European Law Blog, 2026 · ISSN 2950-1970
Published: 19 October 2026
CONSTITUTIONAL LAW

Who Bears the Costs of Systemic Rule of Law Breaches? The General Court's Judgments on EU Value Conditionality

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Since 2021, the EU has increasingly relied on its budgetary powers to defend its values under Article 2 TEU through three value conditionality instruments. In response to value breaches in Hungary, these instruments have been used to freeze over €30 billion in EU funding. Under the most prominent of these, the Conditionality Regulation, the Council not only froze €6.3 billion of cohesion funds in December 2022 but also prohibited the Commission from entering into new legal commitments with public interest trusts or entities maintained by them.

Effectively, the latter measure (Article 2(2) of the Council Implementing Decision) excluded 21 Hungarian universities, affecting around 60% of Hungarian students and staff, from new Erasmus+ and Horizon Europe funding. Six of these universities brought actions for annulment against this part of the Council Implementing Decision (Cases T-115/23; T-132/23; T-133/23; T-138/23; T-139/23; and T-140/23). The General Court, sitting as an intermediate chamber of nine judges, dismissed all six actions. These are the first judgments reviewing concrete measures adopted under the Conditionality Regulation since the ECJ upheld the Regulation's validity.

From a governance perspective, the General Court convincingly pairs strict judicial review with a broad reading of the Regulation. As regards the standard of review, it stresses the *'legal rather than political nature'* of conditionality (T-138/23, para. 87), subjecting its application to full judicial review. Echoing the broader thrust of AG Ćapeta's Opinion in *Parliament v Commission* (C-225/24), this emphasis on judicial scrutiny may help counter concerns about the politicisation of conditionality and thereby strengthen its perceived legitimacy. At the same

time, the General Court ensures the Regulation's effectiveness against systemic breaches by holding that funds can be withheld from recipients without establishing wrongdoing on their part. Together, these strands consolidate conditionality as a valuable addition to the EU's toolbox to protect its values.

From the perspective of affected individuals, however, this approach comes at a cost. Students and researchers bear the consequences of systemic breaches. To safeguard their interests, the EU relies primarily on a Member State it does not trust to implement funds correctly. Yet shielding individuals from the consequences risks weakening the incentives for Member States to remedy breaches. Addressing this *collateral damage dilemma of conditionality* ultimately falls to the EU legislature, particularly in the negotiations on the next Multiannual Financial Framework (MFF). Any reform should, however, preserve conditionality's particular value in addressing systemic breaches.

Background: The EU's Reasons for Freezing the Universities' Funds

Alongside many constitutional reforms and attacks on judicial independence, the *Orbán government* also overhauled the Hungarian university system. In 2021, the government transferred many public universities together with assets worth billions of euros into so-called '*public interest trusts'*. The state relinquished control over these trusts by transferring the founders' rights to their boards of trustees (T-115/23, para. 215), allowing the boards to exercise considerable powers over the budgetary, operational and organisational affairs of the universities (T-138/23, para. 126). In practice, the *Orbán* government appointed a high number of pro-government politicians with indefinite terms to these boards (T-115/23, paras. 90-91). The legal framework even allowed senior political executives to serve on the boards. Against this background, the Council considered that the lack of sufficient safeguards against political influence and conflicts of interest created systemic risks to the management of EU funds. Its decision thus rested on an assessment of risks arising from Hungary's university governance framework.

Conditionality as a 'Legal Rather Than Political' Tool: Full Judicial Review

How closely should EU courts scrutinise such conditionality assessments? Unlike the political procedure under Article 7 TEU, for which Article 269 TFEU limits judicial review to procedural grounds, budgetary conditionality constitutes a predominantly administrative enforcement mechanism. The question therefore concerns the distribution of political authority in the realm of conditionality instruments, as Demopoulou has rightly highlighted. In particular, the General Court had to determine whether the political sensitivity and complexity of conditionality decisions justify a broad margin of institutional discretion and hence limited judicial review.

Before the General Court, the Council, supported by the Commission, argued that, due to the complexity of the assessment, the EU institutions should benefit from a broad margin of discretion, in turn limiting judicial review to manifest errors of assessment (T-138/23, paras. 78-79). The General Court rejected this claim (T-138/23, paras. 82 ff.). It stressed that the principle of the rule of law requires, in general, full judicial review of the acts of the institutions. Only assessments involving highly complex economic, technical or scientific facts may justify more limited judicial review. Relying on the ECJ's jurisprudence, it emphasised that conditionality is of a *'legal rather than political nature'* (T-138/23, para. 87; C-157/21, para. 358). The political sensitivity of suspending EU funds therefore does not justify judicial deference. This reflects the fact that, legally, conditionality forms part of budget implementation (Article 317 TFEU).

The boundaries of institutional discretion are also at issue in the pending case *Parliament v Commission* (C-225/24). Suspecting a deal with *Orbán*, the Parliament is challenging the Commission's decision releasing around €10 billion to Hungary under the Common Provisions Regulation. Although the case concerns the release rather than the freezing of funds, AG Ćapeta's Opinion offers a useful point of comparison.

She proposed a two-step approach to discretion in the field of value conditionality. In the first step, commonly referred to as freezing, when establishing the conditions a Member State must fulfil to receive EU funding, the EU institutions enjoy discretion both in assessing the situation in the Member State and in determining the necessary requirements (*AG Opinion* in C-225/24, paras. 56-58). Although the AG did not expressly state this, her reasoning suggests that judicial review at this stage would be limited to manifest errors of assessment. By contrast, in the second step, concerning the unfreezing of funds, the AG considered that the institutions enjoy, in principle, no discretion in assessing whether the requirements have been fulfilled. She

therefore proposed full judicial review.

The AG Opinion in C-225/24 *Parliament v Commission* and now the General Court's judgments thus share a common thrust towards stronger judicial control over the application of value conditionality. Yet they also reveal a potential tension concerning the first step. While the AG recognised discretion in assessing a Member State's situation (*AG Opinion* in C-225/24, para. 57), the General Court insisted on full judicial review of the legal requirements. This comparison requires two qualifications. First, the AG's observations on the first step were made in passing, as they were not decisive for the case. Second, her Opinion concerned the Charter horizontal enabling condition under the Common Provisions Regulation, a legal instrument different from the Conditionality Regulation. This does not preclude a comparison, since both instruments follow a similar logic, and the AG herself even drew this parallel by speaking of the Commission's discretion regarding *'budgetary conditionality'* in general (*AG Opinion* in C-225/24, paras. 55-56). A possible middle ground lies in combining full judicial review of the legal prerequisites for adopting measures with institutional discretion in determining the reforms a Member State must implement to regain access to funds.

In the long run, closer judicial scrutiny might strengthen conditionality. Observers have already warned that conditionalities risk becoming a political bargaining tool, with decisions potentially influenced by non-budgetary reasons such as the government's position on the Russian aggression. Against this background, strict judicial review may counter concerns about politicisation and strengthen the perceived legitimacy of conditionality. By requiring institutions to justify their decisions against legal criteria, it can promote the equal treatment of Member States and facilitate democratic accountability.

Conditionality as a Systemic Tool: No Individual Breach Required

The General Court's standard of judicial review does not necessitate a restrictive interpretation of the Conditionality Regulation. While the General Court rejected institutional claims to judicial deference, it interpreted the Regulation's requirements broadly and in a manner that is favourable to the EU's ability to act. The General Court held that measures may be adopted without proof of individual wrongdoing by the affected recipients (T-138/23, para. 107). This

broad interpretation facilitates the use of conditionalities in cases of systemic deficiencies in Member States, the kind of deficiencies that exposed the limitations of the EU's existing instruments during the rule of law crisis. In fact, the ambition to create such an instrument was apparent from the title of the Commission's original proposal, a '*regulation on the protection of the Union's budget in case of generalised deficiencies as regards the rule of law*'.

The significance of the General Court's interpretation becomes clear in light of the universities' central argument. They argued that neither they nor the trusts maintaining them had committed any rule of law breach (T-115/23, para. 128; T-138/23, para. 90). As a starting point, the General Court recalled that the Conditionality Regulation addresses individual as well as systemic breaches (Recital 15). Yet, the decisive issue lay elsewhere: must the recipient of the funds (Article 5(1) Conditionality Regulation) itself be responsible for the breach? The Regulation does not expressly stipulate a requirement of identity between the recipient of the funds and the actor responsible for the breaches.

The General Court's reasoning rests on two complementary findings. First, the *public interest trusts* themselves are government entities and can therefore be affected recipients, even though the decision is only addressed to Hungary (Article 2(b) Conditionality Regulation; T-115/23, paras. 132 ff.). Second, where deficiencies arise from the national legal framework, requiring proof of individual breaches by each affected entity would undermine the effectiveness of the Regulation (T-138/23, para. 104). Here, the risks for the Union budget result from *'Hungary's systemic inability … or unwillingness to prevent decisions taken in breach of the applicable law on conflicts of interest'* (T-138/23, para. 106). This shapes the legal framework in which the entities operate. By focusing on that framework rather than on individual conduct, the General Court decouples responsibility for a systemic breach from exposure to measures protecting the EU budget.

This broad interpretation is supported by the fact that, even though many perceive conditionalities as sanctions, legally they have a protective rather than punitive function (C-156/21, para. 119). The scope of the Regulation remains, however, limited by the requirement of a sufficiently direct link to the Union's budget (T-138/23, paras. 109 ff.). In the present case, the General Court found such a link in the trusts' influence over decisions concerning EU-funded research projects and the selection of beneficiaries. Overall, the General Court

combines full judicial review with a broad interpretation of the Regulation that safeguards the EU's capacity to address systemic breaches.

Who Bears the Costs? Thin Protection of Students and Researchers

The General Court's permissive approach is also apparent in its assessment of the consequences for students and researchers. Although these individuals bear no responsibility for the systemic breaches, their access to new EU funding and academic opportunities was restricted. Nevertheless, the General Court interpreted the safeguards available to them in a manner that leaves considerable room for EU institutions to protect the Union budget.

During the legislative process of the Conditionality Regulation, the European Parliament pushed for the interests of beneficiaries to be taken into account. The Regulation now provides that freezing EU funds does not affect the obligations towards beneficiaries (Article 5(2) Conditionality Regulation; T-115/23, para. 196). The General Court also relied largely on this mechanism when discussing the proportionality of the measure regarding individuals (T-115/23, paras. 196 ff.). Although this reasoning is legally justifiable, the lived experience of beneficiaries might be different. While the EU does not trust the Member State to implement EU funds correctly, it relies on that same Member State to honour commitments vis-à-vis individuals.

The General Court adopted a similarly permissive approach in its assessment of academic freedom. Although EU funding restrictions must comply with fundamental rights, particularly academic freedom, the General Court did not find an interference with this right. Contrary to some scholarly opinions, the General Court held that there is no interference with academic freedom as long as the refusal of funding '*is based on scientific considerations … or stems from objectives of general interest clearly laid down by law*' (T-115/23, paras. 221 ff.). The General Court even argued that freezing the funds might contribute to the universities' autonomy, protected by academic freedom (T-115/23, para. 225). Whether restricting European research funding actually strengthens academic autonomy is, however, far from self-evident.

In practice, the Hungarian state eased the burden for some. It funded two new programmes: HU-rizon for researchers and Pannónia mainly for students. However, the programmes could

not rely on existing networks and did not reach the same depth. For instance, the total duration of mobility periods under the Pannónia programme was only half that under Erasmus+.

This raises the question whether beneficiaries should receive stronger protection. Here, conditionality faces the collateral damage dilemma inherent in its logic. As with sanctions, protecting beneficiaries could diminish the incentives for the government to remedy the breaches and for voters to demand change. The elections in Hungary and in Poland illustrate how the promise of funds and societal pressure can contribute to change through the ballot box. There is no purely technical solution to this dilemma. Rather, deciding to what extent beneficiaries should be protected requires a conscious political choice by the EU legislature. The ongoing negotiations about the EU's next MFF and the conditionality instruments offer an opportunity for this.

One option is smart conditionality, through which the EU could protect beneficiaries by redirecting funds or managing them itself. The Commission's proposal takes a cautious step in this direction. It allows suspended funds to be cut after one year and subsequently reallocated to other programmes (see Article 15(4) in conjunction with Articles 8(7) and 9(7) of the proposal). However, this would not protect the original beneficiaries. Protecting them more comprehensively would raise difficulties in identifying 'innocent' beneficiaries. More fundamentally, it could weaken conditionality's particular value in addressing systemic breaches.

Conclusion: Shaping the Future of Value Conditionality

Although the Council has now lifted the measures, the General Court's judgments help shape conditionality as a tool of EU governance. Full judicial review may help counter concerns about politicisation and strengthen trust in the application of conditionality, while the General Court's broad interpretation safeguards the EU's capacity to address systemic breaches. The judgments will not be the last word on judicial scrutiny of the application of value conditionality. If the actions are maintained, *Parliament v Commission* (C-225/24) and *Hungary v Commission* (T-138/25) will clarify how strictly the CJEU reviews decisions concerning the release of funds.

Yet, the collateral damage dilemma remains unresolved. The EU legislature must make a deliberate political choice about how far innocent beneficiaries should be shielded from the consequences of systemic breaches. In my view, while the interests of affected individuals must be taken seriously, conditionality's particular value in addressing such breaches cautions against far-reaching protections that could undermine its effectiveness.

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