

# Opening remarks of First Vice-President Frans Timmermans: College readout on grave concerns about the clear risks for independence of the judiciary in Poland

As you know, the Commission already concluded in our 2016 Recommendations that there is a systemic threat to the rule of law in Poland.

Let me recall that the Commission's concerns are shared equally by the European Parliament and the Council, as well as by the Council of Europe, the Venice Commission and many other independent observers.

Just to stress, the analysis made by the leaders of various political groups in the European Parliament is completely shared by the European Commission. That should not come as a surprise since our actions over the last year and a half have been in line with that analysis.

Recent measures taken by the Polish authorities in relation to the judicial system and the judges greatly amplify the threat to the Rule of Law. That is why we had a discussion today in College on how to respond to this.

Let me recall the heart of the matter.

Under its Rule of Law Framework, the Commission has issued an Opinion and two Recommendations in relation to the Polish Constitutional Tribunal – in essence on the fact that the Constitutional Tribunal is no longer composed in accordance with the Polish Constitution and publication of its judgments is taken out of its hands.

Some judges lawfully elected are not appointed, some judges appointed are not lawfully elected. The legitimacy of the Tribunal is now seriously undermined.

In addition to that situation, four legislative measures reforming the judiciary as a whole have been presented recently to the Polish Parliament:

The first one, the law on the National School of Judiciary, has already entered into force;

The second, the law on the National Council for the Judiciary; the third, the law on the Ordinary Courts Organisation. These two have been adopted and await signing by the President;

And the law on the Supreme Court, which I understand has now been sent to a Committee in the Parliament for further review.

These laws considerably increase the systemic threat to the rule of law in

Poland.

Each individual law, if adopted, would seriously erode the independence of the Polish judiciary.

Collectively, they would abolish any remaining judicial independence and put the judiciary under full political control of the government.

This is not the moment to go into a deep legal analysis, but under these reforms judges will serve at the pleasure of the political leaders and be dependent upon them from their appointment to their pension.

There are many reforms I can mention. Let me just mention but a few.

The 15 judges-members of the National Council for the Judiciary will be appointed by the Sejm whilst currently they are chosen by judges.

The mandate of all the current judges-members of the National Council for the Judiciary will be prematurely terminated.

The Minister of Justice will be granted the power to appoint and dismiss presidents of courts without being bound by concrete criteria, with no obligation to state reasons, and with no possibility for the judiciary to block these decisions.

I could mention many more but let me not do that right now.

These reforms raise concerns as to their compatibility with the Polish Constitution. However, an independent constitutional review is no longer possible given the current situation of the Constitutional Tribunal.

The laws also raise concerns of compatibility with Union law, since Polish courts like the courts of all Member States are called upon to provide an effective remedy in case of violations of EU law, in which case they act as the 'judges of the European Union'.

This matters potentially to anybody doing business in and with Poland, or even anybody visiting the country. I think every single citizen wants to have this, if they need a day in court, without having to think: "Hmm, is this judge going to get a call from the Minister telling him or her what to do." That is not how independent judiciary works.

On 13 July 2017, I wrote to both the Polish Minister of Foreign Affairs and the Polish Minister of Justice with my concerns about the new proposals.

I have asked the two Ministers to relaunch a dialogue and I have invited them to Brussels.

The letter explicitly underlined the importance of not adopting the new proposals.

Unfortunately, on 15 July 2017 two of the laws were approved by the Parliament.

The rule of law is one of the values on which our Union is founded and which defines our Union.

This is no matter only for the Polish people. What is happening in Poland affects the Union as a whole. All of us, every single Member State, every citizen of the Union.

The new laws are not all yet officially in place. So today we cannot take formal decisions just yet.

But we can send a clear and strong political message.

First of all, we will swiftly prepare a third recommendation under the Rule of Law Framework to be formally adopted by College next week;

Secondly, we will swiftly prepare infringement procedures for breach of EU law, also to be launched next week;

Finally, with regard to Article 7, the option of triggering Article 7 of the Treaty was part of the discussion and it should come as no surprise to anyone that, given the latest developments, we are coming very close to triggering Article 7.

Having said all of this, our hand is still extended to the Polish authorities for dialogue. But dialogue must be aimed at redressing the situation. And dialogue, if it happens or not, will not stop the Commission from taking any measures it deems necessary in this framework.

Finally, you know, all of you have been following this. A lot of emotions around this. A lot of personal attacks. Putting people's personal credibility or integrity in the discussion. Mine or other people's. I can take it. They should take their best shot.

But what should not be happening is that journalists are intimidated to do their work, their job. What should not be happening is that anybody sitting in this room, who wants to ask critical questions of me, would feel a reservation, would feel fear for consequences if they do that.

That is not how it works in a free society. That is not how it works. So I would call upon everyone involved in this discussion, to stop it already with this intimidation of journalists if they feel that journalists are asking too critical questions. To stop it already that if a journalist asks a critical question, to brand them enemy of the people or something like that.

"In darkness democracy dies", I think is the motto of the Washington Post. For democracy we need the press to be able to work unimpeded, free. To be at times annoying, also to me. I have some experience. That is your job. My job is to take it and to answer your questions. This should be the attitude of everyone, involved in politics in the European Union. That is the European way, that is how the European Union can function, that is how our people can live in a free and fair and open society.

Thank you very much.