



Rule of Law: Commission issues recommendation to Poland

Brussels, 27 July 2016

The European Commission has today adopted a Rule of Law Recommendation on the situation in Poland, setting out the Commission's concerns and recommending how these can be addressed.

This new step under the Rule of Law Framework follows the intensive dialogue that has been ongoing with the Polish authorities since 13 January. After the adoption of an [Opinion](#) on the situation in Poland on 1 June, the Polish Parliament adopted a new Law on the Constitutional Tribunal on 22 July. The Commission has assessed the overall situation, including in the light of the new law, and reaches the conclusion that even if certain of its concerns have been addressed by that law, important issues of concern regarding the rule of law in Poland remain. The Commission is therefore laying out concrete recommendations to the Polish authorities on how to address these concerns.

The Commission believes that there is a systemic threat to the rule of law in Poland. The fact that the Constitutional Tribunal is prevented from fully ensuring an effective constitutional review adversely affects its integrity, stability and proper functioning, which is one of the essential safeguards of the rule of law in Poland. Where a constitutional justice system has been established, its effectiveness is a key component of the rule of law.

First Vice-President Frans **Timmermans** said today: *"Despite the dialogue pursued with the Polish authorities since the beginning of the year, the Commission considers the main issues which threaten the rule of law in Poland have not been resolved. We are therefore now making concrete recommendations to the Polish authorities on how to address the concerns so that the Constitutional Tribunal of Poland can carry out its mandate to deliver effective constitutional review."*

The Commission today recommends in particular that Poland:

- respects and fully implements the judgments of the Constitutional Tribunal of 3 and 9 December 2015. These 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 do not take up the post of judge without being validly elected;
- publishes and implements fully the judgment of 9 March 2016 of the Constitutional Tribunal, as well as all subsequent judgments, and ensures that the publication of future judgements is automatic and does not depend on any decision of the executive or legislative powers ;
- ensures that any reform of the Law on the Constitutional Tribunal respects the judgments of the Constitutional Tribunal, including the judgments of 3 and 9 December 2015 and the judgment of 9 March 2016, and takes the Opinion of the Venice Commission fully into account; and ensures that the effectiveness of the Constitutional Tribunal as a guarantor of the Constitution is not undermined by new requirements, whether separately or through their combined effect;
- ensures that the Constitutional Tribunal can review the compatibility of the new law adopted on 22 July 2016 on the Constitutional Tribunal before its entry into force and publish and implement fully the judgment of the Tribunal in that respect.

Next Steps

The Commission is recommending that the Polish authorities take appropriate action to address this systemic threat to the rule of law as a matter of urgency and asks the Polish government to inform the Commission, within three months, of the steps taken to that effect.

The Commission remains ready to pursue a constructive dialogue with the Polish Government. If there is no satisfactory follow-up within the time limit set, resort can be had to the 'Article 7 Procedure'.

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.

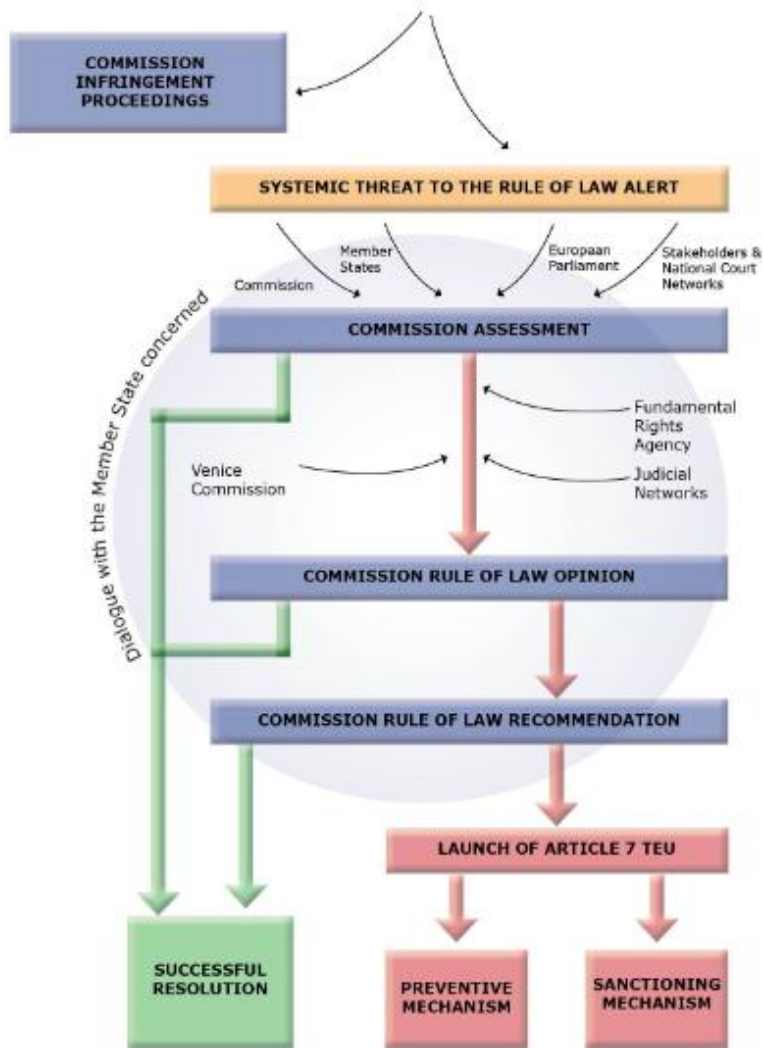
Recent events in Poland concerning in particular the Constitutional Court have led the European Commission to open a dialogue with the Polish Government in order to ensure the full respect of the rule of law. The Commission considers it necessary that Poland's Constitutional Tribunal is able to fully carry out its responsibilities under the Constitution, and in particular to ensure an effective constitutional review of legislative acts.

The Rule of Law Framework – introduced on 11 March 2014 – has three stages (see also graphic in Annex 1). The entire process is based on a continuous dialogue between the Commission and the Member State concerned. The Commission will keep the European Parliament and Council regularly and closely informed.

- **Commission assessment:** The Commission will collect and examine all the relevant information and assess whether there are clear indications of a systemic threat to the rule of law. If, on this evidence, the Commission believes that there is a systemic threat to the rule of law, it will initiate a dialogue with the Member State concerned, by sending its "Rule of Law Opinion", substantiating its concerns. This Opinion serves as a warning to the Member State, and gives the Member State concerned the possibility to respond.
- **Commission Recommendation:** In a second stage, if the matter has not been satisfactorily resolved, the Commission can issue a "Rule of Law Recommendation" addressed to the Member State. In this case, the Commission would recommend that the Member State solves the problems identified within a fixed time limit, and inform the Commission of the steps taken to that effect. The Commission will make its recommendation public.
- **Follow-up to the Commission Recommendation:** In a third stage, the Commission will monitor the follow-up given by the Member State to the recommendation. If there is no satisfactory follow-up within the time limit set, resort can be had to the 'Article 7 Procedure'. This procedure can be triggered by a reasoned proposal by one third of the Member States, by the European Parliament or by the Commission.

Annex I

A rule of law framework for the European Union



For more information:

[Commission Recommendation](#) regarding the Rule of Law in Poland
[MEMO/16/2644](#)

IP/16/2643

Press contacts:

[Mina ANDREEVA](#) (+32 2 299 13 82)

[Tim McPHIE](#) (+ 32 2 295 86 02)

General public inquiries: [Europe Direct](#) by phone [00 800 67 89 10 11](#) or by [email](#)