



Commission adopts Rule of Law Opinion on the situation in Poland

Brussels, 1 June 2016

The European Commission has today adopted an Opinion concerning the rule of law in Poland.

Following the intensive dialogue that has been ongoing with the Polish authorities since 13 January, the Commission has deemed it necessary to formalise its assessment of the current situation in this Opinion. As foreseen in the Rule of Law Framework, this is the first step taken by the Commission in this process. The Opinion sets out the concerns of the Commission and serves to focus the ongoing dialogue with the Polish authorities towards finding a solution.

First Vice-President Frans **Timmermans** said today: *"The rule of law is one of the foundations of the European Union. There have been constructive talks which should now be translated into concrete steps to resolve the systemic risk to the rule of law in Poland. The Opinion adopted today presents our assessment of the issues at stake, building on the dialogue which started in January. On this basis we stand ready to continue the dialogue with the Polish authorities."*

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 ensure an effective constitutional review of legislative acts.

The current concerns of the European Commission relate to the following issues:

- the **appointment of judges to the Constitutional Tribunal** and the implementation of the judgments of the Constitutional Tribunal of 3 and 9 December 2015 relating to these matters;
- the **Law of 22 December 2015 amending the Law on the Constitutional Tribunal**, the judgment of the Constitutional Tribunal of 9 March 2016 relating to this law, and the respect of the judgments rendered by the Constitutional Tribunal since 9 March 2016;
- the **effectiveness of the Constitutional review of new legislation** which has been adopted and enacted in 2016.

Next Steps

The Polish authorities are now invited to submit their observations on the Opinion. On the basis of these observations, the Commission would continue to pursue the constructive dialogue with the Polish government with a view to finding solutions to the concerns set out. If the concerns have not been satisfactorily resolved within a reasonable time, the Commission may decide to issue a Rule of Law Recommendation. This would mean entering the second phase of the Rule of Law Framework (see Annex).

Background

In November 2015, the Commission became aware of an ongoing dispute in Poland concerning the composition of the Constitutional Tribunal, as well as the shortening of the mandates of its current President and Vice-President. The Constitutional Tribunal rendered two judgments on these matters, on 3 and 9 December 2015. In addition, the Commission noted that the Sejm (Polish parliament) approved on 22 December 2015 a law amending the law on the Constitutional Tribunal, which concerns the functioning of the Tribunal as well as the independence of its judges.

In light of the situation regarding the Constitutional Tribunal, the First Vice-President wrote to the Polish Government on 23 December 2015 to request further information about the state of play. The letter requests that the Polish Government explain the measures they envisage to take with respect to the different Constitutional Tribunal judgements.

The First Vice-President's letter also recommended that the Polish Government consult the Venice Commission before adopting the proposed changes to the Law on the Constitutional Tribunal. The Polish Government requested a legal assessment from the Venice Commission on 23 December, but in the meantime the law was formally adopted on 28 December

On 9 March 2016 the Constitutional Tribunal ruled that the Law of 22 December 2015 is unconstitutional. On 11 March, the Venice Commission adopted an opinion in which it found the amendments of 22 December to be incompatible with the requirements of the rule of law. The judgment of 9 March, as well as all judgments rendered by the Constitutional Tribunal since then, have not been published in the Official Journal.

On 13 January 2016, the College of Commissioners held a [first orientation debate](#) on the situation as regards the rule of law in Poland. This was followed by extensive exchanges in writing between the Commission and the Polish authorities. First Vice-President Timmermans visited Warsaw on 5 April and held constructive talks with a number of his Polish counterparts. Since then, extensive exchanges have taken place between the Commission and the Polish Government in meetings at various levels to seek a resolution of the current duality of legal systems in Poland. However, despite these exchanges, it has not yet been possible to find a solution to the issues identified by the Commission.

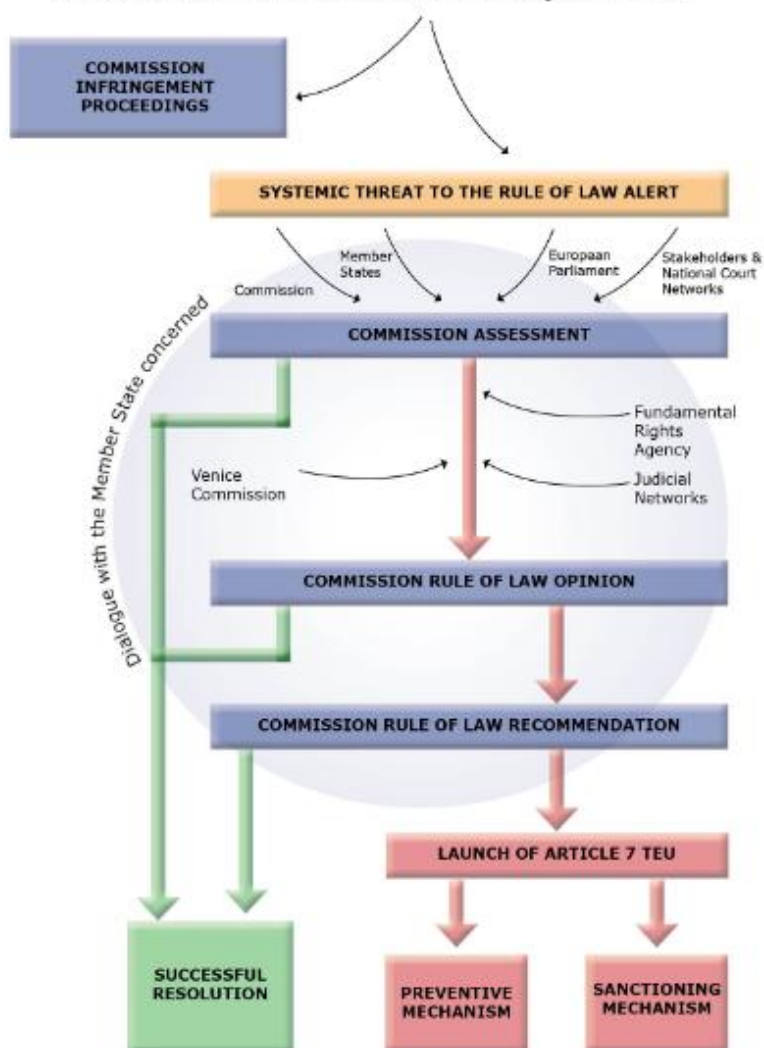
On 18 May, the College of Commissioners discussed the situation concerning the rule of law in Poland based on an oral presentation by First Vice-President Timmermans regarding the state of play of the intensive dialogue that has been ongoing with the Polish authorities since 13 January on the situation of the Constitutional Tribunal, and examined a draft Rule of Law Opinion.

The First Vice-President travelled to Poland on 24 May for discussions with the Polish Prime Minister and other relevant parties. Despite these meetings and further contacts, the Polish Government has still not taken the concrete steps needed to address the Commission's concerns in a satisfactory way and thereby resolve the issue.

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 public its recommendation.
- **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, the Commission, the European Parliament or a group of 10 Member States could resort to the 'Article 7 Procedure'.

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For more information:

[MEMO/16/2017](#)

IP/16/2015

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](#)

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