

PRESS RELEASE

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TGL PROFS ACTION IN SUPPORT OF UNPRECEDENTED LAWSUIT AGAINST THE EUROPEAN COMMISSION FOR CLOSING THE COOPERATION AND VERIFICATION MECHANISM IN RESPECT OF ROMANIA

On 28 November 2023, in an unprecedented step, a professional association of Romanian prosecutors known as *Asociația Inițiativa pentru Justiție* (Association 'Initiative for Justice') lodged an annulment action with the EU General Court which seeks the annulment of the [Commission Decision of 15 September 2023](#) which formally closed the [Cooperation and Verification Mechanism](#) ("CVM") for Romania introduced at the time of Romania's accession to the EU in 2007.

This is the first time that an association of national prosecutors has directly sued the European Commission for failing to uphold the rule of law and ignoring the continuing lack of compliance with the rule of law judgments of the CJEU in the relevant Member State. Prior to this action, four European associations of judges took the unprecedented step of suing the Council of the EU and subsequently, the European Commission, for falling short of what is required to ensure effective judicial protection and disregarding the judgments of the CJEU when they approved Poland's Recovery and Resilience Plan (April 2023 update [here](#)).

In the present case (registered as Case T-1126/23), a professional association of Romanian prosecutors, represented by Carsten Zatschler SC and Vlad-Dan Oanea, seeks the annulment of the Commission Decision 2023/1786 repealing Decision 2006/928/EC [establishing a mechanism for cooperation and verification of progress in Romania to address specific benchmarks in the areas of judicial reform and the fight against corruption](#).

Prior to this action, the Romanian Association 'Initiative for Justice' had been one of three professional associations relied upon by the Commission to carry out its duties in terms of monitoring and reporting on the CVM. Its members cooperated closely with the Commission to bring the CVM to fruition, aiming to achieve compliance with all benchmarks, providing (together with the other two professional associations) the bulk of the substantive foundation of the Commission's assessments, until 2022, when they were side-lined in light of the apparently political decision to abrogate the CVM notwithstanding the fact that significant shortcomings persisted.

The unjustified abrogation of the CVM undermines the work of *Asociația Inițiativa pentru Justiție* and its members in protecting the rule of law. It also has direct consequences for the work of prosecutors, as regards a continuing climate of fear of unjustified disciplinary sanctions and criminal prosecutions as well as illegitimate obstruction preventing prosecutors from fulfilling their functions properly in fearlessly pursuing corruption cases as they should and are ethically committed to, not least by their oath of office.

In support of their annulment action, the Romanian Association 'Initiative for Justice' relies on the following three main submissions:

- The Commission erred in law and made manifest errors of assessment in concluding that all CVM benchmarks were fully met in an irreversible and sustainable manner before abrogating the CVM notwithstanding cogent evidence to the contrary from a range of sources, including multiple preliminary rulings from the CJEU concerning the (mis)application of CVM benchmarks in Romania and the rule of law reports emanating from the Commission itself;
- The Commission has infringed the duty to provide reasons, in particular by not explaining how it arrived at the conclusion that CVM benchmarks had been fully met notwithstanding cogent evidence to the contrary in relation to the following areas: abusive disciplinary proceedings against judges and prosecutors; the continuing privileged position of the Prosecutor General; the uncertain future and impact of a report by "a high level group" which is yet to be published; the continuing incompatibility of the national system for bringing criminal charges against prosecutors as established by the CJEU; the continuing validity and application of Decision No 390/2021 of the Constitutional Court which negates the primacy of EU law and in particular the validity of EU rule of law requirements and CVM benchmarks as interpreted by the CJEU and acknowledged by the Commission itself;
- The Commission has infringed essential procedural requirements as well as Article 2 TEU ("[EU values](#)" provision) and Article 49 ("[Copenhagen criteria](#)" provision) TEU by first failing to obtain the agreement of the Parliament and the Council before ceasing to apply the CVM, and subsequently, by failing to obtain the agreement of the Parliament and the Council before repealing it. By prematurely ceasing its monitoring, the Commission not only presented the Parliament and the Council with a *fait accompli*, it also thereby sabotaged its own ability to carry out the assessments incumbent on it in later proposing to abrogate the CVM.

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

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Background

On 15 September 2023, the European Commission formally closed the Cooperation and Verification Mechanism (CVM) for Bulgaria and Romania. This specific rule of law monitoring tool had been introduced at the time of Bulgaria and Romania's accession to the EU in 2007. The CVM was meant to be a transitional measure to "[facilitate progress in the fields of judicial reform and anti-corruption, as well as on organised crime for Bulgaria](#)". In October 2019, the Commission published its last CVM report in respect of Bulgaria.

In November 2022, the Commission published its last CVM report in respect of Romania. According to the Commission, “[Bulgaria and Romania have now met all the benchmarks and fulfilled all the recommendations under the CVM](#)” which is why the Commission has decided to put an end to the CVM. At the same time, the Commission has indicated that all “[remaining shortcomings and possible new emerging issues](#)” will continue to be monitored “[within the Rule of Law Cycle](#)”.