**Follow up to the European Parliament non-legislative resolution** **on the proposal
for a Council decision on the determination of a clear risk of a serious breach
by the Republic of Poland of the rule of law**

1. **Rapporteur:** Juan Fernando LÓPEZ AGUILAR (S&D/ ES)
2. **Reference numbers:** 2017/0360R (NLE) / A9-0138/2020 / P9\_TA-PROV(2020)225
3. **Date of adoption of the resolution:** 17 September 2020
4. **Competent Parliamentary Committee:** Committee on Civil Liberties, Justice and Home Affairs (LIBE)
5. **Brief analysis/assessment of the resolution and requests made in it:**

The resolution notes that the rule of law situation in Poland has not only not been addressed, but has seriously deteriorated since the triggering of the procedure referred to in Article 7(1) of the Treaty of the European Union (TEU). The resolution in particular calls for “widening the scope of the Commission’s reasoned proposal by including clear risks of serious breaches of other basic values of the Union, especially democracy and respect for human rights” and for ensuring that “adequate funding is provided for national and local civil society organisations as regards the budget envelope for the new Citizens, Equality, Rights and Values Programme within the next multiannual financial framework”.

The resolution identifies as sources of particular concern the following issues. The constitutional revision powers taken on by the Polish parliament since 2015, expedited legislative procedures, as well as recent electoral law changes and elections organised during a public emergency. Broad changes to the country’s judiciary during the last few years, from the way appointments are made to disciplinary procedures. The situation of freedom of expression, media freedom and pluralism (and its impact in the recent presidential election), academic freedom, freedom of assembly and association, and the recent stigmatisation of nongovernmental organisations (NGOs) as operators of foreign actors. The *de facto* criminalisation of sexual education and the drastic limitation, coming close to a *de facto* ban, on abortion and emergency contraception, as well as hate speech, public discrimination, violence against women (and the announced withdrawal of Poland from the Istanbul Convention), domestic violence and intolerant behaviour against vulnerable groups.

The resolution furthermore calls on the Commission to consider launching an infringement procedure in relation to the legislation on the Constitutional Tribunal, its unlawful composition and its role in preventing compliance with the preliminary ruling of the European Court of Justice of 19 November 2019; it calls on the Polish authorities to swiftly implement the order of the European Court of Justice of 8 April 2020; it calls on the Polish authorities to fully comply with the order and calls on the Commission to submit an additional request to the European Court of Justice seeking that payment of a fine be ordered in the event of persisting non-compliance; it calls on the Commission to urgently start infringement proceedings in relation to the national provisions on the powers of the Extraordinary Chamber, since its composition suffers from the same flaws as the Disciplinary Chamber; it calls on the Commission to start infringement proceedings regarding the Act of 12 May 2011 on the National Council of the Judiciary, as amended on 8 December 2017, and to ask the European Court of Justice to suspend the activities of the new National Council of the Judiciary by way of interim measures.

The resolution also addresses the electoral law and organisation of the elections, and reiterates concerns of the European Parliament over the criminalisation of sex education and abortion, the LGBTI free zones, data protection and the recent declaration on the Istanbul Convention.

1. **Response to the requests and overview of the action taken, or intended to be taken, by the Commission:**

The Commission considers that there is a clear risk of a serious breach of the rule of law in Poland. For this reason, on 20 December 2017 the Commission adopted a reasoned proposal in accordance with Article 7(1) TEU. The key consideration for the Commission to activate the Article 7(1) TEU procedure was that the cumulative effect of the reforms enacted in 2017 undermined the independence of the judiciary and impinged on the separation of powers in Poland. As a result of these reforms, the executive and legislative powers could interfere with the entire structure of the justice system.

The Commission presented at the European Parliament’s plenary meetings updates on the state of play concerning the rule of law in Poland on 15 January and 11 February 2020. On these occasions, the Commission stated that the situation of the rule of law in Poland had not improved. In addition, on 14 September 2020, at the European Parliament’s plenary meeting, the Commission stated that recent developments showed that the situation of the rule of law in Poland had not improved since the previous plenary debate in February 2020.

The Commission has undertaken other steps to protect the rule of law in Poland, including the initiation of infringement proceedings to address breaches of EU law. In those infringement proceedings, the European Court of Justice held, on 24 June and 5 November 2019, that Polish legislation concerning the lowering of the retirement age of Supreme Court judges and of ordinary court judges was in breach of EU law on judicial independence.

On 10 October 2019, the Commission decided to refer Poland to the European Court of Justice regarding the new disciplinary regime for judges on the grounds that it undermines judicial independence by not offering the safeguards to protect Polish judges from political control. On 14 January 2020, the Commission decided to ask the European Court of Justice to impose interim measures on Poland, ordering it to suspend the functioning of the Disciplinary Chamber of the Supreme Court with respect to disciplinary cases against judges. On 8 April 2020, the Court of Justice ruled that Poland must immediately suspend the application of the national provisions on the powers of the Disciplinary Chamber of the Supreme Court with regard to disciplinary cases concerning judges. The obligation to suspend the application of those provisions applies until the Court will have rendered its judgment in the infringement procedure. On 5 June 2020, the Commission sent a letter to the Polish authorities asking for clarifications and further information as regards the implementation of the interim measures order. The Commission is closely monitoring the situation on the ground and the arrangements put in place to comply with the order. The Commission reserves the right to take further legal steps on this matter swiftly, if necessary.

As regards the new law on the judiciary of 20 December 2019, the Commission considers that this law undermines the judicial independence of Polish judges and is incompatible with the primacy of EU law. In particular, it prevents Polish courts from directly applying certain provisions of EU law protecting judicial independence, and from lodging references for preliminary rulings on such questions to the European Court of Justice. For this reason, on 29 April 2020, the Commission opened a new infringement procedure against Poland by addressing to it a letter of formal notice. Having examined the reply given by the Polish authorities, on 30 October 2020, the Commission issued a reasoned opinion, asking the Polish authorities to put an end to the infringement within 2 months. In a political letter of 1 November 2020, the Commission has also asked Poland for clarifications as regards recent cases involving the lifting of the immunity of judges in the context of criminal investigations.

As regards the situation of the National Council for the Judiciary and of the Constitutional Tribunal, the Commission recalls its concerns as included in its 2017 Reasoned Proposal on Article 7(1) TEU procedure and continues to closely monitor the developments. More generally, it will be important to follow the forthcoming rulings of the European Court of Justice in the pending infringement procedure in case C-791/19 and in the pending requests for a preliminary ruling and reflect on their impact and on the appropriate follow-up by the Commission as guardian of the Treaties.

The Commission continues to closely monitor the rule of law developments in Poland and notes that the situation has been raising concerns regarding mutual trust between the courts of the Member States, as shown in the context of the execution of European Arrest Warrants with regard to Poland. During 2020, some Member States’ courts suspended the execution of European Arrest Warrants due to concerns regarding judicial independence in Poland. In particular, in July and September 2020, the Amsterdam District Court, temporarily suspended the execution of two European Arrest Warrants issued by Polish judicial authorities, until the European Court of Justice renders a judgment on two requests for a preliminary ruling.

The Commission stands ready to address the situation in Poland through all the instruments at its disposal, including, where relevant, infringement proceedings in case of breaches of EU law. The Commission also remains committed to dialogue with the Polish authorities with the aim of solving problems.

As regards the call to broaden the scope of the ongoing Article 7(1) TEU procedure, the Commission would like to underline that, while the reasoned proposal presented in 2017 focuses on the clear risk of a serious breach of the rule of law, upholding the rule of law is also an important prerequisite for the protection of the other fundamental values listed in Article 2 of the Treaty on European Union, including democracy and fundamental rights.

As regards the request that adequate funding be provided for national and local civil society organisations under the Citizens, Equality, Rights and Values Programme within the next multiannual financial framework, the Commission underlines that according to the political agreement reached between the European Parliament and the Council on the MFF package, this programme will be significantly increased compared to the level agreed at the European Council on 17-21 July 2020 (by EUR 0.8 billion in 2018 prices). The exact amount that will be available for the new Union values strand is currently subject to negotiations between the co-legislators.