MOTION FOR A RESOLUTION

to wind up the debate on the statements by the Council and the Commission
pursuant to Rule 132(2) of the Rules of Procedure

on the first anniversary of the de facto abortion ban in Poland
(2021/2925(RSP))

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B9-0543/2021

European Parliament resolution on the first anniversary of the de facto abortion ban in Poland
(2021/2925(RSP))

The European Parliament,

– having regard to the Treaty on European Union (TEU), and, in particular, Articles 2 and 7(1) thereof,

– having regard to the European Convention on Human Rights (ECHR) of 4 November 1950 and the related case law of the European Court of Human Rights (ECtHR),

– having regard to the Universal Declaration on Human Rights, and, in particular, Articles 18 and 19 thereof,

– having regard to the Charter of Fundamental Rights of the European Union (‘the Charter’) and, in particular, Articles 1, 2, 3, 6, 7, 10, 11, 21, 23, 35 and 45 thereof,

– having regard to the Constitution of the Republic of Poland,

– having regard to the UN International Covenant on Economic, Social and Cultural Rights of 16 December 1966 and the UN International Covenant on Civil and Political Rights of 16 December 1966,


– having regard to the Beijing Platform for Action and the outcomes of its review conferences,

– having regard to the 1994 International Conference on Population and Development (ICPD) in Cairo, its Programme of Action, and the outcomes of its review conferences, in particular the Nairobi Summit on ICPD+25 and its commitments to strive for the ‘three zeros’ objective, zero unmet need for family planning information and services, zero preventable maternal deaths and zero sexual and gender-based violence and harmful practices against women and girls,

– having regard to the UN Sustainable Development Goals agreed in 2015, in particular goals 3 and 5,

– having regard to the World Health Organization Regional Office for Europe’s Action Plan for Sexual and Reproductive Health: Towards achieving the 2030 Agenda for Sustainable Development in Europe – leaving no one behind,

– having regard to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984,
– having regard to the Council of Europe Convention on preventing and combating violence against women and domestic violence (‘the Istanbul Convention’), which entered into force on 1 August 2014,

– having regard to its resolution of 28 November 2019 on the EU’s accession to the Istanbul Convention and other measures to combat gender-based violence¹,

– having regard to the issue paper of the Council of Europe’s Commissioner for Human Rights of 4 December 2017 entitled ‘Women’s sexual and reproductive health and rights in Europe’,

– having regard to UNESCO’s 2018 International Technical Guidance on Sexuality Education,

– having regard to its previous resolutions on Poland, in particular those of 15 November 2017 on the situation of the rule of law and democracy in Poland² and of 17 September 2020 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 law³,

– having regard to the four infringement procedures launched by the Commission against Poland in relation to the reform of the Polish judicial system and to the proposal for a Council decision of 20 December 2017 on the determination of a clear risk of a serious breach by the Republic of Poland of the rule of law (COM(2017)0835),

– having regard to its resolution of 1 March 2018 on the Commission’s decision to activate Article 7(1) TEU as regards the situation in Poland⁴,

– having regard to its resolution of 14 November 2019 on the criminalisation of sexual education in Poland⁵,

– having regard to its resolution of 13 February 2019 on experiencing a backlash in women’s rights and gender equality in the EU⁶,

– having regard to its resolution of 26 November 2020 on the de facto ban on the right to abortion in Poland⁷,

– having particular regard to its resolution of 24 June 2021 on the situation of sexual and reproductive health and rights in the EU, in the frame of women’s health⁸,

– having regard to the 2021 European Abortion Policies Atlas, which ranks 52 European countries and territories by assigning scores for their legal frameworks to access safe

² OJ C 356, 4.10.2018, p. 44.
abortion care,

– having particular regard to its resolutions of 16 September 2021 on media freedom and further deterioration of the rule of law in Poland⁹ and of 21 October 2021 on the rule of law crisis in Poland and the primacy of EU law¹⁰,

– having regard to Rule 132(2) of its Rules of Procedure,

A. whereas the Union is founded on the values of respect for human dignity, freedom, democracy, equality, justice, the rule of law, respect for human rights and non-discrimination, as set out in Article 2 TEU; whereas all Member States have assumed obligations and duties under international law and the EU Treaties to respect, guarantee and fulfil fundamental rights;

B. whereas according to the Charter, the ECHR and the case law of the ECtHR, and the jurisprudence of the UN treaty bodies, sexual and reproductive health and rights (SRHR) are related to multiple human rights, such as the right to life, the right to access healthcare, freedom from inhuman or degrading treatment, and respect for bodily integrity, privacy and personal autonomy; whereas these human rights are also enshrined in the Polish Constitution; whereas the Member States are legally obliged to uphold and protect human rights in accordance with their constitutions, the EU Treaties and the Charter, as well as international law;

C. whereas delaying and denying access to abortion constitutes a form of gender-based violence; whereas access to abortion care is essential for social and economic equality; whereas several human rights bodies¹¹ have asserted that the denial of safe abortion may amount to torture or cruel, inhuman and degrading treatment, and unsafe abortions that lead to death in the context of abortion bans should be understood as ‘gender-arbitrary killings, only suffered by women, as a result of discrimination enshrined in law’;

D. whereas one year ago, on 22 October 2020, the illegitimate Polish Constitutional Tribunal ruled unconstitutional the provision of the 1993 Act on Family Planning, Protection of the Human Foetus and Conditions for Termination of Pregnancy that allowed for abortion in cases where a prenatal test or other medical considerations had indicated a high probability of a severe and irreversible foetal defect or an incurable illness that threatened the foetus’s life; whereas this entailed a de facto abortion ban, as the vast majority of the legal abortions performed in Poland were based on the aforementioned ground;

E. whereas the erosion of the rule of law in Poland has led to violations of human rights, including SRHR; whereas the de facto abortion ban in Poland is a clear attack on the rule of law and fundamental rights, and restricts the realisation of SRHR in Poland,

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¹¹ The Committee on the Elimination of Discrimination against Women, the Human Rights Committee, the Special Rapporteur on torture and other forms of cruel, inhuman and degrading treatment or punishment, and the Special rapporteur on extrajudicial, summary or arbitrary executions (Information Series on Sexual and Reproductive Health and Rights of the UN High Commissioner for Human Rights, Abortion, 2020).
following the many attacks against the rule of law in recent years;

F. whereas the Committee of Ministers of the Council of Europe has expressed repeated concerns regarding Poland’s failure to implement the ECtHR’s judgments for over 13 years in several cases in which the Court found that Poland had violated human rights as a result of its failures to ensure the accessibility of legal abortion in practice;

G. whereas previous attempts to restrict SRHR were initially halted in 2016, 2018 and 2020 as a result of mass opposition from Polish citizens, as expressed in the ‘Black Friday’ marches, which were strongly supported by Members of the European Parliament from different political groups;

H. whereas as a response to the ruling further restricting access to abortion, unprecedented protests have again taken place across Poland, including in small towns and villages, and around the world, and were again organised during October 2021 in over 20 cities across Poland to mark the one-year anniversary of the de facto ban; whereas the protests began in opposition to the serious restriction that undermines Polish women’s fundamental SRHR but evolved into protests opposing further violations of the rule of law and against the government responsible for these violations; whereas the use of excessive and disproportionate force against protesters by law enforcement officers has been well documented;

I. whereas, in spite of the unprecedented demonstrations, the ruling was officially published on 27 January 2021 and therefore the de facto ban on abortion became a reality for women in Poland, leading to the expansion of unsafe abortions and forcing women to travel to seek an abortion abroad, thereby undermining women’s health and rights, their sexual and bodily autonomy and integrity, and putting their lives at risk;

J. whereas since the ruling, many Polish women have been forced to ask for help through initiatives such as Abortion Without Borders and organisations based in other Member States in order to have access to their SRHR, especially to abortion services; whereas the organisation of abortion procedures rests on the shoulders of women’s rights organisations and informal groups, and depends on money raised from donations;

K. whereas over the past 12 months, Abortion Without Borders groups have helped 34 000 people from Poland to access abortion; whereas these numbers are only a fraction of the total number of Polish women needing support in accessing abortion care;

L. whereas as a result of legal restrictions and of stigmatisation, there is a lack of reliable data on abortion incidence in many Member States, as well as on the context in which the abortions are carried out; whereas accurate, regularly updated and anonymous data on abortion from all Member States are vital to understanding SRHR needs and securing the rights of women;

M. whereas according to the data gathered by the Federation for Women and Family Planning (FEDERA), over the last 10 months only 300 women accessed abortion

services in Polish hospitals on the grounds of a threat to life and health; whereas the ruling further stigmatises SRHR and disproportionately affects women and pregnant persons who lack the financial means to fund medical abortion or abortions abroad, as well as those who lack access to information technologies;

N. whereas only a few hospitals in Poland perform abortions for fear of litigation; whereas women often refrain from using their services out of fear of cumbersome, purposefully delayed procedures and referrals; whereas the path of accessing the right to legal abortion on mental health grounds is increasingly being attempted by women who experience severe mental health conditions as a result of not receiving any State institutional assistance in accessing legal abortion services in Poland; whereas in July 2021 the ECHtR announced its intention to address the complaints of Polish women concerning violations of their rights safeguarded by the ECHR14;

O. whereas according to the 2020 European Contraception Atlas15, even prior to the ruling Poland had one of the most restrictive policies regarding access to contraceptive supplies, family planning, counselling and the provision of online information; whereas Poland is one of the few countries that requires a prescription for emergency contraception, which is often denied by doctors on the grounds of personal beliefs;

P. whereas on the basis of the Polish criminal code, anyone who terminates another person’s pregnancy, or aids or abets a pregnant person in terminating their pregnancy in violation of the provisions of the law, faces criminal liability, including imprisonment; whereas as a result of the existing legal provisions, social stigma, fear and pressure from their peers and the medical authorities, doctors in Poland prefer not to be associated with abortion procedures, and this was already the case even when abortion was still legal; whereas apart from the widely used conscience clause, some doctors create additional non-statutory obstacles, such as unnecessary medical examinations, psychological consultations or additional consultations with experts, or limit women’s rights to prenatal tests and information, which should be guaranteed for all under the public health scheme; whereas an individual’s personal beliefs concerning abortion are not allowed to interfere with a patient’s right to full access to healthcare and services provided under the law;

Q. whereas access to gynaecological care in Poland is highly restricted and in some regions almost impossible, resulting in a high number of unintended pregnancies, poor reproductive health, a high prevalence of cervical cancer and insufficient access to contraception; whereas according to the Supreme Audit Office, in 2018 only 2 % of pregnant women living in rural areas in Poland underwent all standard tests that are necessary during pregnancy; whereas LGBTI+ people’s access to sexual and reproductive healthcare is highly restricted, as are their rights; whereas trans and non-binary people requiring gynaecological care face discrimination in medical settings and are often denied access to care; whereas age-appropriate sexuality and relationship education in Polish schools is neither obligatory, nor is it comprehensive and evidence-

15 https://www.epfweb.org/european-contraception-atlas#:~:text=On%2012%20November%202020%20%20MEPs,on%20access%20to%20modern%20contraception
based, and attempts are being made to prohibit it altogether;

R. whereas there has been an increase in the number of worrying threats and hate campaigns targeting women human rights defenders (WHRDs) in Poland for supporting women’s rights, the right to abortion and the Women’s Strike movement which has been at the forefront of mass protests against the restrictions on access to legal abortion; whereas these threats are disturbing reminders of the escalating risks to WHRDs in the country;

S. whereas WHRDs have been collecting signatures for a bill, as a part of the civic initiative prepared by FEDERA entitled ‘Legal Abortion. No compromises’, which would reverse the abortion ban and allow for the safe termination of a pregnancy up to 12th week without the patient being asked to give a reason, and in exceptional cases after the 12th week; whereas in September 2021, the Pro-Right to Life Foundation submitted a bill to the Polish Parliament entitled ‘Stop abortion 2021’ (Stop Aborcji), which would completely prohibit the access to abortion and criminalise it, with penalties of up to 25 years in prison;

T. whereas the Polish Parliament’s acts on the Constitutional Tribunal, adopted on 22 December 2015 and 22 July 2016, as well as the package of three acts adopted at the end of 2016, seriously undermined the Constitutional Tribunal’s independence and legitimacy; whereas the acts of 22 December 2015 and of 22 July 2016 were declared unconstitutional by the Constitutional Tribunal on 9 March and 11 August 2016, respectively; whereas those judgments were neither published nor implemented at the time by the Polish authorities; whereas the constitutionality of Polish laws can no longer be effectively guaranteed in Poland since the entry into force of the aforementioned legislative changes\textsuperscript{16} and thus the legality of the ruling of 22 October 2020 is questionable;

U. whereas on 7 October 2021, the same illegitimate ‘Constitutional Tribunal’ presented its decision in case K 3/21, adopted with two dissenting opinions, on the request initiated by the Polish Prime Minister on 29 March 2021, finding the provisions of the TEU incompatible with the Polish Constitution on multiple grounds; whereas this decision is an attack on the European community of values and laws as a whole, undermining the primacy of EU law as one of its cornerstone principles in accordance with well-established case law of the Court of Justice of the European Union;

V. whereas the ruling of 22 October 2020 reverses the acquired rights of Polish women, as prior to its implementation, abortion in Poland was legal in three cases, which means that Polish women are in a worse legal position now than they were when Poland joined the EU in 2004; stresses that the constitutionality of the three existing exceptions had not been questioned by the Constitutional Tribunal until the PiS-led government took control of the tribunal and the justice system more broadly;

W. whereas a fundamentalist organisation, Ordo Iuris, which is closely linked to the ruling

coalition, has been a driving force behind the campaigns which are undermining human rights and gender equality in Poland, including the attempts to ban abortion, the calls for Poland’s withdrawal from the Istanbul Convention and the calls for the creation of so-called LGBTI-free zones; whereas cultural and religious values in Poland are therefore being abused as reasons to impede the full realisation of women’s rights, equality for women and their right to make decisions about their own bodies;

X. whereas the Venice Commission of the Council of Europe, the ECtHR, Parliament and the Commission have expressed serious concerns regarding the rule of law, including the legitimacy, independence and effectiveness of the Constitutional Tribunal; whereas the Commission triggered an Article 7(1) procedure following the 2015 reforms of the justice system in Poland;

1. Reiterates its strong condemnation of the illegitimate Constitutional Tribunal’s ruling of 22 October 2020 that imposes a near-total ban on abortion and of this blatant attack on SRHR in Poland; calls on the Polish Government to swiftly and fully guarantee access to and the provision of abortion services, to provide safe, legal, free and high-quality abortion services, and to make them accessible to all women and girls; calls on the Polish authorities to respect, fulfil and promote women’s human rights to life, health and equality, as well as their freedom from discrimination, violence and torture or cruel, inhuman and degrading treatment;

2. Strongly regrets the absence during the year that has elapsed of any initiative or proposal aimed at lifting the de facto abortion ban and the numerous restrictions on access to SRHR in the country; reiterates that the de facto abortion ban is putting women’s health and lives at risk and recalls that universal access to healthcare and SRHR are fundamental human rights;

3. Stands in solidarity with Polish women, activists and with the brave individuals and organisations who continue to help women to access abortion care when they need it, as it is their body, their choice; deeply regrets the entry into force of the ruling, in spite of the mass demonstrations in favour of legal access to abortion; supports all women and human rights defenders who are continuing to protest tirelessly against these grave restrictions on their fundamental freedoms and rights; notes that the protestors are demanding not only the annulment of the illegitimate Constitutional Tribunal’s ruling, but also the right to free, legal and safe access to abortion and respect for bodily autonomy and integrity; highlights the expressions of support for, and interest in, the cause of the Polish protesters from many Member States and worldwide;

4. Stresses that restricting or banning the right to abortion by no means reduces the need for abortions, but results in women having to seek unsafe abortions, to travel abroad in order to obtain abortions or to carry their pregnancy to term against their will, including in cases of fatal or severe foetal impairment; stresses further that this is a violation of human rights and a form of gender-based violence affecting women’s and girls’ rights to life, physical and mental integrity, equality, non-discrimination and health;

5. Is deeply concerned about the fact that thousands of women have to travel to access a health service as essential as abortion; emphasises that cross-border abortion services are not a viable option, especially for those living in poverty, facing intersectional
discrimination and in vulnerable situations; is perturbed by the fact that travelling abroad puts women’s health, life and well-being at risk; stresses the importance of post-abortion care, especially for women who experience complications from an incomplete or unsafe abortion;

6. Strongly condemns all legislative proposals or restrictions that aim to further prohibit, criminalise and limit access to safe and legal abortion in Poland; reminds the Polish Parliament and authorities that measures to restrict SRHR are contrary to the principle of non-retrogression under international human rights law and urges them to ensure the full realisation of SRHR;

7. Condemns the increasingly hostile and violent environment for WHRDs in Poland, and calls on the Polish authorities to guarantee WHRDs’ right to express themselves publicly, including when they oppose government policy, without fear of repercussions or threats; calls on the Polish authorities to urgently protect the WHRDs who have been targeted, to investigate the threats against them and to hold those responsible to account; urges the Polish Government to counter the abusive misinformation campaigns targeting WHRDs; stresses that many WHRDs in Poland are now facing criminal charges for their role in the protests against the bill as a result of the COVID-19 restrictions imposed at that time; urges the Polish Government to refrain from bringing politically motivated criminal charges against WHRDs;

8. Strongly condemns the excessive and disproportionate use of force and violence against protesters, including activists and women’s rights organisations, by the law enforcement authorities and by non-state actors such as far-right nationalist groups; calls on the Polish authorities to ensure that those who attack protesters are held accountable for their actions;

9. Condemns the hostile rhetoric used by Polish government officials against WHRDs and other critics of government policies, and urges the Commission to address this and support the activists both politically and financially;

10. Calls on the Polish Government to ensure the participation of women and girls in the drafting of laws and policies that affect their lives, including SRHR and abortion, and that they are able to access justice and remedies when their rights are violated;

11. Calls on the Council and the Commission to provide adequate funding for national and local civil society organisations in order to foster grassroots support for democracy, the rule of law and fundamental rights in Member States, including Poland; urges the Commission to provide immediate and direct support for programmes and Polish civil society organisations working to ensure that SRHR are protected; calls on the Commission and the Member States to support SRHR awareness-raising and training courses through funding programmes; welcomes the support provided by certain Member States in assisting civil society organisations helping Polish women realise their SRHR and encourages others to do the same; calls on the Member States to cooperate more effectively in order to facilitate cross-border access to abortion;

12. Insists that performing an abortion should not be included in the criminal code in any way, shape or form, as this has a chilling effect on doctors who, as a consequence, refrain from providing SRH services out of fear of criminal sanctions and thus limit the
healthcare available to women and girls; calls on the Polish Government to entirely decriminalise abortion and remove anything related to abortion from criminal law, in order to ensure that doctors agree to perform abortions in practice within the legal boundaries of national law, and to ensure that the information it provides on access to abortion and other sexual and reproductive rights is unbiased and evidence-based;

13. Recalls that the unjustified excess of restrictions on access to safe abortion resulting from the aforementioned ruling of the illegitimate Constitutional Tribunal fails to protect the inherent and inalienable rights and dignity of women, as it breaches the Charter, the ECHR, the case law of the ECtHR, numerous international conventions to which Poland is a signatory, as well as the Constitution of the Republic of Poland; reiterates its call on the Polish authorities to fully implement the judgments handed down by the ECtHR in the cases brought against Poland, in which it has ruled that restricting access to lawful abortion violates the human rights of women;

14. Stresses that unhindered and timely access to reproductive health services and respect for women’s reproductive autonomy and decision-making is critical to protecting women’s human rights and gender equality; underlines that the UN experts\(^\text{17}\) have stressed that ‘women’s human rights are fundamental rights that cannot be subordinated to cultural, religious or political considerations’, and that ‘the influence of ideologically and religiously motivated interference in public health matters has been particularly detrimental to the health and well-being of women and girls’;

15. Is deeply concerned about the use of the conscience clause, which is a denial of medical care based on personal beliefs; regrets that, following the amendment to the ‘Act on doctors and dentists professions’, doctors and health facilities are not obliged to indicate an alternative facility or practitioner in the event of a denial of abortion and other SRH services owing to personal beliefs; notes that following the ruling of the illegitimate Constitutional Tribunal of 22 October 2020, the practical use of the conscience clause is in itself limited as a result of the lack of access to abortion on the grounds of foetal condition; deplores that the way in which this clause is framed under Polish law does not envisage any appeals procedure against the abusive use of the conscience clause; regrets the fact that gynaecologists frequently invoke it incorrectly when asked to prescribe contraceptives, thereby also in effect restricting access to contraception in Poland; notes that this mechanism of denying medical care based on personal beliefs also hinders access to prenatal screening, which is not only a violation of the right to information on the condition of a foetus, but also obstructs successful treatment either during pregnancy or immediately afterwards; calls on the Polish Government to regulate refusals to provide SRH services by healthcare providers in a manner that does not deny access to SRHR, and urges the Polish Government to adopt the necessary reforms to introduce the obligation to refer a patient to an alternative practitioner and an appeals procedure against the abusive use of the conscience clause;

16. Urges the Polish authorities to repeal the law limiting access to the emergency contraceptive pill, and to finance, develop and promote the full range of contraceptives,

including male contraception;

17. Condemns the Polish Government’s abuse of the judicial system and of its legislative powers in order to instrumentalise and politicise the lives and health of women and LGBTI+ persons, leading both to their oppression and to discrimination against them;

18. Reiterates its deep concerns expressed in its resolutions over the attempts to criminalise the dissemination of sexuality and relationship education in Poland and calls on the Commission and the Member States, including Poland, to make sure that students of all ages and sexual orientations receive age-appropriate and evidence-based comprehensive sexuality and relationship education, which is key to building young peoples’ skills to form healthy, equal, nurturing and safe relationships, free from discrimination, coercion and violence; highlights that only education, information, universal access to contraception, the eradication of sexual violence and shared responsibility for contraception between women and men can reduce misinformation and the number of unintended pregnancies;

19. Strongly condemns the decision by the Polish Minister of Justice to officially begin Poland’s withdrawal from the Istanbul Convention, which in itself already is and, if followed through, would further be a serious setback with regard to gender equality, women’s rights and the fight against gender-based violence; urges the Polish authorities to reverse this decision and ensure the effective and practical implementation of the Convention; calls on the Council to urgently conclude the EU’s ratification of the Istanbul Convention;

20. Recalls that women’s rights are fundamental human rights and that the EU institutions and the Member States are legally obliged to uphold and protect them in accordance with the Treaties and the Charter, as well as international law;

21. Calls on the Council to address this matter and other allegations of violations of fundamental rights in Poland by expanding the scope of its hearings on the situation in Poland, in accordance with Article 7(1) TEU;

22. Calls on the Polish Government to comply with the ruling from the ECtHR, which declares the composition of the Constitutional Court unlawful\(^\text{18}\); reiterates its calls on the Commission to carry out a thorough assessment of the composition of the illegitimate Constitutional Tribunal; underlines that the ruling on abortion is yet another example of the political takeover of the judiciary and the systemic collapse of the rule of law in Poland, and that the EU institutions are under an obligation to act accordingly;

23. Calls on the Commission to support the Member States in guaranteeing universal access to SRHR, including access to safe and legal abortion for all citizens;

24. Calls on the Commission and the Council to safeguard the right to health and ensure that women and girls in Poland are not left behind, by taking decisive action and countering any legislative proposals or restrictions on accessing healthcare services.

\(^{18}\) CASE OF XERO FLOR w POLSCE sp. z o.o. v. POLAND, available at: https://hudoc.echr.coe.int/eng#{%22itemid%22: [%22001-210065%22]}
coming from Poland, including abortion care;

25. Calls on the Commissioners for Health and Food Safety, for Equality and for Democracy and Demography to facilitate and promote the protection of SRHR in Poland as a vital part of achieving the right to health, safety and gender equality;

26. Calls on the Commission to take concrete steps to protect SRHR in the EU more generally, starting with the establishment of an EU Special Envoy on SRHR and the addition of a designated chapter on the ‘State of play of SRHR’ in the EU Annual Report on Human Rights and Democracy;

27. Calls on the Commission to adopt guidelines for Member States in order to ensure equal access to SRHR goods and services in line with EU law and the jurisprudence of the ECtHR;

28. Reminds the Commission that it should propose a comprehensive directive on preventing and combating gender-based violence in all its forms, including violations of SRHR;

29. Instructs its President to forward this resolution to the Commission and the Council, the President, Government and Parliament of Poland and the governments and parliaments of the Member States.