



## European Commission acts to preserve the rule of law in Poland

Brussels, 26 July 2017

### The European Commission acts today to protect the rule of law in Poland.

The Commission substantiates its grave concerns on the planned reform of the judiciary in Poland in a **Rule of Law Recommendation** addressed to the Polish authorities. In the Commission's assessment, this reform amplifies the systemic threat to the rule of law in Poland already identified in the rule of law procedure started by the Commission in January 2016. The Commission requests the Polish authorities to address these problems within one month. The Commission asks the Polish authorities notably not to take any measure to dismiss or force the retirement of Supreme Court judges. If such a measure is taken, the Commission stands ready to immediately trigger the **Article 7(1) procedure**[\[1\]](#) – a formal warning by the EU that can be issued by four fifths of the Member States in the Council of Ministers.

The Commission also decides to launch **an infringement proceeding** against Poland for breaches of EU law. The College will immediately send a Letter of Formal Notice once the Law on the Ordinary Courts Organisation is published.

At the same time, the Commission recalls its offer to pursue a constructive dialogue with the Polish Government.

President **Jean-Claude Juncker** said: *"The Commission is determined to defend the rule of law in all our Member States as a fundamental principle on which our European Union is built. An independent judiciary is an essential precondition for membership in our Union. The EU can therefore not accept a system which allows dismissing judges at will. Independent courts are the basis of mutual trust between our Member States and our judicial systems. If the Polish government goes ahead with undermining the independence of the judiciary and the rule of law in Poland, we will have no other choice than to trigger Article 7."*

First Vice-President **Frans Timmermans** said: *"Our Recommendations to the Polish authorities are clear. It is time to restore the independence of the Constitutional Tribunal and to either withdraw the laws reforming the judiciary or bring them in line with the Polish Constitution and with European standards on judicial independence. Polish courts like the courts of all Member States are called upon to provide an effective remedy in case of violations of EU law, in which case they act as the "judges of the Union" and must comply with the requirements of the independence of the judiciary in line with the Treaty and the Charter of Fundamental Rights. We want to resolve these issues together in a constructive way. The Commission's hand remains extended to the Polish authorities for dialogue, and we welcome any steps to amend these laws in line with our Recommendations."*

### 1. Rule of Law Recommendation

The Rule of Law Recommendation adopted today complements two previous Recommendations, adopted on 27 July and 21 December 2016, and concerns the lack of an independent and legitimate Constitutional review in Poland. As it stands, the Polish authorities have still not addressed the concerns identified in the first two Recommendations. Moreover the Polish authorities have now taken additional steps which aggravate concerns about judicial independence and significantly increase the systemic threat to the rule of law in Poland.

The Commission's Rule of Law Recommendation sent today to Poland covers **four new legislative acts** now adopted by the Polish Parliament which in the Commission's assessment will increase the systemic threat to the rule of law: the Law on the Supreme Court, the Law on the National Council for the Judiciary (both 'vetoed' on 24 July by the President of the Republic), the Law on the Ordinary Courts Organisation (signed by the President of the Republic on 25 July and awaiting publication and entry into force); and the Law on the National School of Judiciary (published and in force since 13 July). These Laws, in their current form, will structurally undermine the independence of the judiciary in Poland and have an immediate and very significant negative impact on the independent functioning of the judiciary.

In particular, the dismissal of Supreme Court judges will seriously aggravate the systemic threat to the rule of law. The Commission therefore asks the Polish authorities not to take any measure to dismiss or force the retirement of the Supreme Court judges. Should the Polish authorities take such measures,

the Commission is ready to immediately activate the mechanism set out in **Article 7(1) of the Treaty on European Union**.

On the basis of its Rule of Law Recommendation, the Commission invites the Polish government to address the concerns outlined within **one month** and to inform the Commission of the steps taken.

## **2. Infringement procedure on the basis of EU law**

The College of Commissioners also took a decision to prepare an infringement procedure for the possible breach of EU law. The College is ready to send a **Letter of Formal Notice** concerning the **Law on the Ordinary Courts** as soon as it is officially published. The Commission's key legal concern identified in this law relates to the discrimination on the basis of gender due to the introduction of a different retirement age for female judges (60 years) and male judges (65 years). This is contrary to Article 157 Treaty on the Functioning of the European Union (TFEU) and Directive 2006/54 on gender equality in employment. In the Letter of Formal Notice, the Commission will also raise concerns that by giving the Minister of Justice the discretionary power to prolong the mandate of judges which have reached retirement age, as well as to dismiss and appoint Court Presidents, the independence of Polish courts will be undermined (see Article 19(1) of the Treaty on European Union (TEU) in combination with Article 47 of the EU Charter of Fundamental Rights).

### **Next steps**

The Commission's Recommendation invites the Polish Government to address the problems within one month, and to inform the Commission of the steps taken to that effect. The Commission stands ready to pursue a constructive dialogue with the Polish Government. With regards to the infringement procedure, the Commission will send the Letter of Formal Notice once the Law on the Ordinary Courts is published.

### **Background**

The rule of law is one of the common values upon which the European Union is founded. It is enshrined in Article 2 of the Treaty on European Union. The European Commission, together with the European Parliament and the Council, is responsible under the Treaties for guaranteeing the respect of the rule of law as a fundamental value of our Union and making sure that EU law, values and principles are respected. Events in Poland led the European Commission to open a dialogue with the Polish Government in January 2016 under the Rule of Law Framework. The Framework – introduced by the Commission on 11 March 2014 – has three stages (see graphic in Annex 1). The entire process is based on a continuous dialogue between the Commission and the Member State concerned. The Commission keeps the European Parliament and Council regularly and closely informed.

The European Parliament has consistently supported the Commission's concerns, including in the two Resolutions of [13 April](#) and [14 September](#), 2016. On 16 May 2017, the Commission informed the General Affairs Council of the situation in Poland. A very broad majority of Member States supported the Commission's role and efforts to address this issue, and called upon the Polish Government to resume the dialogue with the Commission.

A wide range of other actors at the European and international levels have expressed their deep concern about the reform of the Polish justice system: representatives of the judiciary across Europe, including the Network of Presidents of the Supreme Judicial Courts of the European Union and the European Network of Councils for the Judiciary, the Venice Commission, the Commissioner for Human Rights of the Council of Europe, the United Nations Human Rights Committee as well as numerous civil society organisations such as Amnesty International and the Human Rights and Democracy Network.

### **For more information:**

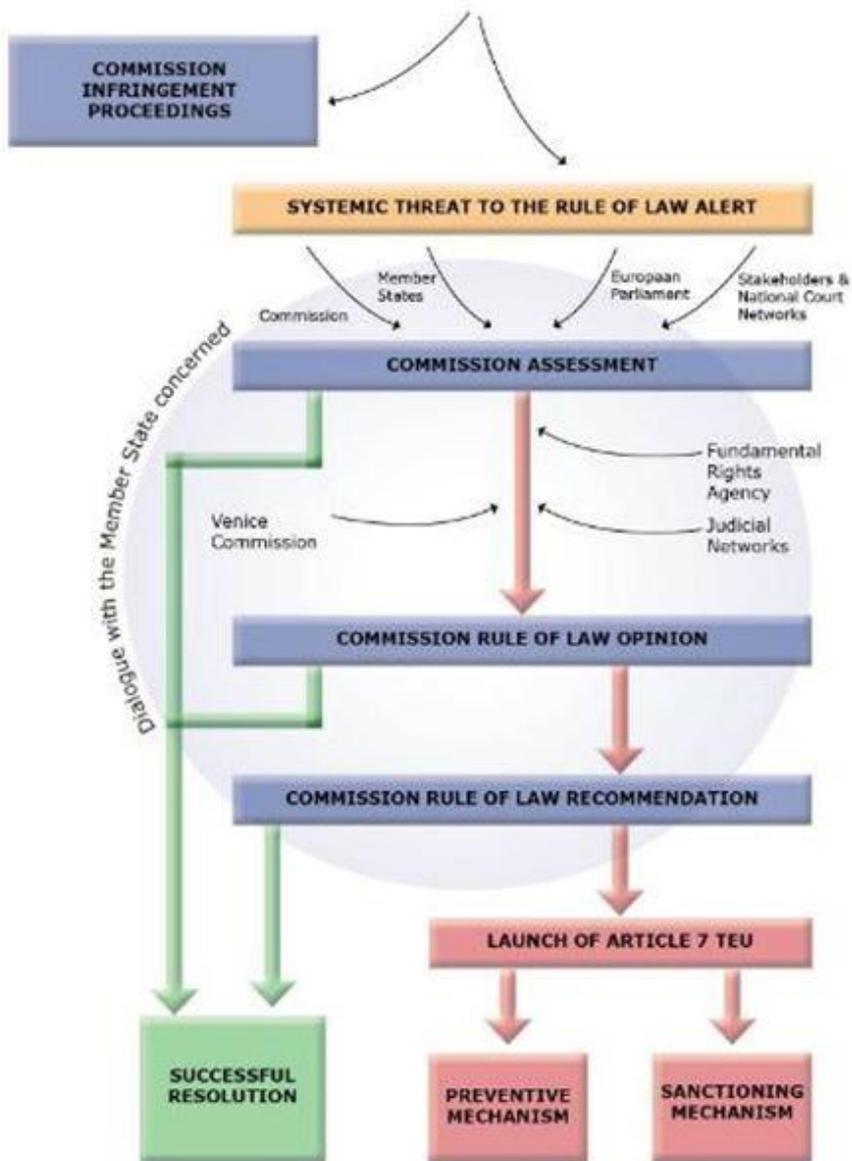
- [Commission Recommendation of 26 July 2017](#)
- [Remarks of First Vice-President Timmermans after College discussion of 19 July 2017](#)
- [Commission Recommendation regarding the Rule of Law in Poland of 21 December 2016](#)
- [Press release on second Rule of Law Recommendation, 21 December 2016](#)
- [Memo on second Rule of Law Recommendation, 21 December 2016](#)
- [Commission Recommendation regarding the Rule of Law in Poland of 27 July 2016](#)
- [Press release on first Rule of Law Recommendation, 27 July 2016](#)
- [Memo on first Rule of Law Recommendation, 27 July 2016](#)

[1] Article 7.1 of the Treaty on European Union provides for the Council, acting by a majority of four

fifths of its members, to determine that there is a clear risk of a serious breach by a Member State of the common values referred to in Article 2 of the Treaty (see Annex II). The Commission can trigger this process by a reasoned proposal.

# Annex I – Rule of Law Framework

## A rule of law framework for the European Union



## Annex II – Article 7 Treaty on European Union

1. On a reasoned proposal by one third of the Member States, by the European Parliament or by the European Commission, the Council, acting by a majority of four fifths of its members after obtaining the consent of the European Parliament, may determine that there is a clear risk of a serious breach by a Member State of the values referred to in Article 2. Before making such a determination, the Council shall hear the Member State in question and may address recommendations to it, acting in accordance with the same procedure.

The Council shall regularly verify that the grounds on which such a determination was made continue to apply.

2. The European Council, acting by unanimity on a proposal by one third of the Member States or by the Commission and after obtaining the consent of the European Parliament, may determine the existence of a serious and persistent breach by a Member State of the values referred to in Article 2, after inviting the Member State in question to submit its observations.

3. Where a determination under paragraph 2 has been made, the Council, acting by a qualified majority, may decide to suspend certain of the rights deriving from the application of the Treaties to the Member State in question, including the voting rights of the representative of the government of that Member State in the Council. In doing so, the Council shall take into account the possible consequences of such a suspension on the rights and obligations of natural and legal persons.

The obligations of the Member State in question under the Treaties shall in any case continue to be binding on that State.

4. The Council, acting by a qualified majority, may decide subsequently to vary or revoke measures taken under paragraph 3 in response to changes in the situation which led to their being imposed.

5. The voting arrangements applying to the European Parliament, the European Council and the Council for the purposes of this Article are laid down in Article 354 of the Treaty on the Functioning of the European Union.

IP/17/2161

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