on rule-of-law restoration – as far as Hungary's political and institutional situation allows it.

If Magyar becomes prime minister, the EU should therefore:

1. Resist premature normalisation

A change in government does not in itself constitute a restoration of the rule of law. It is tempting to assume that Orbán's defeat would bring an end to Hungary's illiberal system and that Magyar's priority would be to dismantle it. EU institutions and member states should adopt a cautious approach, require clear commitments and wait for concrete progress before unblocking EU funds or lifting procedures.

In this context, the process should not be politicised. The EPP and the European Commission should maintain a principled and critical approach towards Magyar and his Tisza party. The EPP should avoid both protecting Magyar – as it protected Orbán until he left the party in 2021 – and favouring him as it favoured Tusk after the 2023 Polish elections.

The European Parliament triggered the Article 7 procedure against Hungary, whereas the Commission opened the procedure against Poland. Although closure rules are not clearly stated, closure should be left to a vote by MEPs when they estimate that issues raised in the 2018 resolution have been addressed.³⁶

2. Establish a binding rule-of-law restoration plan

If Péter Magyar forms a government in Hungary, the Commission and the Council should start discussions on a plan and timeline to restore the rule of law and unblock EU funds. The plan should be drafted

by the Hungarian government in dialogue with the Commission and should include a detailed roadmap with clear deadlines.

This effort should be led by the Commissioner for Justice, in coordination with the Commissioner for Cohesion and Reforms, with support from the relevant Directorates-General and the Reform and Investment Task Force in charge of the RRF. In the Council, a hearing under the Article 7 framework should be organised so that the plan can be presented by the Hungarian Justice minister and discussed with fellow EU ministers. Further hearings should be regularly planned to assess implementation.

3. Prioritise early credibility measures

The restoration plan should prioritise measures that can quickly demonstrate the new government's commitment. These include joining the European Public Prosecutor's Office (EPPO) and abiding to ECJ rulings on asylum and academic freedom.

The plan should also prioritise meeting the super milestones required to unlock RRF funds and the enabling conditions for cohesion funds. In addition, it should incorporate the recommendations set out in the Commission's annual rule-of-law report.

4. Operationalise phased conditionality

As part of the discussions, the Commission and the Council should define priorities and accept trade-offs to reflect political and institutional constraints.

If a Magyar government lacks the two-third majority required to adopt all required measures, the EU should be ready to adjust milestones and allow for progressive disbursements. This would allow partial but tangible progress on rule-of-law restoration while enabling Magyar to sustain domestic support for reform.

In parallel, the Commission should clearly set out in advance the criteria used to assess the corrective measures and justify decisions to unblock the funds. This would help limit politicisation and reduce the risk of legal challenge before the ECJ.

5. Establish a pilot rule-of-law transition mechanism

Once a restoration action plan is agreed, EU institutions should closely monitor its implementation and the broader evolution of the rule of law in Hungary, beyond the next legislative term if necessary. They should establish an ad-hoc mechanism for that purpose, which would serve as a template for future rule-of-law restoration monitoring.

This mechanism could draw on the post-programme surveillance, used for euro areas countries that had received financial assistance, established in 2013.³⁷ The Commission would publish regular progress reports to the Council and the Parliament's Civil Liberties, Justice and Home Affairs (LIBE) committee. The Council could recommend corrective measures in cases of insufficient

progress or backsliding, while the LIBE committee could hold hearings with Hungarian authorities.

This mechanism would complement the Commission's annual rule-of-law report, with cross-references between findings and recommendations. However, unlike the rule-of-law report – which is not binding and with no sanctions foreseen – this framework should be linked to budget conditionality. EU funds should be suspended if corrective measures recommended by the Council are not implemented.

The mechanism would terminate once Hungary has remedied systemic violations in the four pillars defined in the rule-of-law report – the judiciary, anti-corruption, media and checks and balances. This should include reforms to electoral law and the Fundamental Law adopted in 2010, which enabled the politicisation of the judiciary and other breaches of democratic standards.³⁸ Clear targets should be defined at the outset.

CONCLUSION

Hungary could become the EU's first real test case for democratic restoration after illiberal rule. The lesson from Poland is clear: regime change does not equal system change. The EU must strike a difficult balance – but avoid complacency.

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What is at stake is not only Hungary's trajectory, but the credibility of the EU's rule-of-law toolbox and its capacity to sustain democratic recovery.³⁹ If managed poorly, the EU risks weakening its leverage across the Union. If managed well, phased conditionality could become the missing link between enforcement and recovery – turning political transition into durable democratic resilience.

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