Déclaration presse par Michel Barnier suite à l'adoption d'une recommandation visant à entamer les discussions relatives à la phase suivante du retrait ordonné du Royaume-Uni de l'Union européenne.

Mesdames et Messieurs,

Je suis heureux de vous retrouver pour ce bref point de presse à l'issue de ma participation à la réunion du collège des commissaires où nous avons présenté le projet de directives de négociation que la Commission va transmettre au Conseil sur un des points de cette négociation complexe et extraordinaire qui est la période de transition.

Je vous avais dit, après notre premier accord vendredi dernier, que le travail continuait.

Et donc nous avons présenté ce matin à la Commission, qui l'a adoptée, cette recommandation au Conseil pour les directives de négociations concernant la transition.

Je voudrais faire trois points à ce sujet.

I – D'abord, rappeler que le progrès suffisant que nous avons constaté avec le Président Juncker, est une étape importante – très importante – et nécessaire sur la route d'un accord et d'un retrait ordonné du Royaume-Uni, plutôt que vers un retrait désordonné.

De ce point de vue-là, je salue le travail qui a été fait, je l'ai dit publiquement devant le Parlement européen, à l'égard de Theresa May, et je veux dire aussi mes remerciements à l'équipe de négociation britannique.

Cette étape importante et nécessaire est franchie mais nous ne sommes pas au bout de la route pour établir les conditions de ce retrait ordonné qui exige du temps.

Dans ce temps il y a, de mon point de vue, ce qui avait été d'ailleurs prévu par le Conseil européen dès le mois d'avril, cette période de transition qui a été officiellement demandée par Theresa May dans son discours de Florence pour la première fois.

Cette période de transition est utile, elle permettra évidemment à l'administration britannique de se préparer, notamment pour éviter le désordre aux frontières britanniques qui sont aussi les nôtres et puis de se préparer à d'autres enjeux – je pense à l'enjeu d'Euratom dont le Royaume-Uni

va sortir.

Cette période permettra aussi de donner le temps nécessaire pour les entreprises, des deux côtés, qui doivent se préparer à la nouvelle relation.

Voilà pourquoi cette période de transition, demandée par le Royaume-Uni est effectivement utile et fait partie de ce retrait ordonné.

II – Quels sont les principes qui vont encadrer la négociation sur cette période de transition ?

Ces principes ne sont pas nouveaux, ils sont également contenus dans les orientations du Conseil européen et dans les résolutions du Parlement européen. Je voudrais en citer cinq, que toute période de transition devra respecter :

1. L'intégrité du marché intérieur : toute transition comprendra l'ensemble des secteurs économiques couverts par le marché unique, et évidemment les quatre libertés qui restent indivisibles et qui sont la fondation du marché unique.
2. L'intégrité de l'Union douanière. Le tarif douanier commun, qui est un élément clef de l'Union douanière, continuera de s'appliquer pendant la transition, de même que les contrôles aux frontières pour les produits venant de pays tiers.
3. Toutes les nouvelles règles de l'Union européenne qui seront adoptées pendant la transition s'appliqueront au Royaume-Uni, sous le contrôle des agences européennes, de la Commission et de la Cour de justice de l'Union européenne.
4. Il n'y aura pas de transition "à la carte" : en plus du cadre réglementaire de l'Union européenne, toutes les politiques de l'Union européenne continueront à s'appliquer – je dis bien toutes les politiques.
5. Le respect de l'autonomie de décision de l'Union européenne, ce qui fait que, évidemment, le Royaume-Uni, comme il l'a voulu, deviendra un pays tiers le 30 mars 2019 au matin et ne participera plus aux institutions de l'Union européenne.

Ceci veut donc dire que le Royaume-Uni gardera pendant cette période de transition tous les avantages, tous les bénéfices mais aussi toutes les obligations du marché unique, de l'Union douanière et des politiques communes.

Je pense à nouveau que cette transition permettra de répondre aux préoccupations de beaucoup d'entreprises, que nous recevons, que nous écoutons et que nous continuerons d'écouter et qui nous disent :

1. qu'elles ont besoin de stabilité pendant cette période de transition, c'est-à-dire d'une continuité du cadre réglementaire existant ;
2. qu'au-delà de cette continuité, de cette visibilité, elles ne veulent

pas être obligées de s’adapter deux fois.

Maintenir l’ensemble du cadre réglementaire, en particulier pour les entreprises, conduit à s’adapter une seule fois, à la fin de la période de transition, même s’il faut, je le répète, se préparer dès maintenant à ce changement-là.

Autre point important, qui est aussi inscrit dans les décisions du Conseil européen, la durée. Cette période de transition doit être courte et limitée dans le temps. Theresa May évoquait dans son discours de Florence une période maximale de deux années. De notre point de vue, le terme logique de cette période devrait être le 31 décembre 2020, qui est le terme du cadre financier pluriannuel.

III – Quand cette période de transition sera-t-elle agréée ?

Sur la durée, sur les modalités de cette transition, nous savons que beaucoup de citoyens, d’entreprises, d’universités, d’administrations publiques veulent cette clarté le plus vite possible.

Mais je rappelle que la seule base juridique pour établir cette transition, c’est l’article 50. S’il n’y a pas de retrait ordonné et de traité sur l’article 50, il n’y a pas de transition. Et donc ces deux éléments vont ensemble : toutes les conditions et les éléments de la séparation ordonnée, en particulier sur la base du *joint report* agréé il y a 8 jours et qui sera pour l’essentiel le *main stream* de l’accord de retrait et la transition, qui seront décidés sous la même base juridique.

La transition fait partie de l’accord de retrait. Le contenu doit donc être finalisé pour octobre 2018, dans ce nouveau traité article 50.

Il faut aussi, à partir d’octobre 2018, laisser le temps, plusieurs mois, octobre à février, au Parlement européen, au Conseil, aux autorités britanniques, au Parlement britannique, de se prononcer sur cet accord.

Et je rappelle que la transition et la finalisation du retrait ordonné vont ensemble et s’agissant de ce retrait ordonné, évidemment nous allons nous appuyer sur les dispositions, les 96 paragraphes du *joint report,* puisqu’il n’est pas question de revenir en arrière, sur aucun des points de cet accord de progrès suffisant.

Je voudrais conclure en disant quelques mots de notre futur partenariat, de l’avenir de notre relation avec le Royaume-Uni.

Nous allons travailler dès le mois de mars, après le Conseil européen qui va décider de nouvelles *guidelines*, sur un document extrêmement important qui doit être terminé lui aussi en octobre 2018, à côté du traité article 50 : une déclaration politique qui accompagnera l’accord de retrait et qui devra définir clairement, sans ambiguïté, les contours de notre future relation.

J’ai compris, en étant au Parlement européen et aussi en participant, à l’invitation de Donald Tusk, vendredi au Conseil européen, qu’il y a une volonté générale du côté des 27, des institutions, des chefs d’Etat et de

gouvernement, de savoir en octobre où on va et quel sera le cadre, quelles seront les conditions de notre future relation avec le Royaume-Uni.

Il ne s'agira pas d'avoir un traité, nous aurons besoin de plus de temps, en revanche nous pouvons et nous devrons dans cette déclaration politique définir le cadre de la future relation et cette déclaration politique accompagnera le traité article 50 sur le retrait ordonné et la transition.

Ainsi, le jour où la transition démarrera, nous saurons où nous allons et à quoi nous voulons aboutir, à quel type de relation, et je vais être un peu plus spécifique et dire calmement les choses : pour établir le cadre de cette future relation, naturellement je respecterai scrupuleusement les *guidelines* du Conseil européen, je resterai fidèle aux résolutions du Parlement européen mais nous savons déjà où nous allons puisque nous connaissons les différents modèles de coopération avec les pays tiers.

En utilisant ces différents modèles de coopération, qui sont tous disponibles, nous appliquons les lignes rouges décidées par le Royaume-Uni lui-même.

C'est le Royaume-Uni lui-même, par la voix de son gouvernement, qui nous dit qu'il ne veut plus faire partie du marché unique puisqu'il ne veut pas respecter les quatre libertés. C'est le Royaume-Uni lui-même qui, par la voix de son gouvernement, nous dit qu'il ne veut plus faire partie de l'Union douanière puisqu'il veut retrouver sa souveraineté commerciale. C'est le Royaume-Uni lui-même qui nous dit qu'il ne reconnaitra plus l'autorité de la Cour de justice européenne. Et nous tenons compte de que nous dit le Royaume-Uni, et de toutes les conséquences que ce qu'il nous dit impose pour lui-même et pour nous même.

Et donc en croisant nos différents modèles de coopération qui sont tous disponibles avec les lignes rouges demandées par le Royaume-Uni lui-même, on aboutit logiquement à travailler, à partir du mois de mars, pour la partie économique de notre futur partenariat, à un accord de libre-échange, sur le modèle de ce que nous avons négocié ou signé avec le Canada, la Corée du Sud et plus récemment le Japon.

Et là aussi je veux être extrêmement clair : il n'y a pas d'ambiguïté, il y a des différences avec des modèles, puisque chacun de ces modèles de coopération et de commerce est naturellement adapté au pays avec lequel nous le signons. Il y a des différences mais la logique reste la même. Ce sera la même logique pour la négociation que nous aurons avec le Royaume-Uni.

Je redis aussi enfin que nous n'avons pas seulement du commerce à faire avec le Royaume-Uni : il y a d'autres dimensions dans ce futur partenariat auxquelles nous travaillerons dès le mois de mars : je pense à la coopération judiciaire, je pense à un accord spécifique en matière d'aviation, je parle évidemment de la coopération bilatérale que nous devrons construire dans un domaine extrêmement sensible et important pour les citoyens qui est celui de la sécurité, de la défense, de la politique étrangère. Cela ne se fera plus, comme je l'ai dit à Berlin, dans le cadre du traité de l'Union européenne que les Britanniques quittent mais cela se fera sous une autre forme. Nous devons

y travailler.

Voilà les différentes dimensions du futur partenariat avec comme pilier économique un accord de libre-échange.

Mesdames et Messieurs,

Cinq jours après la reconnaissance des “progrès suffisants” par le Conseil européen et par le Parlement européen, cette recommandation de directives de négociation sur la transition va être adressée au Conseil. Je la présenterai moi-même cet après-midi au Coreper et le Conseil affaires générales devrait en discuter le 29 janvier et immédiatement après nous commencerons la négociation sur cette future période de transition.

Pour terminer, juste quelques mots en anglais : *Merry Christmas and a Happy New Year to all of you*.

Mergers: Commission opens in-depth investigation into proposed acquisition of Cristal by Tronox

Commissioner Margrethe **Vestager**, responsible for competition policy, said: *“Titanium dioxide is used in everyday products, including paints, plastics and paper, and many different manufacturers need to buy it from a small number of suppliers. We will carefully assess whether the proposed merger between Cristal and Tronox would affect competition in the titanium dioxide market and ultimately lead to higher prices for many everyday products, or less choice for consumers.”*

Tronox and Cristal are both active in manufacturing titanium dioxide pigment. They also own titanium feedstock facilities, from which they source the raw material for their pigment production. Titanium dioxide is a white pigment used in numerous products, such as paints, paper and plastics. It is used to add opacity and brightness, and to ensure consistency of colour.

The proposed merger would create the largest supplier of chloride-based titanium dioxide in the European Economic Area (EEA) and globally.

The Commission’s preliminary competition concerns

The Commission’s initial market investigation raised several issues relating in particular to a reduction in the number of suppliers of titanium dioxide pigment produced via the chloride-based process. The market is already concentrated and Tronox and Cristal are close competitors. The Commission is concerned that the transaction could lead to less choice for customers and

potentially to higher prices for the products concerned.

Different types of titanium dioxide pigment are suitable for use in different products. For some of them, such as paints for buildings and specific types of plastics and paper, the number of suppliers of titanium dioxide is particularly limited. In some of these markets, the Commission is concerned that the acquisition would reduce the number of effective competitors from four to three.

The Commission will now carry out an in-depth investigation into the effects of this transaction to further explore its initial concerns.

The transaction was notified to the Commission on 15 November 2017. The Commission now has 90 working days, until 15 May 2018, to take a decision. The opening of an in-depth investigation does not prejudge the outcome of the investigation.

Companies and products

Tronox, registered in Australia and headquartered in the US, is active in mining and in the production of minerals and chemicals, including titanium dioxide. It owns mines in Australia and South Africa, and operates production sites in Europe, the US and Australia.

Cristal (The National Titanium Dioxide Company Ltd.) is headquartered in Saudi Arabia and is part of the Tasnee industrial company. Cristal is active in mining and in the production of titanium dioxide and other titanium chemicals. It owns mines in Australia and Brazil, and operates production sites in Europe, the US, China, Brazil and Saudi Arabia.

Merger control rules and procedures

The Commission has the duty to assess mergers and acquisitions that have been referred to it by EU Member States (see Article 4(5) of the Merger Regulation) and to prevent concentrations that would significantly impede effective competition in the EEA or any substantial part of it.

The vast majority of notified mergers do not pose competition problems and are cleared after a routine review. From the moment a transaction is notified, the Commission generally has 25 working days to decide whether to grant approval (Phase I) or to start an in-depth investigation (Phase II).

In addition to the current transaction, there are five ongoing Phase II merger investigations: the proposed acquisition of Ilva by ArcelorMittal, the proposed merger of Essilor and Luxottica, the proposed acquisition of Monsanto by Bayer, the proposed creation of a joint venture by Celanese and Blackstone, and the proposed acquisition of NXP by Qualcomm.

More information will be available on the competition website, in the Commission's public case register under the case number M.8451.

Opening remarks by Vice-President Dombrovskis on the review of prudential rules for investment firms

The European Commission has today taken another step in our efforts to build deeper and more integrated capital markets, as part of our Capital Markets Union. As you know, this is important for completing Europe's Economic and Monetary Union.

Today's proposal aims to make sure that capital requirements for investment firms are more proportionate and in line with the risk they face. This follows our Call for Evidence, which we launched to ensure that post-crisis financial regulation is fit for purpose.

Around 6000 investment firms operate in the EU today. Alongside banks, these firms provide a range of services that are important for channelling capital and savings towards productive uses across the EU. These services include investment advice, helping companies tap capital markets, managing assets, and providing market liquidity, to name a few.

Under the current rules, investment firms are subject to the same prudential regulation as banks. But unlike banks, investment firms do not take deposits or make loans on a large scale, so the risks they face are often different. In addition, the existing rules are often ill-suited to the business models of investment firms and the risks they present to customers and markets. The result is a prudential regime that can be at the same time too strict in some cases, and too lax in others.

That is why we are today proposing more risk-sensitive and less burdensome regulations for investment firms, based on advice by the European Banking Authority. This would smoothen the functioning of European capital markets, without endangering financial stability.

More specifically, today's proposal includes three elements:

First, we are making sure that capital requirements are more proportionate and responsive to the diverse risks faced by the EU's investment firms. Smaller investment firms should benefit from simpler requirements. This will lead to considerable reductions in administrative burdens and compliance costs.

Second, we will treat large and systemic investment firms as banks in all respects. They provide "bank-like" services and underwrite risks on a significant scale across the single market. Our regulatory and supervisory structure should also accommodate large stand-alone investment firms. In practice, this means that systemic investment firms located in the euro area

would be supervised by the single supervisory mechanism in the European Central Bank, just like systemic banks are supervised today. So we are bringing large systemic investment firms under the bank supervision system.

Third, under the new Mifid rules coming into force on 3 January, the Commission can decide to grant access to the EU to wholesale investment firms located in third countries through equivalence. We are proposing to update this equivalence test with a reference to the rules we are presenting today. We are also making the test itself more proportionate and risk-sensitive. This means that when the amount of investment services provided by a third country's firms makes it of systemic importance for the EU, we are explicitly clarifying that our equivalence assessment will be more detailed and granular.

This is a clear signal to our international partners: the EU supports globally integrated capital markets based on the principle of equivalence. But it is also a clear signal for those third countries that are potentially important for us when it comes to provision of financial services: by keeping their rules and supervision closely aligned to ours, it will be easier for the EU to consider granting them equivalence.

Thank you very much.

Commission action on the Rule of Law in Poland: Questions & Answers

IP/17/5367

What is the legal basis for the Commission's actions to defend the Rule of Law in Member States?

The rule of law is one of the fundamental values upon which the European Union is founded. The Commission, beyond its task to ensure the respect of EU law, is also responsible, together with the European Parliament, the Member States and the Council, for guaranteeing the fundamental values of the Union.

On 11 March 2014, the European Commission adopted a new Framework for addressing systemic threats to the Rule of Law in any of the EU's 28 Member States. The Framework establishes a tool allowing the Commission to enter into a dialogue with the Member State concerned to prevent the escalation of systemic threats to the rule of law.

The purpose of the Framework is to enable the Commission to find a solution with the Member State concerned in order to prevent the emergence of a systemic threat to the rule of law that could develop into a "clear risk of a serious breach" which would potentially trigger the use of the 'Article 7

Procedure'.

After two years of dialogue with the Polish authorities under the Rule of Law Framework which has not led to results and has not prevented further deterioration of the situation, it is necessary and proportionate to enter into a new phase of dialogue formally involving the European Parliament and the Council.

The Procedure foreseen under Article 7 of the Treaty on European Union (TEU) aims at ensuring that all EU Member States respect the common values of the EU, including the Rule of Law. It foresees two legal possibilities in such a situation: a preventive mechanism in case of a "clear risk of a serious breach of the [Union's] values" (Article 7(1) TEU) and a sanctioning mechanism in the case of "the existence of a serious and persistent breach" of the Union's value, including the Rule of Law (Article 7(2) and Article 7(3) TEU). Article 7 TEU has until today not been used.

Why did the Commission launch a Rule of Law dialogue on 13 January 2016 on the situation in Poland?

Events in Poland, in particular the political and legal dispute concerning the composition of the Constitutional Tribunal, and a new law relating to the functioning of the Constitutional Tribunal, gave rise to first concerns regarding the respect of the rule of law.

Following a debate in the College of Commissioners on 13 January 2016 about the developments in Poland, the Commission launched a dialogue and requested information from the Polish authorities on the situation.

What has happened in the two years since the Commission launched the Rule of Law dialogue with Poland?

A comprehensive explanation of the developments of the past two years, and the Commission's attempts to engage in constructive dialogue with the Polish authorities can be found in the Reasoned Proposal for a Council Decision adopted today (LINK). The Commission has made an extensive use of the possibilities provided by the Rule of Law Framework for a constructive dialogue with the Polish authorities. Throughout this process the Commission has always substantiated its concerns in an objective and thorough manner. The Commission has issued a Rule of Law Opinion and three Rule of Law Recommendations. It has exchanged more than 25 letters with the Polish authorities on this matter. A number of meetings and contacts between the Commission and the Polish authorities also took place, both in Warsaw and in Brussels, and the Commission has always made clear that it stood ready to pursue a constructive dialogue and has repeatedly invited the Polish authorities for further meetings to that end. Key steps include:

2016

- On 13 January 2016, the Commission **launched a dialogue** with the Polish authorities in order to seek solutions to its concerns regarding the Constitutional Tribunal.

- Between February 2016 and July 2016 the Commission and the Polish Government exchanged a number of letters and met on several occasions.
- On 13 April 2016, the European Parliament voted for a Resolution urging the Polish Government to respect, publish and fully implement the judgments of the Constitutional Tribunal.
- On 1 June 2016, in the absence of solutions from the Polish authorities, the Commission formalised its concerns by sending a **Rule of Law Opinion** to the Polish Government.
- On 27 July 2016, after further exchanges were unable to resolve the Commission's concerns, the Commission adopted a **Rule of Law Recommendation**, finding that there was a systemic threat to the rule of law in Poland. The Commission invited the Polish authorities to address its concerns within three months, but the Polish Government informed the Commission that it disagreed on all the points raised.
- By 21 December 2016, important issues remained unresolved, and the Commission adopted a **second Rule of Law Recommendation**, concluding that there continued to be a systemic threat to the rule of law in Poland. The Polish authorities again disagreed with the Commission's assessment.

2017

- On 20 January 2017, the Polish Government announced a comprehensive reform of the judiciary in Poland.
- On 16 May 2017, the Commission informed the Council on the situation in Poland, and there was broad support among Member States for the Commission's role and efforts to address the issue. Member States called upon Poland to resume the dialogue with the Commission.
- On 13 July 2017, the Commission wrote to the Polish authorities expressing its concerns about the pending legislative proposals on the reform of the judiciary, underlining the importance of refraining from adopting the proposals as they were drafted at that time, and calling for a meaningful dialogue. The Commission explicitly invited the Polish Foreign Minister and Polish Justice Minister to meet at their earliest convenience. These invitations were ignored.
- By 26 July 2017, the Polish Parliament had adopted **four judicial reform laws**; two of the laws had been signed into force by the President, and two of the laws were vetoed by the President and subject to further legislative discussions. The Commission adopted a **third Rule of Law Recommendation**, reiterating its existing concerns about the Constitutional Tribunal and setting out in addition its grave concerns about the judicial reforms. The Commission's Recommendation set out a list of proposed remedies, and urged the Polish authorities in particular not to take any measure to dismiss or force the retirement of Supreme Court judges.
- On 25 September the Commission again informed the Council of the situation in Poland, and there was again broad agreement on the need for Poland to engage in a dialogue with the Commission.
- On 26 September 2017, the President of the Republic transmitted to the Sejm two new draft laws on the Supreme Court and on the National Council for the Judiciary. On 15 November 2017, the European Parliament adopted a Resolution expressing support for the Recommendations issued by the

Commission, and considering that the current situation in Poland represents a clear risk of a serious breach of the values referred to in Article 2 of the TEU.

- On 8 December 2017, the two new draft laws propsoed by the President of the Republic were adopted by the Sejm, the lower house of the Polish Parliament, after further legislative work. On the same day, the Venice Commission of the Council of Europe adopted two opinions on the judicial reforms in Poland, concluding that they enable the legislative and executive powers to interfere in a severe and extensive manner in the administration of justice, and thereby pose a grave threat to judicial independence.
- On 15 December 2017, the two laws were approved by the Polish Senate, the upper house of the Polish parliament.

In summary, within a period of two years more than 13 consecutive laws have been adopted affecting the entire structure of the justice system in Poland; the Constitutional Tribunal, the Supreme Court, the ordinary courts, the national Council for the Judiciary, the prosecution service and the National School of Judiciary. The common pattern of all these legislative changes is that the executive of legislative powers have been systematically enabled to interfere significantly with the composition, powers, administration and functioning of these bodies.

What are the main issues that the Commission is concerned about?

The **independence and legitimacy of the Constitutional Tribunal** in Poland have been seriously undermined and it is no longer able to provide an effective constitutional review, in light of a number of developments over the past two years. In particular, these developments have led to a complete recomposition of the Tribunal outside the normal constitutional process for the appointment of judges. Three judges that were lawfully nominated to the Tribunal have not been able to take office, and three judges with no legal mandate are sitting on the Tribunal. In addition, the President of the Tribunal was unlawfully appointed, and certain judgments of the Tribunal have not been published by the Government.

As a consequence, the **constitutionality of national legislation can no longer be guaranteed**. There are a number of sensitive laws which have been adopted, the most recent being a new electoral law, for which no independent constitutional review is possible. Laws on the media, on public demonstrations, on public services, on NGOs are other recent examples which deserve an independent constitutional review

As a consequence of further judicial reforms, **almost 40% of the current Supreme Court judges will be subject to forced retirement**. The President of the Republic will have the discretionary power to prolong the mandate of Supreme Court judges, and all new Supreme Court judges will be appointed by the President on the recommendation of the newly composed National Council for the Judiciary, which will be largely dominated by political appointees. In other words **the independence of the highest Court in Poland is undermined**. Given the wide scope of competences of the Supreme Court, this could impact on a wide range of areas directly concerning the life of Polish and European

citizens, such as social security rights or the validation of election results. One concrete example is the fine recently imposed by the Polish media regulator on a commercial broadcaster for its broadcasting of protests against the Government. Such a decision should normally be reviewed by independent courts, including the Supreme Court.

The ordinary courts are also directly affected, as a number of **judges are forced to retire following a lowering of the retirement age of judges**. These mandates can be prolonged at the discretion of the Minister of Justice. The **Minister of Justice also has the discretionary power to appoint and dismiss all presidents of courts without concrete criteria**, no obligation to state reasons and no judicial review. According to available information until now, **24 court presidents have already been dismissed** and 32 have been appointed under this new discretionary regime.

There has been a total reset of the National Council for the Judiciary, which is the institution tasked by the Constitution with safeguarding judicial independence. The mandate of the current judges-members of the Council will be prematurely terminated and new judges-members will be reappointed by the Polish Parliament, instead of by other judges as required by European standards. This will have an impact on the careers of judges, in terms of their appointments, promotions, mobility and disciplinary proceeding.

What do the reforms of the Polish judiciary mean for the rest of the European Union?

The situation in Poland is a matter of common concern for the EU. Respect for the rule of law is a prerequisite for the protection of all the values under Article 2 of the Treaty on European Union, as well as for the effective application of EU law. This manifests itself in areas as diverse as the functioning of the Single Market, the creation of an investment friendly environment and the mutual trust which is the corner stone of cooperation between Member States in the Justice and Home affairs areas. For example, the judicial cooperation between Member States in criminal or civil cases could be at stake, in cases such as the mutual recognition of a European Arrest Warrant or a child custody decision.

How does the Commission propose to resolve the systemic threat to the Rule of Law in Poland?

The Commission's **4th Rule of Law Recommendation**, adopted today, sets our clearly the measures which the Polish authorities should take to address its concerns. The Commission is willing to reconsider its **Reasoned Proposal to the Council** if Poland takes the specified measures.

The Polish authorities are invited to:

- Amend the Supreme Court law, **not apply a lowered retirement age to current judges, remove the discretionary power of the President** to prolong the mandate of Supreme Court judges, and **remove the extraordinary appeal procedure , which includes a power to reopen final judgments taken years earlier**;

- Amend the law on the National Council for the Judiciary, to **not terminate the mandate of judges-members**, and ensure that the new appointment regime continues to **guarantee election of judges-members by their peers**;
- Amend or withdraw the law on Ordinary Courts Organisation, in particular to **remove the new retirement regime for judges including the discretionary powers of the Minister of Justice** to prolong the mandate of judges and to appoint and dismiss presidents of courts;
- **Restore the independence and legitimacy of the Constitutional Tribunal**, by ensuring that its judges, President and Vice-Presidents are lawfully elected and by ensuring that all its legitimately delivered judgements are published and fully implemented;
- Refrain from actions and public statements which could further undermine the legitimacy of the judiciary.

What is the Rule of Law Framework?

Where there are clear indications of a systemic threat to the rule of law in a Member State, the Commission can launch a 'pre-Article 7 Procedure' by initiating a dialogue with that Member State through the Rule of Law Framework.

The Rule of Law Framework makes transparent how the Commission exercises its role under the Treaties, and aims at reducing the need for recourse to the Article 7 Procedure.

The Rule of Law Framework has three stages (see also graphic in Annex 1):

- **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 a "Rule of Law Opinion", substantiating its concerns.
- **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 one third of the Member States could resort to the 'Article 7 Procedure'.

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.

What is the Article 7 Procedure?

The Procedure foreseen under Article 7 of the Treaty on European Union (TEU) aims at ensuring that all EU Member States respect the common values of the EU, including the Rule of Law. It foresees two legal possibilities in such a situation: a **preventive mechanism** in case of a "clear risk of a serious breach of the [Union's] values" (Article 7(1) TEU) and a **sanctioning mechanism** in the case of "the existence of a serious and persistent breach" of the Union's value, including the Rule of Law (Article 7(2) and Article 7(3) TEU). Article 7 TEU has until today not been used.

The preventive mechanism allows the Council to give the EU Member State concerned a warning before a serious breach has actually materialised. The sanctioning mechanism allows the Council to act if a serious and persistent breach is deemed to exist. This may include the suspension of certain rights deriving from the application of the treaties to the EU country in question, including the voting rights of that country in the Council. In such a case the 'serious breach' must have persisted for some time.

The Article 7 Procedure can be triggered by one third of the Member States, by the European Parliament (in case of the preventive mechanism of Article 7(1) TEU) or by the European Commission.

To determine that there is a clear risk of a serious breach of the rule of law, the Council, after obtaining the consent of the European Parliament, must act with a decision of 4/5 of its members, and must reach the same threshold if it wishes to address recommendations to the Member State concerned. The Council must hear the Member States concerned before adopting such a decision.

To determine the existence of a serious and persistent breach of the rule of law, the European Council must act by unanimity, after obtaining the consent of the European Parliament. The Member State concerned must first be invited to offer its observations.

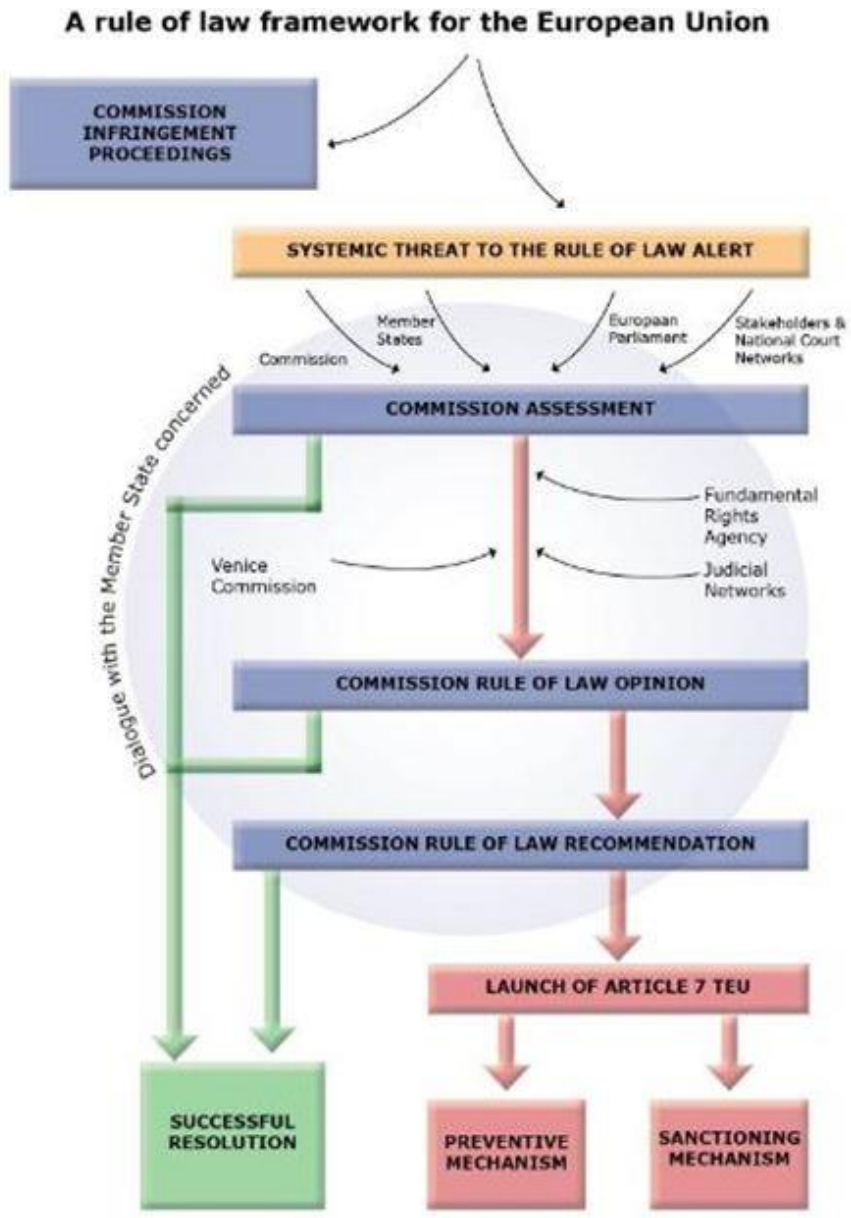
To sanction a Member State for a serious and persistent breach of the rule of law, the Council must act by qualified majority. To revoke or amend these sanctions the Council must also act by qualified majority.

In accordance with Article 354 TFEU, the Member of the European Council or the Council representing the Member State in question shall not take part in the vote, and the Member State concerned shall not be counted in the calculation of the majorities for these determinations.

Has the Article 7 Procedure been used before?

Since 2009, the European Union has been confronted on several occasions with events in EU countries which revealed specific rule of law problems. The Commission has until now addressed these events by exerting political pressure, as well as by launching infringement proceedings in case of violations of EU law. The use of the Article 7 Procedure has never been used until today.

ANNEX I



ESMA PUBLISHES CRA MARKET SHARE CALCULATION

The purpose of the market share calculation is to facilitate issuers and related third parties in their evaluation of a CRA with no more than 10% total market share in the EU.

The CRA Regulation (CRAR), under Article 8d, says that issuers or related third parties are required to consider appointing a CRA with no more than 10% total market share whenever they intend to appoint one or more CRAs to rate an issuance or entity.

Using the Market Share Calculation

The publication aims to guide the user through the requirements of Article 8d. It also provides background and guidance as to how the market share calculation is performed and should be used.

The structure and approach of the document is as follows:

- **Section 6** – Allows the user to identify CRAs with no more than 10% total market share;
- **Section 7** – Allows the user to identify the types of credit ratings offered by these CRAs;
- **Section 8** – Allows the user to assess the proportion each credit rating type makes up of a CRA's overall issuance; and
- **Section 9** – Provides a link to a Standard Form and Supervisory Briefing the user can for documenting the non-appointment of a CRA with no more than 10% total market share.

This market share calculation is valid for use from its date of publication and applicable until the date of publication of the next Market Share Calculation in 2018.

ESMA welcomes feedback on the information presented in this market share calculation in future and invites market participants to send this by email to: CRA-info@esma.europa.eu