

# EU Rule of Law Toolbox

Barbara Grabowska-Moroz

CEU Democracy Institute (Budapest)

12 June 2023



Co-funded by the  
European Union

Co-funded by the European Union. Views and opinions expressed are however those of the author(s) only and do not necessarily reflect those of the European Union or the Academy of European Law. Neither the European Union nor the granting authority can be held responsible for them.



**Pre-accession  
conditionality**

**ACCESSION**



**(Post-accession)  
enforcement of values**

## Article 49 TEU

Any European State which **respects** the **values referred to in Article 2** and is committed to promoting them may apply to become a member of the Union. The European Parliament and national Parliaments shall be notified of this application. The applicant State shall address its application to the Council, which shall act unanimously after consulting the Commission and after receiving the consent of the European Parliament, which shall act by a majority of its component members. The conditions of eligibility agreed upon by the European Council shall be taken into account.

The **conditions** of admission and the adjustments to the Treaties on which the Union is founded, which such admission entails, shall be the subject of an agreement between the Member States and the applicant State. This agreement shall be submitted for ratification by all the contracting States in accordance with their respective constitutional requirements.

## **Copenhagen criteria**

- **political** criteria: stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities;
- **economic** criteria: a functioning market economy and the capacity to cope with competition and market forces;
- **administrative** and institutional capacity to effectively implement the acquis and ability to take on the obligations of membership.

## The EU rule of law policy:

- promoting a rule of law culture,
- preventing rule of law problems from emerging or deepening
- effective common response when a significant problem has been identified.

*(COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE EUROPEAN COUNCIL, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS  
Strengthening the rule of law within the Union A blueprint for action, COM/2019/343 final)*

## **POLITICAL**

- Article 7 TEU
- Rule of law framework
  - CVM
- Annual RoL dialogue
  - RoL report
- RoL conditionality



**Enforcement  
of values**

## **JUDICIAL**

- Infringement actions (258+259 TFEU)
- Preliminary reference (267 TFEU)
- Annulment action (263 TFEU)

## Article 7 TEU

### Article 7(1): PREVENTIVE MEASURES

Determining a clear RISK of a serious breach of the values in Article 2 TEU

#### Reasoned proposal by:

1/3 of **Member States**

or

**European Commission**

or

**European Parliament**

(2/3 majority of the votes cast, representing the majority of its component members)

**Hearing** of the EU country concerned in the Council

#### Consent by the **European Parliament**

(2/3 majority of the votes cast, representing the majority of its component members)

**Decision by the Council** to determine clear risk of a serious breach of the values referred in Article 2 TEU

(by a majority of 4/5 of Members States excluding EU country concerned)

#### **Council can issue recommendations**

(by a majority of 4/5 of Members States excluding EU country concerned)

## Article 7 (2-3) SANCTIONS MECHANISM

Determination of the EXISTENCE of a serious and persistent breach of values in Article 2 TEU

### Proposal by:

#### Article 7(2)

1/3 of Member States

or

European Commission

**Observations** submitted  
by the EU country  
concerned

**Consent by the  
European Parliament**  
(2/3 majority of the votes  
cast representing the  
majority of MEPs)

**The European Council  
determines the  
existence of a serious  
and persistent breach**  
(decision by unanimity  
excluding EU country  
concerned)

### Article 7 (3) TEU: Suspension of certain rights

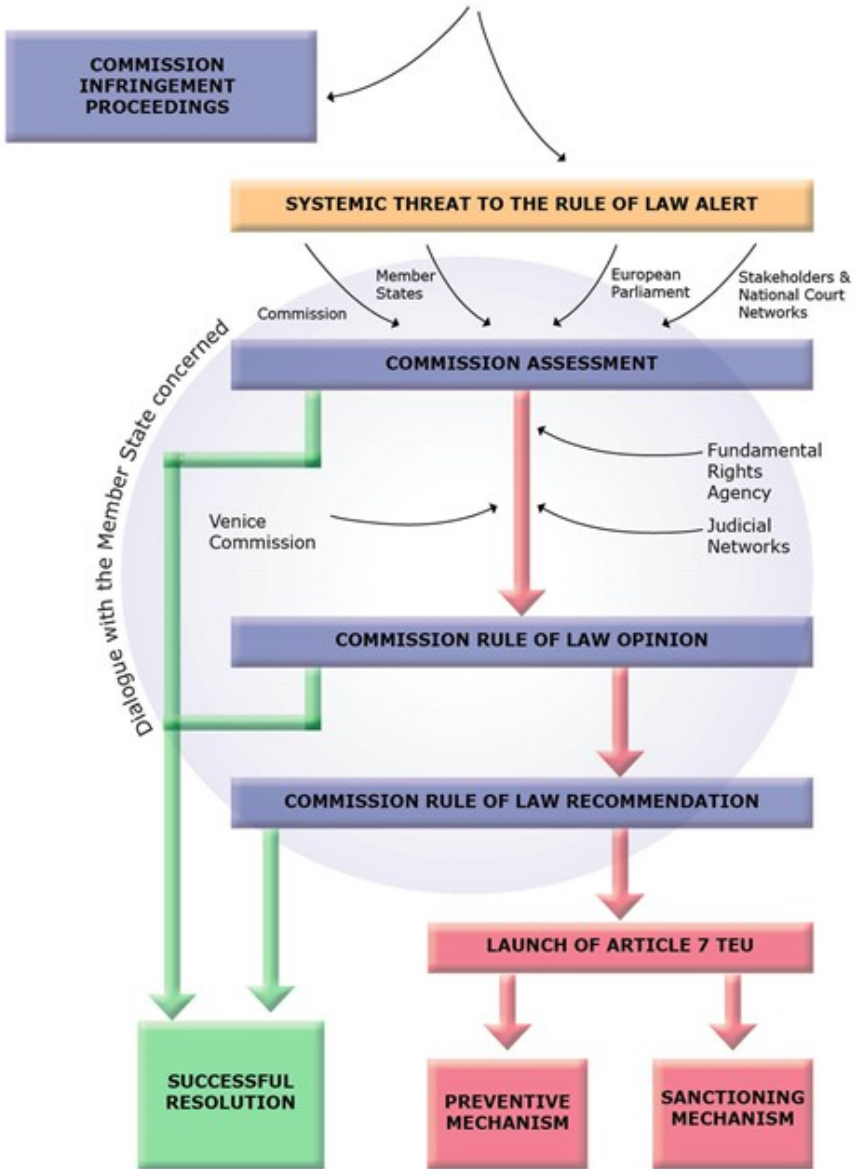
The Council can suspend membership  
rights, including voting rights

The vote requires a qualified majority,  
which is defined as:

- 72% of Member States, excluding the  
Member State concerned;
- And comprising 65% of the EU's  
population of the Member States  
participating in the vote.

EU country concerned does not participate  
in the vote.

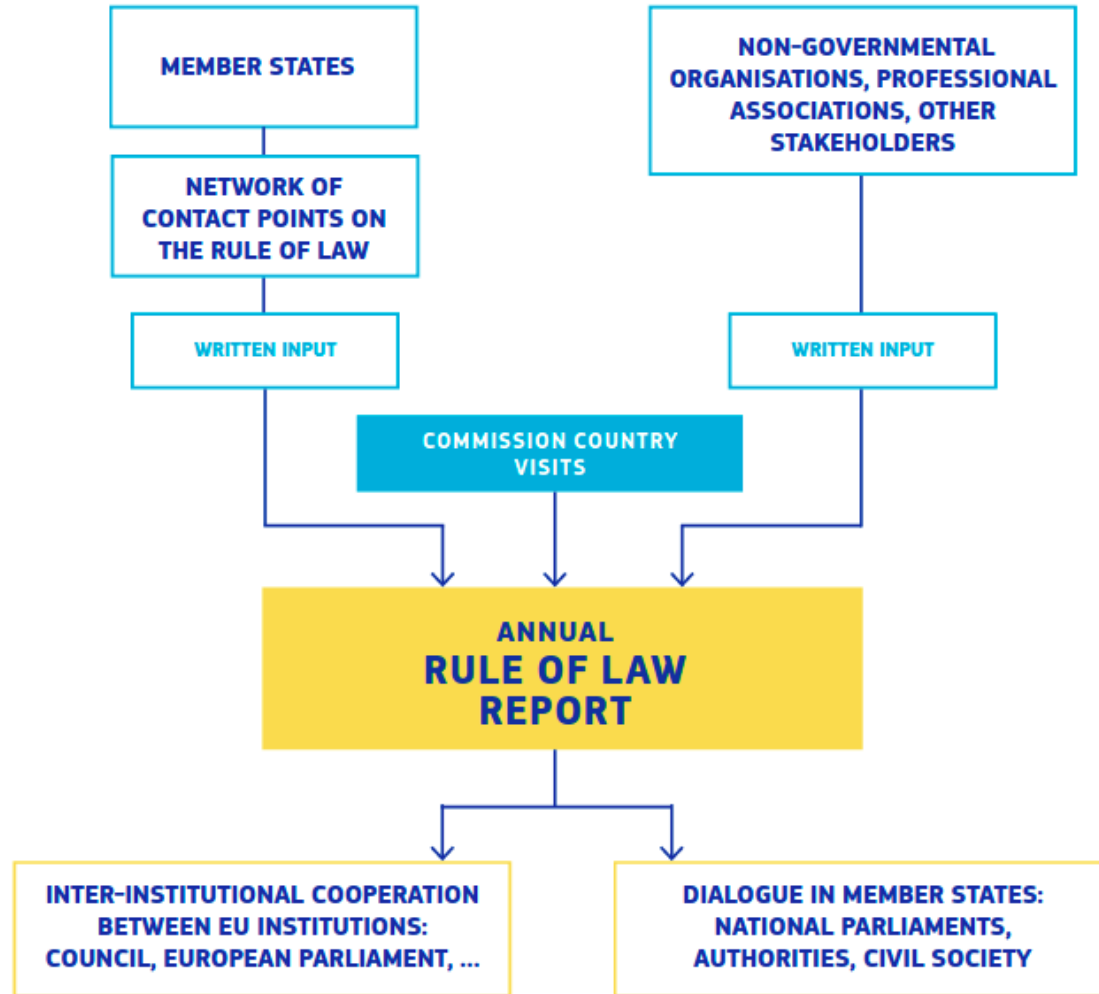




## Rule of law framework

COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL A new EU Framework to strengthen the Rule of Law, COM/2014/0158 final

# HOW THE EUROPEAN RULE OF LAW MECHANISM WORKS:



## Annual rule of law report

- justice systems,
- anti-corruption framework,
- media pluralism and media freedom,
- other institutional issues linked to checks and balances

Brussels, 20.12.2017  
COM(2017) 835 final

2017/0360 (NLE)

**REASONED PROPOSAL IN ACCORDANCE WITH ARTICLE 7(1) OF THE  
TREATY ON EUROPEAN UNION REGARDING THE RULE OF LAW IN POLAND**

Proposal for a

**COUNCIL DECISION**

**on the determination of a clear risk of a serious breach by the Republic of Poland of  
the rule of law**

HAS ADOPTED THIS DECISION:

*Article 1*

There is a clear risk of a serious breach by the Republic of Poland of the rule of law.

*Article 2*

The Council recommends that the Republic of Poland take the following actions within three months after notification of this Decision:

- (a) restore the independence and legitimacy of the Constitutional Tribunal as guarantor of the Polish Constitution by ensuring that its judges, its President and its Vice-President are lawfully elected and appointed, by implementing fully the judgments of the Constitutional Tribunal of 3 and 9 December 2015 which require that the three judges that were lawfully nominated in October 2015 by the previous legislature can take up their function of judge in the Constitutional Tribunal, and that the three judges nominated by the new legislature without a valid legal basis no longer adjudicate without being validly elected;
- (b) publish and implement fully the judgments of the Constitutional Tribunal of 9 March 2016, 11 August 2016 and 7 November 2016;
- (c) ensure that the law on the Supreme Court, the law on Ordinary Courts Organisation, the law on the National Council for the Judiciary and the law on the National School of Judiciary are amended in order to ensure their compliance with the requirements relating to the independence of the judiciary, the separation of powers and legal certainty;
- (d) ensure that any justice reform is prepared in close cooperation with the judiciary and all interested parties, including the Venice Commission;

## The situation in Hungary

**European Parliament resolution of 12 September 2018 on a proposal calling on the Council to determine, pursuant to Article 7(1) of the Treaty on European Union, the existence of a clear risk of a serious breach by Hungary of the values on which the Union is founded (2017/2131(INL))**

(2019/C 433/09)

1. States that the concerns of Parliament relate to the following issues:

— the functioning of the constitutional and electoral system;

— the independence of the judiciary and of other institutions and the rights of judges;

— corruption and conflicts of interest;

— privacy and data protection;

— freedom of expression;

— academic freedom;

— freedom of religion;

— freedom of association;

— the right to equal treatment;

— the rights of persons belonging to minorities, including Roma and Jews, and protection against hateful statements against such minorities;

— the fundamental rights of migrants, asylum seekers and refugees;

— economic and social rights.

HAS ADOPTED THIS DECISION:

*Article 1*

ounded.

## Rule of law conditionality mechanism

*Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget*

Article 3. For the purposes of this Regulation, the following may be indicative of breaches of the principles of the rule of law:

- (a) endangering the **independence of the judiciary**;
- (b) failing to **prevent, correct or sanction arbitrary or unlawful decisions by public authorities**, including by law-enforcement authorities, withholding financial and human resources affecting their proper functioning or failing to ensure the absence of conflicts of interest;
- (c) limiting the **availability and effectiveness of legal remedies**, including through restrictive procedural rules and lack of implementation of judgments, or limiting the effective investigation, prosecution or sanctioning of breaches of law.

## Stages of the Conditionality Mechanism

1	2	3	4	5	6
<p>The Commission sends a reason letter to a Member State if it believes a breach on the rule of law in the Member State will impact the EU's budget.</p>	<p>The concerned Member State will respond with required information, observations, and may propose remedial measures.</p>	<p>The Commission will assess and carry out an assessment, together with the Member State's response.</p>	<p>If the Commission intends to submit a proposal to trigger this mechanism to the Council, but before doing so, it can give the Member State an opportunity to submit its observations on the proportionality of the proposals.</p>	<p>Where the Commission is not satisfied following its assessment, it will submit to the Council a proposal for appropriate measures relating to the mechanism.</p>	<p>The Council will then vote on the Commission's proposals within 1 - 2 months of receiving them from the Commission.</p>
<p>It sets out the factual elements and specific grounds for the notification.</p>	<p>The Member State must reply within 1 - 3 months.</p>	<p>The Commission's assessment must take place within one month of receiving the Member State's response, or within a reasonable timeframe in the case of no received response.</p>		<p>The Commission will have one month to submit the proposals to the Council upon receiving the Member State's observations, or if no observations are received, without delay.</p>	<p>It requires approval by QMV - Qualified Majority Voting (55% of Member States = 65% of EU population).</p>
					<p>Through QMV, the Council can amend the Commission's proposal.</p>

Source: European Movement Ireland



EUROPEAN COMMISSION

## Complaint – Breach of the principles of the rule of law affecting the Union budget or financial interests

Regulation 2020/2092 on a general regime of conditionality for the protection of the Union budget (“Conditionality Regulation”)

This complaint form serves to notify the European Commission of breaches of the principles of the rule of law in a Member State that specifically affect or seriously risk affecting the sound financial management of the Union budget or the protection of the financial interests of the Union in a sufficiently direct way.

To notify the European Commission of any other complaint related to the rule of law, please use instead the complaint form available at [https://ec.europa.eu/assets/sg/report-a-breach/complaints\\_en/](https://ec.europa.eu/assets/sg/report-a-breach/complaints_en/)

All fields marked with \* are mandatory. Please be concise and if necessary continue on a separate page.

# The rule of law toolkit of the European Union

## Infringement actions

- 1) The Commission sends a **letter of formal notice** requesting further information to the country concerned, which must send a detailed reply within a specified period, usually 2 months.
- 2) If the Commission concludes that the country is failing to fulfil its obligations under EU law, it may send a **reasoned opinion**: a formal request to comply with EU law. It explains why the Commission considers that the country is breaching EU law. It also requests that the country inform the Commission of the measures taken, within a specified period, usually 2 months.
- 3) If the country still doesn't comply, the Commission may decide to **refer** the matter to the Court of Justice.

INFR(2021)2261	15/02/2023	Referral to Court Art. 258 TFEU	<a href="#">IP/23/842</a>	<a href="#">inf_23_525</a>	Poland	Justice, Fundamental Rights and Citizenship	Violation of EU law, in particular Art 19(1), second subparagraph, TEU and the general principles of EU law, by the Polish Constitutional Tribunal.
INFR(2022)0150	15/02/2023	<a href="#">Referral to Court Art. 258 TFEU - 260(3) TFEU</a>	<a href="#">IP/23/703</a>	<a href="#">inf_23_525</a>	Poland	Justice, Fundamental Rights and Citizenship	Failure to notify measures transposing and failure to transpose Directive (EU) 2019/1937 on the protection of persons who report breaches of Union law
INFR(2018)2180	15/02/2023	Closing of the case	<a href="#">IP/23/769</a>		Poland	Internal Market, Industry, Entrepreneurship and SMEs	Non-conformity of national legislation with the Professional Qualifications Directive by Poland (first batch)
INFR(2022)2196	15/02/2023	Formal notice Art. 258 TFEU		<a href="#">inf_23_525</a>	Poland	Environment	WATER - Late review, adoption and reporting of third river basin management plans by Poland



Hungary

Malta

Poland

Romania

CJEU

ECHTR

## DASHBOARD RULE OF LAW CASES - HUNGARY - CJEU

Status

All

Search



Print

Case Number	Name	Date of Judgement	ECLI:EU:C:	Summary
<a href="#">C-156/21</a>	Hungary v Parliament and Council	16/02/2022	<a href="#">2022:97</a>	<a href="#">Conditionality Regulation</a>
<a href="#">C-564/19</a>	IS	23/11/2021	<a href="#">2021:949</a>	<a href="#">independence of judiciary</a>
<a href="#">C-821/19</a>	Commission v Hungary	16/11/2021	<a href="#">2021:930</a>	<a href="#">inadmissibility for international protection applications</a>
<a href="#">C-650/18</a>	Hungary v Parliament	03/06/2021	<a href="#">2021:426</a>	<a href="#">legality of the adoption of the Art. 7 TEU resolution</a>
<a href="#">C-808/18</a>	Commission v Hungary	17/12/2020	<a href="#">2020:1029</a>	<a href="#">international protection and return of unlawfully staying TCN's</a>
<a href="#">C-66/18</a>	Commission v Hungary	06/10/2020	<a href="#">2020:792</a>	<a href="#">academic freedom</a>
<a href="#">C-78/18</a>	Commission v Hungary	18/06/2020	<a href="#">2020:476</a>	<a href="#">Hungarian NGO Transparency Law</a>

# Complaint form for breach of EU law

1 / 10

## 1. About this complaint form



Via this form you can file a complaint against a breach of EU law by a Member State.

However, please note Commission action in response to complaints is unlikely to directly resolve your personal situation:

1. The Commission is not obliged to open formal infringement procedures – even if it considers a breach has occurred.
2. If the Commission does formally follow up your complaint, its aim is a general one – to ensure the laws of the Member State in question are brought fully into line with EU law and correctly applied.

If the European Court of Justice confirms a breach of EU law, the Member State in question has to take action, to remedy the breach.

In order to directly resolve your personal situation, or be awarded compensation, you should take action locally, in the Member State concerned.

- if solving your problem requires a national decision to be annulled, only national courts can do this.
- if you are seeking compensation for damage, only national courts have the power to order authorities in their jurisdiction to award this.

Submitting a complaint to the Commission does not suspend the time limits for starting legal action under national law.

If you need more direct advice, you can contact our [enquiry service](#).

I have read and understood all of the above.\*

## C-204/21

20 December 2019 – “Muzzle law” adopted (entered into force in February 2020)

29 April 2020 – letter of formal notice (Poland’s response: 29 June 2020)

30 October 2020 – reasoned opinion (reply: 30 December 2020)

3 December 2020 – additional letter of formal notice (reply: 4 January 2020)

27 January 2021 – additional reasoned opinion (reply: 26 February 2021)

1 April 2021 – motion for interim measures

14 July 2021 – order of the Court of Justice (16 August 2021 – PL motion to quash the interim measures; 6 October 2021 – measures upheld)

7 September 2021 – motion for imposing fines

27 October 2021 – fines imposed (1m EUR/day)

21 April 2023 – fines lowered (500k EUR/day)

15 December 2022 – AG opinion

5 June 2023 – judgment of the Court of Justice

## Preliminary reference procedure

### C-564/19, IS

1. Article 267 TFEU must be interpreted as **precluding** the supreme court of a Member State from declaring, following an appeal in the interests of the law, that a request for a preliminary ruling which has been submitted to the Court under Article 267 TFEU by a lower court is unlawful on the ground that the questions referred are not relevant and necessary for the resolution of the dispute in the main proceedings, without, however, altering the legal effects of the decision containing that request. The principle of the primacy of EU law requires that **lower court to disregard such a decision** of the national supreme court.
2. Article 267 TFEU must be interpreted as **precluding disciplinary proceedings** from being brought against a national judge on the ground that he or she has made a reference for a preliminary ruling to the Court of Justice under that provision.

## **C-896/19 *Repubblika v Il-Prim Ministru***

(1) Should the second [subparagraph] of Article 19(1) TEU and Article 47 of the [Charter], read separately or together, be considered to be applicable with respect to the legal validity of Articles 96, 96A and 100 of the Constitution of Malta?

(2) If the first question elicits an affirmative answer, *should the power of the Prime Minister in the process of the appointment of members of the judiciary in Malta be considered to be in conformity with Article 19(1) TEU and with Article 47 of the [Charter],* considered as well in the light of Article 96A of the Constitution, which entered into effect in 2016?

(3) If the power of the Prime Minister is found to be incompatible, should this fact be taken into consideration with regard to future appointments or should it affect previous appointments as well?

## Annulment action

### Article 263 TFEU

The Court of Justice of the European Union shall review the **legality** of legislative acts, of acts of the Council, of the Commission and of the European Central Bank, other than recommendations and opinions, and of acts of the European Parliament and of the European Council intended to produce legal effects vis-à-vis third parties. It shall also review the legality of acts of bodies, offices or agencies of the Union intended to produce legal effects vis-à-vis third parties.

Any natural or legal person may, under the conditions laid down in the first and second paragraphs, institute proceedings against an act addressed to that person or which is of **direct and individual concern to them**, and against a regulatory act which is of direct concern to them and does not entail implementing measures.

**directly concerned:** 1. that measure must directly affect the legal situation of that individual and, 2. there must be no discretion left to the addressees of that measure who are responsible for its implementation, that implementation being purely automatic and resulting from Union rules alone without the application of other intermediate rules.

**individually concerned:** applicants must be affected by reason of certain attributes that are **peculiar** to them or by reason of circumstances in which they are differentiated from all other persons and by virtue of these factors individually distinguished just as the addressee of a decision.

## Annulment actions

### ***C-156/21 - Hungary v Parliament and Council, C-157/21 – Poland v Parliament and Council***

#### **1. First plea in law: the legal basis for the regulation is inappropriate and that there was no appropriate legal basis**

Article 322(1)(a) TFEU, the provision designated as the legal basis for the contested regulation, empowers the EU legislature to adopt financial rules for implementing the EU budget; however, *the contested regulation does not contain such rules*. Consequently, the legal basis of the regulation is not the appropriate basis and it does not have an appropriate legal basis.

#### **2. Second plea in law: infringement of Article 7 TEU, together with Articles 4(1) TEU, 5(2) TEU, 13(2) TEU and 269 TFEU**

The procedure laid down by the contested regulation implies, in relation to a particular situation, that the procedure referred to in Article 7 TEU is put into effect, which is not permitted by Article 7 TEU. *The creation, in itself, of a parallel procedure by means of the contested regulation infringes and circumvents Article 7 TEU*. At the same time, the procedure laid down by the regulation is contrary to the division of powers as defined in Article 4(1) TEU, infringes the principle of conferral laid down in Article 5(2) TEU and the principle of institutional balance laid down in Article 13(2) TEU and infringes Article 269 TFEU through the powers conferred on the Court of Justice.



### 3. Third plea in law: infringement of the general principles of EU law of legal certainty and legislative clarity

The underlying **concepts** used in the contested regulation are in part **not defined and in part cannot be the subject of a uniform definition**, and, for that reason are not a suitable basis for the assessments and the measures which may be made or adopted based on the contested regulation or to allow the Member States to identify with the necessary certainty from that regulation what is expected of them concerning their legal systems or the functioning of their authorities. Similarly, various specific provisions of the contested regulation, both individually and together, involve such a degree of **legal uncertainty** in relation to the application of the regulation that they infringe the general principles of EU Law of legal certainty and legislative clarity.



PRESS RELEASE

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.

Thank you!

Grabowska-MorozB@ceu.edu