

Opening remarks of First Vice-President Frans Timmermans, Readout of the European Commission discussion on the Rule of Law in Poland

I would like to speak to you about the situation in Poland as regards the rule of law.

Sadly our concerns have deepened. Within a period of two years a significant numbers of laws have been adopted – 13 in total – which put at serious risk the independence of the judiciary and the separation of powers in Poland.

The entire structure of the justice system is affected: 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 or legislative powers are now set up in such a way that the ruling majority can systematically, politically interfere with the composition, the powers, the administration and the functioning of these authorities, thereby rendering the independence of the judiciary completely moot.

Since December 2015, two years ago, the Commission has made a huge effort to substantiate its concerns in an objective, elaborate and thorough manner.

We have issued three Recommendations and have always stood ready to pursue a constructive dialogue. In this year, this dialogue did not take place. I want to make absolutely clear that we continue to stand ready for such a dialogue. On every day, 24 hours, 7 days. Whenever the Polish authorities would deem it possible.

The Commission's concerns are fully shared by a wide range of European and international organisations, including the Council of Europe's Venice Commission, the United Nations, the OSCE and various European Networks of Supreme Courts, Constitutional Courts and highest Administrative Courts, Councils for the Judiciary, and Bar Associations, and also by the European Parliament which took a very clear position.

In the General Affairs Council, on two occasions – in May and September - there was broad agreement amongst Member States on the fact that the Rule of Law is a common responsibility and that there was a need for Poland and the Commission to engage in a meaningful dialogue in order to find a solution.

Today in Poland the constitutionality of legislation can no longer be guaranteed.

Almost 40% of the current Supreme Court judges will be forced into compulsory retirement on the basis of the law adopted by the Polish Parliament last

Friday. The President of the Republic will have the discretionary power to decide if and for how long to prolong their mandates. And all new Supreme Court judges will be appointed by the President of the Republic on the recommendation of the newly composed National Council for the Judiciary, which is dominated by political appointees of the ruling party. This politicised Supreme Court will decide directly about, for instance, the validity of election results.

The ordinary courts are also directly affected: a number of judges is forced to retire following a decrease of the retirement age of judges. Their mandates can be prolonged at the discretion of the Minister of Justice, who is also the Chief Prosecutor. The Minister of Justice has the discretionary power to appoint and dismiss all presidents of courts – without concrete criteria, no obligation to state reasons and no judicial review. Until now, 25 court presidents have already been dismissed and 35 have been appointed under this new rule.

There is a full reset of the National Council for the Judiciary, which is the institution tasked by the Polish Constitution with safeguarding judicial independence. The mandate of the judges-members of the Council will be prematurely terminated and the judges-members will be reappointed by the Polish Parliament instead of by other judges as is required by European standards. The impact of this is wide since the Council plays a key role throughout the career of judges when it comes to their appointments, their promotions, to where they are assigned to in the country and the courts, to disciplinary proceedings, etc.

What does this mean for the European Union? Respect for the rule of law is a prerequisite for the protection of all the values of Article 2 in our Treaty, as well as for the effective application of EU law, for the proper functioning of the Single Market, for an investment-friendly environment and, last but not least, for the mutual trust which is the corner stone of cooperation between Member States in the Justice and Home affairs areas. If you put an end, or limit, the separation of powers, you break down the rule of law. And that means breaking down the smooth functioning of the Union as a whole.

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. Numerous meetings and contacts between the Commission and the Polish authorities took place, both in Warsaw and in Brussels.

Again, we have always been ready to relaunch the dialogue with the Polish authorities and continue to invite the Polish Ministers of Foreign Affairs and of Justice here in Brussels or I was always prepared to travel to Warsaw to meet them there.

We've also been clear of what we ask of the Polish authorities:

First, to restore the independence and legitimacy of the Constitutional Tribunal by ensuring that its judges, its President and its Vice-President

are lawfully elected and appointed;

Second, to publish and implement fully the three 2016 judgments of the Constitutional Tribunal;

Third, to amend the law on the Supreme Court so as to not apply a lowered retirement age to the current Supreme Court judges, and remove the discretionary powers of the President of the Republic and remove the extraordinary appeal procedure;

Fourth, to amend the law on the ordinary courts so as to remove the new retirement regime for judges of ordinary courts, including the discretionary power of the Minister of Justice, and Chief Prosecutor; and remove the discretionary power of the Minister of Justice to appoint and dismiss presidents of courts and remedy decisions already taken;

Amend the law, fifth point, on the National Council for the Judiciary so as to ensure that the mandate of judges-members of the Council is not terminated and the judges-members are elected by other judges.

After two years the Commission can only conclude that there is now a clear risk of a serious breach of the rule of law. Today we therefore have adopted three measures that are linked.

First, the Commission issued today a 4th Rule of Law Recommendation, setting out clearly a list of steps that the Polish authorities can still take to remedy the current situation in the coming three months.

Second, the Commission decided to invoke the Article 7(1) procedure and submit a Reasoned Proposal for a Decision of the Council on the determination of a clear risk of a serious breach of the rule of law by Poland. However, should the Polish authorities implement the recommended actions in the coming three months, the Commission stands ready, in consultation with the European Parliament and the Council, to reconsider its Reasoned Proposal.

Let me be very clear on one issue, because I saw here and there in the media: "nuclear option." This is not a nuclear option. What we're asking now the Council to do, and the European Parliament, is in fact what the Commission has been doing over the last two years. To analyse the situation, and to decide whether in the view of these two other institutions that there is a clear risk of a serious breach of the rule of law. If that is the position of the other institutions, they can then also send recommendations to the Polish government, and then take it from there. So it's not a nuclear option. It's again an attempt to start a dialogue to resolve the situation.

Our third step: we have decided to take the next step in its infringement procedure against Poland for breaches of EU law by the Law on the Ordinary Courts Organisation, referring Poland to the Court of Justice of the European Union.

I want to be very clear: it is with a heavy heart that we have decided to initiate Article 7(1), but the facts leave us no choice. I stood before you in July, when I clearly said that we'd almost reached the situation where we

would need to invoke Article 7(1). The situation since then has not improved, but deteriorated. So we have no other option than to do this today.

The Rule of Law is a necessary condition for effective cooperation between Member States. This is not just about the situation in Poland, this about the EU as a whole, about who we are. An issue with the rule of law in one Member State is of concern to all Member States. And all Member States should be engaged to try and solve that issue in collaboration with the Member State concerned.

That's why we continue to hope that we can soon enter into a more fruitful dialogue with the Polish authorities. It is my firm belief that redressing the rule of law is in the interest of Poland as a nation. Is in the interest of Polish citizens, who are also EU citizens. And it is certainly in the interest of the EU as a whole.