

28 August 2022

TGL PROFS ACTION IN SUPPORT OF UNPRECEDENTED LAWSUIT AGAINST THE COUNCIL OF THE EU'S DECISION TO APPROVE POLAND'S RECOVERY AND RESILIENCE PLAN

On 28 August 2022, in an unprecedented legal step, four European associations of judges – the [Association of European Administrative Judges](#) (AEAJ); the [European Association of Judges](#) (EAJ); [Rechters voor Rechters](#); and [Magistrats Européens pour la Démocratie et les Libertés](#) (MEDEL) – lodged an annulment action with the [General Court of the EU](#).

This application seeks the annulment of the [Council's decision of 17 June 2022 approving Poland's recovery and resilience plan](#) (RPP) on the grounds that the rule of law “milestones” – [first agreed by the Commission](#) before being endorsed by the Council – fall short of what is required to ensure effective judicial protection and disregard the judgments of the CJEU on the matter.

In particular, [the “milestones”](#) concerning the reinstatement of Polish judges unlawfully suspended by the unlawful body known as the “Disciplinary Chamber” purport to authorise – and in effect financially reward – a course of action which is inconsistent with the judgment of the Court of Justice of 15 July 2021 in [Case C-791/19](#), and would worsen the position of Polish judges subjected to unlawful sanctions and further undermine judicial independence in Poland and other EU Member States.

This is, in essence, what several European Commissioners have already indicated in writing to the President of the European Commission. The President, however, decided to overlook their [“substantial doubts”](#). The Council similarly decided to disregard the European Parliament's repeated calls to refrain from approving Poland's RRP until Polish authorities comply with [“the judgments of the CJEU and international courts fully and properly”](#).

[The Good Lobby Profs](#) is honoured to have contributed to this unprecedented EU annulment action by offering support and access to a team of legal experts which included Professor Daniel Sarmiento; Professor Kees Sterk; Professor John Morijn; Professor Laurent Pech; Professor Alberto Alemanno as well as Trajan Shipley and Francesco Zatelli.

As recalled by the European Court of Justice in its [judgments of 16 February 2022](#) regarding the EU's Rule of Law Conditionality Regulation, not only does the rule of law form part of the values which define the very identity of the EU and the foundations of its legal order, the EU and its Member States have a duty to respect, promote and defend it. This includes a duty on the Commission and the Council not to treat judgments of the Court of Justice as bargaining chips and adjustment variables for reasons of political convenience

The breach of this duty by both the Commission and the Council has been the catalyst for *The Good Lobby Profs* to spearhead the efforts which have led to the lodging of today's unprecedented annulment action by four European organisations of judges.

Contact person for media queries: Prof. Laurent Pech (laurent_pech@thegoodlobby.eu)

The [Good Lobby Profs](#) is an academic-led initiative acting as a rapid response mechanism to uphold the rule of law across the continent. It relies on an extensive and diverse team of 60+ academic members from more than 30 countries bringing a wealth of legal and public policy expertise on multiple legal systems. It builds upon [The Good Lobby](#)'s mission to enhance the advocacy and legal capacity of European civil society.

Background

On 17 June 2022, the Council of the EU approved Poland's RPP whereby making a total of €35.4bn available in principle to Polish authorities under the Recovery and Resilience Facility. Only the Dutch government abstained on the ground that the milestones "[are missing some key elements](#)" such as "the speedy reappointment of judges who have been unfairly removed from office". A further political declaration by Belgium, Denmark, Sweden and The Netherlands called on the Commission to "[carefully assess the satisfactory fulfilment of the relevant milestones before taking a decision on the approval of any payments](#)".

This followed the European Commission's positive assessment of the same RPP on 1 June 2022 notwithstanding the manifest and continuing deterioration of the rule of law situation in Poland. The European Commission justified its endorsement of Poland's RPP on account of the inclusion of several "milestones" relating to judicial independence and to be met by Polish authorities before EU recovery money is disbursed.

These "milestones" led to [unprecedented dissent within the Commission](#) with the most serious concerns expressed by several sitting members of the Commission with past or present responsibilities over the rule of law: For Frans Timmermans (currently the Executive Vice-President for the European Green Deal and formerly First Vice-President in charge of the rule of law), the "milestones" are not "[fully in line with the ECJ's judgments and orders](#)" in violation of the Commission's "duty to ensure that the integrity of the ECJ is protection and therefore that its rulings are respected and fully implemented by all member states". Didier Reynders (current Commissioner for Justice) similarly expressed his "[substantial doubts on certain aspects of \[the\] milestones, notably as regards the re-instatement of suspended judges](#)" with Margrethe Vestager (Commissioner for Competition and Executive Vice President of the Commission) also stating that the Commission's approach puts it "[at odds with the European Court of Justice ruling](#)" of 15 July 2021 in Case C-791/19 concerning Poland's new disciplinary regime for judges.

In its [Resolution of 9 June 2022](#), the European Parliament expressed "its grave concerns about the Commission's positive assessment, on 1 June 2022, of Poland's recovery and resilience plan, which was submitted by Poland on 3 May 2021, considering the country's existing and

continued breaches of the values enshrined in Article 2 TEU, including of the rule of law and the independence of the judiciary.” It further regretted “that the conditions set in the RRF do not envisage the immediate reinstatement of all the unlawfully suspended judges to their former positions” and urged “the Council to only approve Poland’s national plan under the RRF once it has fully complied with the requirements of the RRF Regulation, and in particular Article 22 thereof [...] and with all the European Semester country-specific recommendations in the field of the rule of law, and once it has implemented all the relevant judgments of the CJEU and the ECtHR”.