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Ares S(2021)6463756

Honourable Presidents,

Thank you for your letter sent to President von der Leyen, in which you refer to the two recent rulings of the Court of Justice, issued in cases C-791/19 and C-204/21R, and developments that ensued thereafter, in particular as regards the reaction to these rulings of the Constitutional Tribunal, the First President of the Supreme Court, and the Minister of Justice.

Let me first thank your associations for the engagement in promotion and protection of the rule of law in the European Union and beyond.

As regards the matter referred to in your letter, we would like to recall that on 7 September 2021, the Commission took two separate decisions, both related to the implementation of rulings of the Court of Justice of July 2021 to which you refer. We believe that Poland failed to take the necessary measures to fully comply with the rulings and the actions of the Polish authorities continue to undermine the independence of the Polish justice system. Firstly, as regards the Court's interim measures order of 14 July, the Commission decided to request that daily financial penalties be imposed on Poland for as long as the measures ordered by the Court are not being fully implemented. Secondly, as regards the judgement of the Court of Justice of 15 July 2021, the Commission decided to send a letter of formal notice to Poland. If the Commission finds that the Polish reply to the letter of formal notice is not satisfactory, the Commission may bring the case, once more, before the Court of Justice¹.

¹ You can find more about these measures here:
https://ec.europa.eu/commission/presscorner/detail/en/ip_21_4587



As regards the decision of the Constitutional Tribunal regarding the power of the Court of Justice to issue interim measures orders in the area of the judiciary, you will be aware that the European Court of Human Rights, seized in a number of cases related to the functioning of the Polish justice system, held that a 2015 appointment to the Constitutional Tribunal led to a breach of the requirement of ‘a tribunal established by law’. These irregularities in the appointment procedure of judges to the Constitutional Tribunal have been raised as a serious concern in the Reasoned Proposal of 20 December 2017 adopted by the Commission under Article 7(1) TEU procedure. Concerns over the independence and legitimacy of the Constitutional Tribunal, raised by the Commission under the Article 7(1) TEU procedure, have still not been resolved. Also, the Commission expressed its concerns in a letter to the Polish authorities, as regards the motion of the Prime Minister to the Constitutional Tribunal seeking an assessment of the compatibility with the Constitution of EU Treaty provisions and a declaration of the precedence of the Polish Constitution over EU law.

We would like to ensure you that the Commission will continue to follow closely the developments in Poland 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.

As President von der Leyen stated in her recent speech on the State of the Union our values are guaranteed by our legal order and safeguarded by the judgments of the European Court of Justice. These judgments are binding. And we will make sure that they are respected in every Member State of our Union.

Yours sincerely,

(e-signed)

Didier REYNDEERS

Edith Zeller
President of the Association of European Administrative Judges (AEAJ)

Filipe Marques
President of Magistrats Européens pour la Démocratie et les Libertés (MEDEL)

José Igreja Matos
President of the European Association of Judges (EAJ)

Tamara Trotman
President of Judges for Judges