

Basic information	
2017/0360(NLE)	Procedure lapsed or withdrawn
NLE - Non-legislative enactments	
Determination of a clear risk of a serious breach by Poland of the rule of law	
Accompanying procedure 2017/0360R(NLE)	
Subject	
8.30.10 Principles common to the Member States, EU values	
Geographical area	
Poland	

Key players			
Council of the European Union	Council configuration	Meetings	Date
	General Affairs	3663	2018-12-11
	General Affairs	3614	2018-04-17
European Commission	Commission DG	Commissioner	
	Justice and Consumers	TIMMERMANS Frans	

Key events			
Date	Event	Reference	Summary
20/12/2017	Preparatory document	COM(2017)0835 	Summary
17/04/2018	Debate in Council		
11/12/2018	Debate in Council		
30/05/2024	Proposal withdrawn by Commission		

Technical information	
Procedure reference	2017/0360(NLE)
Procedure type	NLE - Non-legislative enactments
Procedure subtype	Consent by Parliament
Amendments and repeals	Accompanying procedure 2017/0360R(NLE)
Legal basis	Treaty on European Union TEU 07-p1
Stage reached in procedure	Procedure lapsed or withdrawn

Documentation gateway				
European Commission				
Document type	Reference	Date	Summary	
Preparatory document	COM(2017)0835 	20/12/2017	Summary	
Other Commission document (C)	C(2024)3595	30/05/2024		
National parliaments				
Document type	Parliament /Chamber	Reference	Date	Summary
Contribution	FR_ASSEMBLY	COM(2017)0835	23/01/2019	

Meetings with interest representatives published in line with the Rules of Procedure

Rapporteurs, Shadow Rapporteurs and Committee Chairs

Transparency				
Name	Role	Committee	Date	Interest representatives
STRIK Tineke	Shadow rapporteur	LIBE	30/06/2023	Open Dialogue Foundation

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

2017/0360(NLE) - 20/12/2017 - Preparatory document

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 **recommendation** 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 is 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;
- 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.