Basic information

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

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
LIBE Civil Liberties, Justice and Home Affairs	LÓPEZ AGUILAR Juan Fernando (S&D)	14/10/2019
	Shadow rapporteur METSOLA Roberta (EPP) ŠIMEČKA Michal (Renew) REINTKE Terry (Greens /EFA) JAKI Patryk (ECR) BAY Nicolas (ID) ARVANITIS Konstantinos (GUE/NGL)	

Committee for opinion	Rapporteur for opinion	Appointed
AFCO Constitutional Affairs	The committee decided not to give an opinion.	
FEMM Women's Rights and Gender Equality	REGNER Evelyn (S&D)	27/04/2020

Council of the European Union

Key events

Date	Event	Reference	Summary
27/05/2020	Committee referral announced in Parliament		
16/07/2020	Vote in committee		
20/07/2020	Committee report tabled for plenary	A9-0138/2020	Summary
14/09/2020	Debate in Parliament		
17/09/2020	Decision by Parliament	T9-0225/2020	Summary
17/09/2020	Results of vote in Parliament		

Technical information

Procedure reference	2017/0360R(NLE)
Procedure type	NLE - Non-legislative enactments
Procedure subtype	Interim report under consent procedure
Amendments and repeals	Accompanying procedure 2017/0360(NLE)
Legal basis	Rules of Procedure EP 107-p5
Stage reached in procedure	Procedure completed
Committee dossier	LIBE/9/02985

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee draft report		PE650.665	13/05/2020	
Amendments tabled in committee		PE652.541	29/05/2020	
Committee opinion	FEMM	PE652.283	08/07/2020	
Committee report tabled for plenary, single reading		A9-0138/2020	20/07/2020	Summary
Text adopted by Parliament, single reading		T9-0225/2020	17/09/2020	Summary

European Commission

Document type	Reference	Date	Summary
Commission response to text adopted in plenary	SP(2020)597	11/02/2021	

Additional information

Source	Document	Date
European Commission	EUR-Lex	

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

2017/0360R(NLE) - 17/09/2020 - Text adopted by Parliament, single reading

The European Parliament adopted by 513 votes to 148, with 33 abstentions, a 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.

Parliament expressed its concerns regarding: (1) the functioning of the legislative and electoral system, (2) the independence of the judiciary and the rights of judges and (3) the protection of fundamental rights. It reaffirmed its position, expressed in several of its resolutions on the situation of the rule of law and democracy in Poland, that the facts and trends mentioned in the resolution, taken together, represent a systemic threat to the values of Article 2 of the Treaty on European Union (EU Treaty) and constitute a clear risk of serious breach of these values.

Council to resume Article 7 proceedings against Poland

Members called on the Council and the Commission to ‘refrain from narrowly interpreting the principle of the rule of law, and to use the procedure under Article 7(1) TEU for all the principles enshrined in Article 2 of the EU Treaty’. Noting that the last hearing was held in December 2018, they urged the Council to resume the formal hearings as soon as possible and to ‘finally act’ under the procedure of Article 7 TEU in the light of the ‘overwhelming evidence’ provided in the Resolution and in numerous reports by international and European organisations.

Functioning of the legislative and electoral system in Poland

Parliament denounced the use of constitutional review powers by the Polish Parliament, as well as the frequent use of expedited legislative procedures for the adoption of crucial legislation reshaping the organisation and functioning of the judicial system, without meaningful consultation of stakeholders. It also deplored recent developments concerning amendments to the Electoral Law and elections held in cases of public emergency.

Judicial independence and other institutions and the rights of judges in Poland

According to Members, the changes made to the country's judicial system in recent years, ranging from the way appointments are made to disciplinary proceedings against judges and prosecutors in Poland, pose a serious threat to judicial independence by allowing the legislative and executive powers to interfere in the overall structure and decisions of the judicial system in a manner incompatible with the principles of the separation of powers and the rule of law.

Concerns about the composition and conduct of the new National Council of the Judiciary, the assessment of the Minister of Justice, who is also the Prosecutor General, over the prosecution service, the establishment of the disciplinary and extraordinary chamber within the Supreme Court, the rules governing the organisation of the common courts, the appointment of courts presidents and the retirement regime for judges of the ordinary courts were highlighted in the resolution.

Protection of fundamental rights in Poland

Poland is invited to take all necessary measures to:

- ensure the right to a fair trial;

- ensure freedom of expression, media freedom and pluralism, academic freedom, freedom of assembly and association;

- carry out an assessment of the legislation adopted in the field of data protection and privacy as regards its compatibility with Union law;

- combat racist hate speech and incitement to violence, both online and offline;

- combat prejudice and negative feelings towards national and ethnic minorities (including the Roma), migrants, refugees and asylum seekers;

- ensure the effective enforcement of laws prohibiting parties or organisations which promote or incite racial discrimination;

- refrain from de facto criminalising the provision of sex education to minors and ensure access for all students to scientifically accurate and comprehensive sex education in accordance with international standards;

- ensure that legislation to prevent and combat violence against women and domestic violence is applied throughout the country (Members deplored the withdrawal process by Poland of the Istanbul Convention);

- refrain from any further attempts to restrict women's sexual and reproductive health and rights;

- improve the situation with regard to the increase in intolerance and violence against LGBTI persons. In this regard, Members deplored the mass arrest of 48 LGBTI activists on 7 August 2020 (the Polish ‘Stonewall’) which sends a worrying signal regarding the freedom of speech and assembly in Poland.

The Commission is invited to make full use of the tools available to it, to address a clear risk of a serious breach by Poland of the values on which the Union is founded, in particular expedited infringement procedures and applications for interim measures before the Court of Justice, as well as budgetary tools. The Commission is invited to keep the Parliament regularly informed and closely involved.

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

2017/0360R(NLE) - 20/07/2020 - Committee report tabled for plenary, single reading

The Committee on Civil Liberties, Justice and Home Affairs adopted the interim report by Juan Fernando LÓPEZ AGUILAR (S&D, ES) 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.

Legal base

Future Member States are vetted for their compliance with the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities as set out in Article 2 of the Treaty on European Union before they accede to the Union. The so-called ‘Copenhagen criteria’ ensure that all new EU Member States are in line with the Union’s common principles before joining the EU. However, no similar method exists to supervise adherence to these foundational principles after accession. This has been referred to as the ‘Copenhagen dilemma’.

According to Article 7 of the Treaty of the EU, the Council may determine that there is a clear risk of a serious breach of common EU values laid down in Article 2. It may also act in the event of a breach in an area where the Member States act autonomously.

On 20 December 2017, the European Commission issued its reasoned proposal based on Article 7(1) TEU 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. The European Parliament expressed its concerns regarding the rule of law situation in Poland in several resolutions adopted during the past years.

This interim report focuses on the continuing deterioration of the situation in Poland as regards the functioning of the legislative and electoral system, the independence of the judiciary and the rights of judges, and the protection of fundamental rights.

Since the situation of the rule of law in Poland has not only not been addressed but has seriously deteriorated since the triggering of the Article 7(1) TEU, Members stressed the importance of this interim report, which aims to take stock of the developments as regards:

The rule of law, democracy and fundamental rights in Poland

Changes to the country’s judiciary, enacted during the last few years, ranging from the way appointments are made, to disciplinary procedures, pose a serious risk to judicial independence according to Members.

As regards the rule of law in the strict sense of independence of the judiciary, the situation is far from improving. Issues such as the composition and behaviour of the new National Council of the Judiciary; the tight grip of the Minister of Justice, who is also the Prosecutor-General, on the prosecution services; the creation of the disciplinary chamber and the chamber of extraordinary appeal inside the Supreme Court; the systematic intimidation of judges and disciplinary proceedings against judges who speak out on these reforms was highlighted in the report.

The functioning of the legislative and electoral system

Members deplored the frequent use of expedited legislative procedures by the Polish parliament for the adoption of crucial legislation redesigning the organisation and functioning of the judiciary, without meaningful consultation with stakeholders, including the judicial community.

They also stressed the recent developments pertaining to changes to the electoral law and elections organised during a public emergency.

The protection of fundamental rights, including rights of persons belonging to minorities

Poland is urged to:

- take all necessary measures to firmly combat racist hate speech and incitement to violence, online and offline, and publicly condemn and distance itself from racist hate speech by public figures and to address prejudices and negative sentiments towards national and ethnic minorities (including Roma), migrants, refugees and asylum seekers and to ensure effective enforcement of the laws outlawing parties or organisations that promote or incite racial discrimination;

- improve the freedom of expression, media freedom and pluralism, academic freedom, freedom of assembly and association;

- refrain from any further attempts to restrict women’s sexual and reproductive health and rights;

- improve the situation regarding the increase in intolerance and violence towards LGBTI persons.

Widening of the scope of the Article 7(1) TEU procedure

This interim report should give a new impulse in the Article 7(1) TEU procedure, by including not only the most recent controversial changes to the Polish judicial system, but by including an analysis of the situation of democracy and fundamental rights in Poland, which require specific attention.

Call for action by the Polish authorities, the Council and the Commission

Members called on the Polish government to:

- comply with all provisions relating to the rule of law and fundamental rights enshrined in the Treaties, the Charter, the ECHR and international human rights standards, and to engage in an honest dialogue with the Commission;

- swiftly and fully implement the rulings of the Court of Justice and to respect the primacy of Union law.

The Council and the Commission are called on to:

- refrain from narrowly interpreting the principle of the rule of law, and to use the procedure under Article 7(1) TEU to its full potential by addressing the implications of the Polish government's action for all the principles enshrined in Article 2 TEU, including democracy and fundamental rights;

- keep Parliament regularly informed and closely involved.

The Council is urged to finally act under the Article 7(1) TEU procedure by finding that there is a clear risk of a serious breach by the Republic of Poland of the values referred to in Article 2 TEU, in the light of overwhelming evidence thereof as displayed in this report.

Lastly, the Commission is called upon to make full use of the tools available to address a clear risk of a serious breach by Poland of the values on which the Union is founded, in particular expedited infringement procedures and applications for interim measures before the Court of Justice.