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Advocate General's Opinion in Case C-225/24 | Parliament v Commission

Advocate General Tamara Čapeta proposes that the Court of Justice annul the Commission's decision lifting the suspension on the disbursement of funds to Hungary

The Commission may not disburse EU funds to a Member State until the required legislative reforms are in force and are effectively being applied. Furthermore, in any decision to disburse those funds the Commission must demonstrate that each condition has been satisfied – thereby protecting EU financial interests, enabling judicial review and informing not only the Member State concerned but all EU citizens

Under the Common Provisions Regulation (CPR),¹ funding from the EU budget is conditioned on Member States' respect for horizontal enabling conditions, one of which is compliance with the Charter of Fundamental Rights of the European Union.

In 2022, the Commission approved 10 operational programmes financed under the CPR funds in Hungary, but suspended the disbursement of those funds until the country had fulfilled the requirements laid down in the Charter.² In those decisions, the Commission set the detailed conditions that Hungary must satisfy in order to address its non-fulfilment of the Charter requirements. Part of these requirements concerned the independence of the judiciary.

In December 2023, the Commission adopted the contested decision³ by which it concluded that Hungary had satisfied the Charter requirements in relation to judicial independence and lifted the suspension on the disbursement of funds for related programmes. As a result of this decision, Hungary became eligible to receive approximately € 10.2 billion from various funds governed by the CPR.

On 25 March 2024, the European Parliament brought an action before the Court of Justice requesting the annulment of the contested decision. It alleged that the Commission infringed the applicable law and committed manifest errors of assessment, infringed its duty to state reasons and misused its powers.

In today's Opinion, Advocate General Tamara Čapeta proposes that the Court of Justice annul the Commission's contested decision.

She considers that **once the Commission has set**, within the boundaries of its discretion, **the specific requirements** that the Member State must satisfy in order to secure payment from the European Union's budget, it may **not enable payment until each of those requirements have been fulfilled**.

In relation to the first plea of the Parliament, Advocate General Čapeta is of the opinion that the Commission **incorrectly applied the requirements** imposed on Hungary when it permitted, without any explanation, the disbursement of the budget before the required legislative reforms had entered into force or were being applied. Furthermore, the Commission **failed to carry out a proper assessment of the reforms** relating to the independence of the Kúria (Supreme Court, Hungary), to judicial appointments of members of the Alkotmánybíróság (Constitutional Court, Hungary) and to the removal of the obstacles to making preliminary references. Finally, the Commission **did not adequately address the legislative developments that could undermine or offset the objectives of the reforms** Hungary had undertaken.

In relation to the second plea of the Parliament, Advocate General Čapeta considers that the Commission **infringed its duty to state reasons** under Article 296 TFEU by failing to provide any explanation for departing from the requirements set out in its 2022 approval decisions. Even if such a decision is formally addressed only to the Member State concerned, there are larger public interests behind that decision, namely the disbursement of public money. For that reason, and especially in a situation where the release of the funds had previously been suspended on account of concerns in respect of the rule of law, Advocate General Čapeta considers that the Commission owes an explanation not only to Hungary, but to the EU citizens at large.

In relation to the third plea of the Parliament, Advocate General Čapeta concluded that the claims relating to the misuse of powers were not sufficiently substantiated and proposed that the Court reject that plea.

NOTE: The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

NOTE: An action for annulment seeks the annulment of acts of the institutions of the European Union that are contrary to EU law. The Member States, the European institutions and individuals may, under certain conditions, bring an action for annulment before the Court of Justice or the General Court. If the action is well founded, the act is annulled. The institution concerned must fill any legal vacuum created by the annulment of the act.

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The [full text](#) of the Opinion is published on the CURIA website on the day of delivery.

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Pictures of the delivery of the Opinion are available from '[Europe by Satellite](#)' ☎ (+32) 2 2964106.

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¹ See Article 9(1) of the [Regulation \(EU\) 2021/1060](#) of the European Parliament and of the Council of 24 June 2021 laying down common provisions on the European Regional Development Fund, the European Social Fund Plus, the Cohesion Fund, the Just Transition Fund and the European Maritime, Fisheries and Aquaculture Fund and financial rules for those and for the Asylum, Migration and Integration Fund, the Internal Security Fund and the Instrument for Financial Support for Border Management and Visa Policy.

² The Commission identified four major deficiencies concerning the judicial independence, academic freedom, the so-called 'child protection law', and the right to asylum.

³ Commission Decision C(2023) 9014 of 13 December 2023 on the approval and signature of the Commission assessment, in accordance with Article 15(4) of Regulation (EU) 2021/1060, of the fulfilment of the horizontal enabling condition '3. Effective application and implementation of the Charter of Fundamental Rights' with regard to the deficiencies in judicial independence in Hungary (non-published).