Determination of a clear risk of a serious breach by Poland of the rule of law

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PURPOSE: to determine a clear risk of a serious breach of the rule of law by Poland.

PROPOSED ACT: Council Decision.

ROLE OF THE EUROPEAN PARLIAMENT: Council may adopt the act only if Parliament has given its consent to the act.

BACKGROUND: the European Union is founded on a common set of values enshrined in Article 2 of the Treaty on European Union (TEU), which include the respect for the rule of law.

According to **Article 7(1) TEU**, on a reasoned proposal by one third of the Member States, by the European Parliament or by the European Commission, the Council, acting by a majority of four fifths of its members after obtaining the consent of the European Parliament, may determine that there is a clear risk of a serious breach by a Member State of the values referred to in Article 2.

In this **reasoned proposal**, the Commission presents its concerns regarding the lack of an independent and legitimate constitutional review and to the adoption in 2017 by the Polish Parliament of the law on the Supreme Court, the law on Ordinary Courts Organisation, the law on the National Council for the Judiciary and the law on the National School of Judiciary which contain provisions raising serious concerns as regards **judicial independence, the separation of powers and legal certainty**.

In particular, the main concerns relate to the new retirement regimes of Supreme Court judges and ordinary court judges, a new extraordinary appeal procedure in the Supreme Court, the dismissal and appointment of presidents of ordinary courts and the termination of the mandate and the appointment procedure of judges-members of the National Council for the Judiciary.

The Commission has carried out an extensive **dialogue** with the Polish authorities since January 2016 in order to find solutions to the concerns raised. On 20 December 2017, it adopted a further r**ecommendation** regarding the rule of law in Poland supplementing three previous recommendations adopted on 27 July 2016, 21 December 2016 and 27 July 2017. However, **Poland failed to take the appropriate measures** within the time set in this recommendation.

On 15 November 2017, the European Parliament adopted a resolution stating that the current situation in Poland represents a clear risk of a serious breach of EU values.

CONTENT: in accordance with Article 7(1) TEU, the Commission submits the present reasoned proposal to the Council inviting it to determine that there is a clear risk of a serious breach by Poland of the rule of law.

It recommended that Poland take the following actions within three months after notification of this Decision:

- restore the independence and legitimacy of the Constitutional Tribunal as guarantor of the Polish Constitution by ensuring that its judges, its President and its Vice-President are lawfully elected and appointed;
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ensure that the law on the Supreme Court, the law on Ordinary Courts Organisation, the law on the National Council for the Judiciary and the law on the National School of Judiciary are amended in order to ensure their compliance with the requirements relating to the independence of the judiciary, the separation of powers and legal certainty;

- ensure that any justice reform is prepared in close cooperation with the judiciary and all interested parties, including the European Commission for Democracy through Law (Venice Commission);
- refrain from actions and public statements which could undermine further the legitimacy of the Constitutional Tribunal, the Supreme Court, the ordinary courts, the judges, individually or collectively, or the judiciary as a whole.