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Honourable Presidents of judicial associations,

Thank you for your letter of 30 May 2022 to the President of the Commission, in which you endorse a letter of Polish associations of judges, raising concerns about the continued operation of the National Council for the Judiciary and about the recent legislation adopted by the Polish parliament in view of commitments made in the Recovery and Resilience Plan. The President asked me to reply on her behalf. Please accept our apologies for the delay in replying.

Allow me first to express my gratitude for sharing these concerns with the Commission. There is no doubt that the EU must protect the rule of law if it is to stand up for justice and the EU's core values. President von der Leyen has repeatedly underlined, also before the European Parliament, that the rule of law is the foundation of our Union. It is essential to the protection of all other values on which the Union is founded: freedom, democracy, equality, and respect for human rights.

As regards the situation of the NCJ, the Commission considers, as noted in the 2022 Rule of Law Report, that serious concerns on its independence remain unaddressed, even though these concerns have been raised in a number of rulings of the Court of Justice of the European Union and of the European Court of Human Rights, confirming concerns identified by the Commission in the context of the reasoned proposal adopted by the Commission in accordance with the procedure under Article 7(1) of the Treaty on European Union. The Court of Justice held that, whereas the fact that a body, such as a National Council of the Judiciary, which is involved in the procedure for the appointment of judges is, for the most part, made up of members chosen by the legislature cannot, in itself, give rise to any doubt as to the independence of the judges appointed at the end of that procedure, the situation may be different where that fact, combined with other relevant factors and the conditions under which those choices were made, leads to such doubts being raised.

Edith Zeller
President of the Association of European Administrative Judges

Duro Sessa
President of the European Associations of Judges (EAJ)

Tamara Trotman
President of Judges for Judges

Filipe Cesar Marques
President of Magistrats Europeens pour la Democratie et les Libertes (MEDEL)

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In a number of rulings, the European Court of Human Rights considered the process of judicial appointments to benches of the Chamber of Extraordinary Control and Public Affairs and the Civil Chamber of the Supreme Court inherently defective on account of the involvement of the NCJ lacking independence from the legislature and executive and the appointment upon the NCJ resolution in a procedure lacking effective judicial protection and despite the stay of the implementation of that resolution. In view of the expiry of the joint term of office of the NCJ judges-members, on 12 May 2022, the Polish Sejm appointed new judges-members of the NCJ, in a process boycotted by the largest associations of judges and organisations of other legal professions, including the National Bar Council and the National Council of Legal Councillors, who called on judges not to apply for election. Former members of the NCJ, appointed thereto in the period of 1989-2018, supported that call. Out of 15 judges-members appointed, all were proposed by the current governing majority in the absence of any proposals from opposition parties, amongst which 11 reappointed members. The Commission continues to follow closely developments as regards the role of the NCJ and the judicial review of its decisions.

As regards the Recovery and Resilience Plan submitted by Poland, as for all other Member States, the Commission assessed the plan against all the criteria set out in the Recovery and Resilience Facility Regulation. Under the Regulation, each plan must contribute to effectively address all or a significant subset of challenges identified in the relevant country-specific recommendations and the Commission must be satisfied that there is a robust governance and control system at national level to protect the financial interests of the Union. In the case of Poland, the independence of the judiciary is a challenge that was identified in the country specific recommendations. Therefore, taking into account these assessment criteria, the Commission and Poland have agreed on the addition in the plan of a reform of the judicial system, to be implemented and verified through respective milestones. Poland will need to demonstrate that these milestones have been fulfilled before any disbursement under the Recovery and Resilience Facility can take place.

The fulfilment of the respective milestones will be assessed on the basis of the legislation in force when Poland submits its first request for a disbursement under the Recovery and Resilience Facility. It is imperative that the new legislation complies with EU law. The Commission is assessing the effects and the implementation of the new Law on the Supreme Court adopted by the Polish Parliament on 9 June 2022, and in force since 14 July 2022, and has engaged with the Polish authorities on those elements where improvements are still needed.

The Commission will continue to follow closely the developments in Poland, including in the context of its annual Rule of Law Report¹, and remains strongly committed to upholding EU law and values in the interest of the citizens of Poland and of the rest of the European Union.

Yours sincerely,

(e-signed)

Didier REYNDEERS

¹ You can find the 2022 Rule of Law Report here: https://ec.europa.eu/info/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law/rule-law-mechanism/2022-rule-law-report_en