



Plenary sitting

B9-0323/2022

7.6.2022

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 rule of law and the potential approval of the Polish national recovery plan (RRF)
(2022/2703(RSP))

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on behalf of the Renew Group

European Parliament resolution on the rule of law and the potential approval of the Polish national recovery plan (RRF) (2022/2703(RSP))

The European Parliament,

- having regard to Articles 2 and 7(1) of the Treaty on European Union (TEU),
- having regard to the Charter of Fundamental Rights of the European Union,
- having regard to Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 establishing the Recovery and Resilience Facility (RRF Regulation)¹,
- having regard to the Commission's reasoned proposal of 20 December 2017 in accordance with Article 7(1) TEU regarding the rule of law in Poland: 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 (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 Poland²,
- having regard to the Commission recommendation of 23 May 2022 for a Council Recommendation on the 2022 National Reform Programme of Poland and delivering a Council opinion on the 2022 Convergence Programme of Poland (COM(2022)0622),
- having regard to its resolution 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 its resolution of 16 September 2021 on media freedom and further deterioration of the rule of law in Poland⁴,
- having regard to the open letter of 7 June 2022 from Polish and international civil society organisations to the Commission regarding the Polish National Council of the Judiciary,
- having regard to its resolution of 10 October 2021 on the rule of law crisis in Poland and the primacy of EU law⁵,
- having regard to its resolution of 5 May 2022 on ongoing hearings under Article 7(1)

¹ OJ L 57, 18.2.2021, p. 17.

² OJ C 129, 5.4.2019, p. 13.

³ OJ C 385, 22.9.2021, p. 317.

⁴ OJ C 117, 11.3.2022, p. 151.

⁵ OJ C 184, 5.5.2022, p. 154.

TEU regarding Poland and Hungary⁶,

- having regard to the case-law of the Court of Justice of the EU (CJEU) and the European Court of Human Rights,
 - having regard to the Commission proposal for a Council implementing decision on the approval of the assessment of the recovery and resilience plan for Poland (COM(2022)0268),
 - having regard to Rule 132(2) of its Rules of Procedure,
- A. whereas the Commission proposal for a Council implementing decision on the approval of the assessment of the recovery and resilience plan for Poland was reportedly not decided unanimously, with some votes against and several Commissioners writing dissents;
- B. whereas during the October 2021 plenary session, Commission President von der Leyen outlined three criteria for the approval of the Polish recovery and resilience plan: dismantling the disciplinary chamber of the supreme court; reforming the disciplinary proceedings for judges; and reinstating the judges suspended by the disciplinary chamber;
- C. whereas Parliament has repeatedly called for the Commission and the Council to refrain from approving Poland's draft recovery and resilience plan until the Government of Poland implements the judgments of the CJEU and international courts fully and properly, and to ensure that the assessment of the plan guarantees compliance with the relevant country-specific recommendations, in particular on safeguarding judicial independence;
- D. whereas reforms in Poland in the field of justice are still ongoing and recent bills being put to the vote and proposals being discussed have not effectively addressed all the concerns regarding the independence of the judicial bodies and disciplinary procedures at stake; whereas several judges are still facing disciplinary procedures and/or have not been reinstated;
- E. whereas Article 19 of the RRF Regulation clearly lays down the 11 criteria for the Commission to assess, notably whether the arrangements proposed by the Member State concerned are expected to prevent, detect and correct corruption, fraud and conflicts of interests when using the funds provided under the Recovery and Resilience Facility (RRF);
- F. whereas in the 2022 European Semester country-specific recommendations⁷, the Commission stated that the independence, efficiency and quality of the justice system are essential components in this respect and that in Poland, the rule of law has deteriorated and judicial independence remains a serious concern, which has also been

⁶ Texts adopted, P9_TA(2022)0204.

⁷ https://ec.europa.eu/info/system/files/2022-european-semester-csr-poland_en.pdf

noted in several rulings from the CJEU and the European Court of Human Rights;

- G. whereas in the 2022 European Semester country-specific recommendations, the Commission recommended that Poland take action in 2022 and 2023, inter alia, to enhance its investment climate, in particular by safeguarding judicial independence and ensuring effective public consultations and the involvement of social partners in the policymaking process;
 - H. whereas the Polish Senate has proposed amendments to the bill replacing the disciplinary chamber with a new body, which would annul decisions taken by the disciplinary chamber and allow judges who were dismissed to return to their previous roles;
 - I. whereas in accordance with Article 13(1) of the RRF Regulation, no plan adopted after 31 December 2021 is eligible to pre-financing;
1. Strongly condemns the Commission's endorsement of Poland's recovery and resilience plan despite the existing and continued breaches of the values enshrined in Article 2 TEU, including of the rule of law and the independence of the judiciary; reiterates that the existence of such breaches has been properly documented by many court judgments, European Parliament resolutions, assessments by other EU institutions, including in the ongoing procedure under Article 7(1) TEU, and international organisations; underlines that unconditional compliance with CJEU judgments and recognition of the primacy of EU law is non-negotiable;
 2. Insists that the Council carry out a rigorous and thorough analysis of the Commission's assessment of the national plan of Poland under the RRF and expects, notably, the three conditions for disbursing the RRF funds to Poland, as mentioned by the Commission President in October 2021, to be fulfilled;
 3. Strongly urges the Council to refrain from approving Poland's national plan under the RRF until it has fully complied with the requirements of the RRF Regulation, and in particular Article 22 thereof, notably with a view to safeguarding the Union's financial interests against conflict of interest and fraud, and with all the European Semester country-specific recommendations in the field of the rule of law, and until it has implemented all the relevant judgments of the CJEU and the European Court of Human Rights;
 4. Expresses serious concern about the introduction of the 'milestones' negotiated between the Commission and the Polish authorities, which do not cover all problems with regard to the eroded impartiality and independence of the Polish judiciary; underlines, in this regard, the contentious issues with the illegitimate Constitutional Tribunal and the illegitimate National Council of the Judiciary, which seriously undermine the impartiality and independence of the Polish judiciary and pose a serious challenge to the EU's legal order, but which are not addressed in the 'milestones';
 5. Finds it unacceptable that the negotiations between the Commission and the Polish authorities were not transparent and that Members of the European Parliament, who were elected by the taxpayers ultimately financing the RRF, did not have access to the agreement before it was signed and endorsed;

6. Expresses concern that one of the ‘milestones’ envisages that decisions taken by the illegitimate disciplinary chamber regarding the lifting of the judicial immunity of judges could be subject to a review procedure which could take up to 15 months, while in its interim order of 14 July 2021 the CJEU declared that the Polish authorities must suspend such decisions with immediate effect and reinstate judges temporarily until the new chamber, with a new legal basis fully compliant with the CJEU’s interpretation, has ruled in each case on the permanent reinstatement; calls on the Polish authorities to ensure that no judge who has been illegally nominated to the disciplinary chamber is eligible for a seat in the new chamber, in order to guarantee its full independence;
7. Further expresses concern about the margin of manoeuvre in the implementation of the ‘milestones’; underlines that all criteria have to be met in full compliance with the requirements for judicial independence established in EU law, as interpreted by the CJEU; calls on the Commission to apply the RRF rules diligently when assessing the remaining plans, and to nominate an independent arbiter, such as the Venice Commission, to analyse and judge whether the criteria as laid out in the agreement have effectively been met;
8. Insists that the milestones and targets related to the protection of the financial interests of the Union, the establishment of an adequate monitoring system, the independence of the judiciary and the prevention, detection and fight against fraud, conflicts of interest and corruption have to be fulfilled before the submission of a first payment request;
9. Urges the Commission to refrain from making any payments to Poland under the RRF until the Polish Government and authorities have fully and irreversibly implemented all CJEU rulings, reinstated the dismissed judges with immediate effect and recognised the primacy of EU law; underlines that in the event that any payment to Poland under the RRF is disbursed before all criteria have been fully met, Parliament will make use of all legal, political and institutional means at its disposal to hold the Commission accountable;
10. Highlights that compliance with the rule of law and with Article 2 TEU are prerequisites to gaining access to the fund, that the rule of law conditionality mechanism is fully applicable to the RRF and that no measures should be financed under the RRF that are contrary to the EU values enshrined in Article 2 TEU; urges the Commission to monitor very carefully the risks to EU financial interests in the implementation of the RRF and any breaches or potential breaches of the principles of the rule of law and to take immediate action if the financial interests of the EU could be harmed; calls on the Commission, therefore, in accordance with the Rule of Law Conditionality Regulation⁸, to be particularly strict with the Member States in ensuring that they comply with protecting the financial interests of the Union, as enshrined in Article 22 of that Regulation;
11. Recalls, furthermore, that adherence to the rule of law and the sound financial management of EU funds are to be continuously evaluated throughout the lifecycle of the RRF and that the satisfactory fulfilment of milestones and targets and the related

⁸ Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget, OJ L 433I , 22.12.2020, p. 1.

payments presuppose that there has been no reversal of measures related to milestones and targets that have already been satisfactorily fulfilled; stresses that the Commission must refrain from disbursing funding and, where applicable, recover funds in the event that such conditions are no longer fulfilled;

12. Recalls that the Commission, as the guardian of the Treaties, should use all tools at its disposal to ensure compliance with the values enshrined in Article 2 TEU;
13. Instructs its President to forward this resolution to the Council, the Commission, and the governments and parliaments of the Member States.