

Press release

EU institutions would violate EU law if Polish and Hungarian Recovery Plans are approved without these Member States first fully implementing rule of law demands

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So far, the Commission has not submitted a proposal to greenlight funding of the Polish and Hungarian National Recovery and Resilience Plans. This state of play is erroneously presented as purely political. A report co-written by four law professors shows that, on the contrary, there are hard legal barriers to what is politically possible. Rule of law requirements are hard law. Any action to propose and approve EU COVID recovery funding without first solving well-documented problems with judicial independence and fighting corruption would run into severe problems with EU law in at least 5 different ways:

1. Regulation 2021/148 that lays down conditions for release of EU COVID funding, entails a hard and non-discretionary requirement to put in place a fully functioning system to trace and confront corruption with EU funding. No such system currently exists in Hungary. Until it does, the Hungarian Recovery and Resilience Plan cannot be approved in a legally sound manner.
2. Failing to protect the requirement of judicial independence, laid down in primary EU law, in both Poland and Hungary by applying the secondary EU law of Regulation 2021/148 would amount to a breach of EU law by the Commission and the Council. Secondary law cannot be applied in a manner that violates primary EU law as interpreted by the Court of Justice.
3. The Commission would seriously undermine its role as Guardian of the Treaties and act in contradictory fashion, by rightfully raising concerns regarding the repeated violation of principles of judicial independence, and the non-implementation of the Court's judgments on that topic yet simultaneously proposing to release EU COVID-funding conditional on ... judicial independence in both Poland and Hungary.
4. The Commission would also undermine its capacity and credibility to act swiftly to address corruption with (other) EU funds if it proposed to approve EU COVID-funding.
5. Given these legal risks, Council decision and Commission implementing decisions that would approve EU COVID funding for Poland and/or Hungary would very likely be challenged before the Court of Justice, risking significant delays for Polish and Hungarian EU citizens.

Under EU law, as interpreted by the Court of Justice, rule of law requirements are clear, precise, unconditional and universal. They are binding on Poland and Hungary in the same way that these requirements are binding on all other EU Member States. It was concrete and deliberate rule of law undermining actions in Poland and Hungary that led the Council to adopt specific country-specific recommendations to correct them. Only concrete and deliberate restorative action by the Polish and Hungarian governments – not just vague promises and general declarations – should now trigger unlocking EU funds. The Polish and Hungarian governments are fully the masters of their own release.

“As soon as an independent and impartial Polish judge like Igor Tuleya [now stripped of his immunity and suspended by a body that is not a court the so-called Disciplinary Chamber of the Polish Supreme Court] is back in his toga and hearing cases, nothing would prevent EU institutions from releasing EU COVID recovery funds for the benefit of Polish EU citizens. And as soon as the Hungarian government puts in place an effective and independently run system to prevent and track corruption with EU funds, in the same way as it exists in other Member States, EU COVID recovery should come the way of Hungarian EU citizens.”

Read: [6 reasons why the EU should use the approval of National Recovery and Resilience Plans to enforce the rule of law in Hungary and Poland](#)

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