



AEAJ



## **Update: Rule of Law Lawsuit against the Polish Recovery and Resilience Plan**

(19 April 2023)

**In a notable procedural decision, the General Court will hear arguments on the substance of the Rule of Law Lawsuit against the Polish Recovery and Resilience Plan, reserving objections on standing raised by the Council to be dealt with later. The Court has moreover triggered the Expedited Procedure for the case.**

On 28 August 2022, the four main European judges' organisations filed lawsuits in the EU General Court for annulment of the Council's approval of the Polish Recovery and Resilience Plan ("RRP").<sup>[1]</sup> The judges' organisations argue that the RRP contains inadequate safeguards (so-called "milestones") regarding the rule of law.<sup>[2]</sup> In a rare move, the case is being treated in an expedited procedure, last used for the RT France case.

In addition, on 27 February 2023, the judges' organisations brought another lawsuit,<sup>[3]</sup> challenging the Financing and Loan Agreements entered into by the Commission on the basis of the Council's approval of the RRP.<sup>[4]</sup> These agreements contain details of how the EU funds will be paid out to Poland by the Commission. This additional lawsuit is being brought as a precaution because the Council has contested the admissibility of the judges' organisations' case, notably on the basis that it is the Financing and Loan Agreements which constitute "the individual legal commitment within the meaning of the Financial Regulation" that technically needs to be the target of an annulment action. The lawsuit, which is directed against the Commission, is accordingly based on five identical pleas to the original lawsuit against the Council. A sixth ground is added, as the Commission has drafted the agreements in terms which could allow payments even where the flawed rule of law milestones have not been met – and thus without even minimal remedial action on the part of Poland.

In an Order of 31 March 2023, served on the parties this week, the General Court considers that, notwithstanding the Council's arguments on admissibility, it is appropriate to continue the proceedings on the substance. The Court will accordingly rule on the admissibility arguments only after having heard arguments on the substance of the cases. The Council was given until 26 April 2023 to lodge a defence. By letter date 5 April 2023, the Council sought an extension of this time limit to 5 June 2023 and suggested that the Court reconsider its decision to apply the expedited procedure. The Court granted a 1-week extension to 3 May 2023. No hearing date has been set yet, but it can be expected to be convened before the summer vacation.

The judges' organisations are in particular concerned that the "milestones" approved by the Council deviate from and are inconsistent with the case-law of the Court of Justice concerning the Disciplinary Chamber of the Polish Supreme Court. While the Court required unlawfully imposed disciplinary sanctions to be immediately set aside, the Council's decision would authorise Poland to require wrongly sanctioned judges to commence potentially cumbersome "review proceedings" to have their names cleared. While it seems that all the unlawfully suspended judges have in the meantime been able to return to work,<sup>[5]</sup> there are still numerous sham disciplinary proceedings pending against judges and a vast range of previous sanctions that have not been set aside and continue to put these and other judges under undue pressure.

## Background

The four main European organisations of judges are the Association of European Administrative Judges (AEAJ), the European Association of Judges (EAJ, a regional branch of the International Association of Judges – IAJ), *Rechters voor Rechters* (Judges for Judges), and *Magistrats Européens pour la Démocratie et les Libertés* (MEDEL). They are represented by Carsten Zatschler SC and Emily Egan McGrath BL, Barristers, assisted by Anne Bateman and Maeve Delargy, Solicitors of Philip Lee LLP, Dublin. The support provided by The Good Lobby Profs is gratefully acknowledged.

The deterioration of the rule of law in Poland has been conclusively established in a range of judgments of the Court of Justice of the EU and the European Court of Human Rights, as well as in numerous documents of the Parliament, the Council and the Commission. It is therefore not possible to guarantee that the EU funds<sup>[6]</sup> will be spent as intended under the RRP. It is uncontested that effective judicial protection is a prerequisite for the functioning of the internal control system required by the applicable legal rules<sup>[7]</sup> and that without an adequate internal control system, no payments are legally possible.

<sup>[1]</sup> See previous Press Release: <https://medelnet.eu/four-european-organisations-of-judges-sue-eu-council-for-disregarding-eu-courts-judgements-on-decision-to-unblock-funds-to-poland/>

<sup>[2]</sup> The cases were registered as Cases T-530/22 to T-533/22 and subsequently joined: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:62022TN0530>

<sup>[3]</sup> Case T-116/23: <https://curia.europa.eu/juris/liste.jsf?nat=or&mat=or&pcs=Oor&jur=C%2CT%2CF&num=T-116%252F23>

<sup>[4]</sup> Commission Ref. Ares (2022)6239700 and Ares (2022)6239884, disclosed to the public on 24 January 2023 in response to a request from the judges' organisations.

<sup>[5]</sup> Judge Maciej Ferek returns to adjudication, the new Chamber of the Supreme Court has lifted his suspension: <https://ruleoflaw.pl/judge-maciej-ferek-returns-to-adjudication-the-new-chamber-of-the-supreme-court-has-lifted-his-suspension-this-was-the-last-judge-who-had-been-suspended/>

<sup>[6]</sup> The Council authorised the payment of financial support to Poland encompassing up to some 23.8 billion euros of non-repayable support and up to some 11.5 billion euros of loans.

<sup>[7]</sup> Article 22 of the RRF Regulation.

*Source: rechtersvoorrechters.nl*