



**2017/0360R(NLE)**

29.6.2020

# **DRAFT COMPROMISE AMENDMENTS**

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  
(COM(2017)0835 – C9-0000/2020 – 2017/0360R(NLE))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Juan Fernando López Aguilar

(Interim report – Rule 105(5) of the Rules of Procedure)

## DRAFT COMPROMISE AMENDMENTS

### DRAFT COMPROMISE AMENDMENT A on recitals (points A-Ca)

**covered:** 21 (Šimečka et al.), 24 (Šimečka et al.), FEMM B (partially),

**fall:** 18 (Kempa et al.), 19 (Hidvéghi), 20 (Hidvéghi), 22 (Kempa et al.), 23 (Jaki et al.), 25 (Kempa), 26 (Jaki et al.), 27 (Kempa), FEMM A (partially), FEMM C, FEMM E,

- A. whereas the Union is founded on 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 and as reflected in the Charter of Fundamental Rights of the European Union and embedded in international human rights treaties **[also FEMM B (partially)];**
- B. whereas, in contrast to Article 258 of the Treaty on the Functioning of the European Union, the scope of Article 7 of the Treaty on European Union is not ~~limited to the obligations under the Treaties~~ ***confined to areas covered by Union law*** and, as indicated in the Commission's Communication of 15 October 2003, and whereas the Union can ***therefore*** assess the existence of a clear risk of a serious breach of the common values ***referred to in Article 2 of the Treaty on European Union not only in the event of a breach in this limited field but also in the event of a breach in an area where the Member States act autonomously; in areas falling under Member States' competences*** **[AM 21 Šimečka et al.];**
- C. whereas any clear risk of a serious breach by a Member State of the values referred to in Article 2 of the Treaty on European Union does not concern solely the individual Member State where the risk materialises but has a negative impact on the other Member States, on mutual trust between Member States and on the very nature of the Union **[also FEMM B (partially)];**
- Ca. ***whereas the Member States have, in accordance with Article 49 of the Treaty on European Union, freely and voluntarily committed themselves to the common values referred to in Article 2 thereof*** **[AM 24 Šimečka et al.];**

**DRAFT COMPROMISE AMENDMENT B on paragraphs 1-6a**

**covered:** 35 (Arvanitis et al.), 39 (Metsola et al.), 42 (Arvanitis et al.), 53 (López Aguilar et al.), FEMM 17

**fall:** 28 (Jaki et al.), 29 (Metsola et al.), 30 (Hidvéghi), 31 (Kempa), 32 (Jaki et al.), 33 (Kempa et al.), 34 (Kempa et al.), 36 (Kempa), 37 (Jaki et al.), 38 (Hidvéghi), 40 (Jaki et al.), 41 (Kempa), 43 (Jaki et al.), 44 (Kempa), 45 (Arvanitis et al.), 46 (Hidvéghi), 47 (Jaki et al.), 48 (Šimečka et al.), 49 (Kempa et al.), 50 (Hidvéghi), 51 (Kempa), 52 (Jaki et al.), 54 (Tobé)

1. States that the concerns of Parliament relate to the following issues:
  - the functioning of the legislative and electoral system,
  - the independence of the judiciary and the rights of judges,
  - the protection of fundamental rights, ~~including rights of persons belonging to minorities;~~
2. Reiterates 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 this resolution taken together represent a systemic threat to the values of Article 2 of the Treaty on European Union (TEU) and constitute a clear risk of a serious breach thereof;
3. Expresses its deep concern that, despite three hearings of Poland having been held in the Council, ***multiple exchanges of views in the European Parliament’s Committee on Civil Liberties, Justice and Home Affairs in the presence of the Polish authorities***, alarming reports by the United Nations, the Organisation for Security and Cooperation in Europe (OSCE) and the Council of Europe, and four infringements procedures launched by the Commission, the rule of law situation in Poland has not only not been addressed but has seriously deteriorated since the triggering of Article 7(1) TEU [AM 39 Metsola et al.]; ***is of the opinion that discussions in the Council within the framework of the procedure referred to in Article 7(1) TEU have been neither regular nor structured, and have neither sufficiently addressed the substantial issues that warranted the activation of the procedure nor adequately mapped the impact that the Polish government’s actions are having on the values referred to in Article 2 TEU [AM 35 Arvanitis et al.] ;***
4. Notes that 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<sup>1</sup> has a limited scope, namely the rule of law situation in Poland in the strict sense of independence of the judiciary; sees an urgent need to widen the scope of the reasoned proposal by including clear risks of serious breaches of other basic values of the Union, especially democracy and respect for human rights [AM 42 Arvanitis et al.: see new para. 48a];
5. Takes the view that the latest developments in the ongoing hearings under Article 7(1) TEU once again underline the imminent need for a complementary and preventive Union mechanism on democracy, the rule of law and fundamental rights as put forward ~~by Parliament~~ in its resolution of 25 October 2016;

<sup>1</sup> COM/2017/0835 final - 2017/0360 (NLE).

6. Reiterates its position on the proposal for a regulation of the European Parliament and of the Council on the protection of the Union's budget in case of generalised deficiencies as regards the rule of law in the Member States, including the need to safeguard the rights of beneficiaries, and calls on the Council to start interinstitutional negotiations as soon as possible [**also FEMM 17 (partially)**];
- 6a. *Reiterates its position as regards the budget envelope for the new Citizens, Equality, Rights and Values Programme within the next multiannual financial framework, and calls on the Council and the Commission to ensure that adequate funding is provided for national and local civil society organisations to grow grassroots support for democracy, rule of law and fundamental rights in the Member States, including Poland* [AM 53 López Aguilar et al.; FEMM 17 (partially)];

**DRAFT COMPROMISE AMENDMENT C on part on “Functioning of the legislative and electoral system in Poland” (paragraphs 7-13)**

**covered:** 64 (Hidvéghi), 65 (Kempa et al.), 73 (Metsola et al.), 76 (López Aguilar et al.), 77 (Metsola et al.), 80 (López Aguilar), 81 (Šimečka), 83 (Metsola et al.)

**fall:** 55 (Kempa et al.), 56 (Jaki et al.), 57 (Kempa et al.), 58 (Kempa et al.), 59 (Kempa et al.), 60 (Kempa), 61 (Kempa et al.), 62 (Kempa et al.), 63 (Hidvéghi), 66 (Kempa), 67 (Jaki et al.), 68 (Metsola et al.), 69 (Jaki et al.), 70 (Kempa et al.), 71 (Kempa et al.), 72 (Kempa), 74 (Kempa), 75 (Kempa et al.), 78 (Kempa), 79 (Kempa et al.), 82 (Hidvéghi),

***Functioning of the legislative and electoral system in Poland***

**Usurpation Use of powers of constitutional revision by the Polish parliament**

7. Denounces that the Polish parliament assumed powers of constitutional revision which it did not have when it acted as the ordinary legislature in adopting the act of 22 December 2015 amending the act on the Constitutional ~~Court~~ Tribunal<sup>2</sup> and the act of 22 July 2016 on the Constitutional Tribunal<sup>3</sup>, as found by the Constitutional Tribunal in its judgments of 9 March<sup>4</sup>, 11 August<sup>5</sup> and 7 November 2016<sup>6, 7</sup>;
8. Regrets, furthermore, that many particularly sensitive legislative acts have been adopted by the Polish parliament at a time when independent constitutional review of laws can no longer be effectively guaranteed, such as the act of 30 December 2015 amending the act on Civil Service and certain other acts<sup>8</sup>, the act of 15 January 2016 amending the act on the police and certain other acts<sup>9</sup>, the act of 28 January 2016 on the public prosecution office<sup>10</sup> and the act of 28 January 2016 - regulations implementing the act on the public prosecution office<sup>11</sup>, the act of 18 March 2016 amending the act on the Ombudsman and certain other acts<sup>12</sup>, the act of 22 June 2016

<sup>2</sup> Ustawa z dnia 22 grudnia 2015 r. o zmianie ustawy o Trybunale Konstytucyjnym (Dz.U. 2015 poz. 2217).

<sup>3</sup> Ustawa z dnia 22 lipca 2016 r. o Trybunale Konstytucyjnym (Dz.U. 2016 poz. 1157).

<sup>4</sup> Judgement of the Constitutional Tribunal of 9 March 2016, K 47/15.

<sup>5</sup> Judgement of the Constitutional Tribunal of 11 August 2016, K 39/16.

<sup>6</sup> Judgement of the Constitutional Tribunal of 7 November 2016, K 44/16.

<sup>7</sup> See Venice Commission Opinion of 14 October 2016 on the Law of 22 July 2016 on the Constitutional Tribunal, Opinion no. 860/2016, para. 127; Commission Reasoned Proposal of 20 December 2017, paras 91 and following.

<sup>8</sup> Ustawa z dnia 30 grudnia 2015 r. o zmianie ustawy o służbie cywilnej oraz niektórych innych ustaw (Dz.U. 2016 poz. 34).

<sup>9</sup> Ustawa z dnia 15 stycznia 2016 r. o zmianie ustawy o Policji oraz niektórych innych ustaw (Dz.U. 2016 poz. 147).

<sup>10</sup> Ustawa z dnia 28 stycznia 2016 r. Prawo o prokuraturze (Dz.U. 2016 poz. 177).

<sup>11</sup> Ustawa z dnia 28 stycznia 2016 r. Przepisy wprowadzające ustawę - Prawo o prokuraturze (Dz.U. 2016 poz. 178).

<sup>12</sup> Ustawa z dnia 18 marca 2016 r. o zmianie ustawy o Rzeczniku Praw Obywatelskich oraz niektórych innych ustaw (Dz.U. 2016 poz. 677).

on the National Media Council<sup>13</sup>, the act of 10 June 2016 on anti-terrorist actions<sup>14</sup> and several other acts fundamentally reorganising the judicial system<sup>15</sup>;

### The use of expedited legislative procedures

9. Deplores 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<sup>16</sup>;
- ~~10. Denounces that, during the COVID-19 outbreak, but not linked with the COVID-19 outbreak, legislation is being debated or even rushed through in Parliament in very sensitive areas such as abortion, sexual education, the organisation of elections or the term of office of the President, the latter even requiring a change to the Constitution; underlines that this could amount to abuse of the fact that citizens cannot organise or protest publicly, which would seriously undermine the legitimacy of the legislation adopted; [AM 64 Hidvéghi and AM 65 Kempa et al.]~~

### Electoral law and organisation of elections

11. Notes with concern that the OSCE concluded that media bias and intolerant rhetoric in the campaign *for the October 2019 parliamentary elections* were of significant concern<sup>17</sup> and that, while all candidates were able to campaign freely, senior state officials used publicly funded events for campaign messaging; notes, furthermore, that the dominance of the ruling party in public media further amplified its advantage<sup>18</sup> [AM 73 Metsola et al.];
12. Is concerned that the new Chamber of Extraordinary Control and Public Matters of the Supreme Court (hereinafter the ‘Extraordinary Chamber’), which is composed in majority of individuals ~~judges~~ nominated by the new National Council of the Judiciary (NCJ) and risks not to qualify as independent tribunal in the assessment of the CJEU, is to ascertain the validity of ~~general and local~~ elections and to examine electoral disputes; **notes that** this raises serious concerns as regards the separation of powers and the functioning of Polish democracy, in that it makes judicial review of electoral disputes particularly vulnerable to political influence **and is capable of creating legal uncertainty as to the validity of such review**<sup>19</sup> [AM 76 López Aguilar et al.];

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<sup>13</sup> Ustawa z dnia 22 czerwca 2016 r. o Radzie Mediów Narodowych (Dz.U. 2016 poz. 929).

<sup>14</sup> Ustawa z dnia 10 czerwca 2016 r. o działaniach antyterrorystycznych (Dz.U. 2016 poz. 904).

<sup>15</sup> See Commission Reasoned Proposal of 20 December 2017, paras 112-113.

<sup>16</sup> ENCJ, Warsaw Declaration of 3 June 2016; Second Commission Recommendation (EU) 2016/146 of 21 December 2016, Article 2(d).

<sup>17</sup> OSCE/ODIHR, Statement of Preliminary Findings and Conclusions after its Limited Election Observation Mission, 14 October 2019.

<sup>18</sup> OSCE/ODIHR, Limited Election Observation Mission Final Report on the parliamentary elections of 13 October 2019, Warsaw, 14 February 2020.

<sup>19</sup> Venice Commission, Opinion of 8-9 December 2017, CDL-AD(2017)031, para. 43; Third Commission Recommendation (EU) 2017/1520 of 26 July 2017, para. 135.

13. *Notes that, in its 2002 Code of Good Practice in Electoral Matters<sup>20</sup>, the Venice Commission provides clear guidelines on the holding of general elections during public emergencies, including epidemics; notes that, while the Code provides for the possibility of exceptional voting arrangements, any amendments to introduce such arrangements may only be considered to be in accordance with European best practices 'if the principle of free suffrage is guaranteed'; considers that this is not the case with* ~~is concerned, while recognising the extraordinary circumstances created by the COVID-19 health crisis, about the amendments to the electoral legislation framework for the presidential elections that were to take place on 10 May 2020 [AM 83 Metsola et al.], being considered in the Polish parliament shortly before the presidential elections, which change the practical organisation of the elections in order to proceed to a vote by postal services; , which since they could impede the elections from taking a fair, secret and equal course, respectful of the right to privacy<sup>21</sup> and Regulation (EU) 2016/679 of the European Parliament and of the Council<sup>22</sup>; and which~~ *notes moreover that those amendments run counter to the case law of the Polish Constitutional Tribunal that was developed when constitutional review was still effective, and which stated that the electoral code is not to be modified six months before any elections [AM 81 Šimečka]; notes with concern that the announcement to postpone the presidential elections came only 4 days before the scheduled date [AM 80 López Aguilar et al.]; stresses, moreover, that it is very difficult to organise a genuine election campaign giving an equal share of attention and equal opportunities to all candidates and programmes and allowing for real public debate in the midst of an epidemic<sup>23</sup>;*

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<sup>20</sup> Venice Commission, CDL-AD (2002) 23, Opinion no. 190/2002, Code of good practice in electoral matters. Guidelines and explanatory report, 30 October 2002; *See, as well, Venice Commission, CDL-PI(2020)005rev-e, Report on Respect for Democracy Human Rights and Rule of Law during States of Emergency - Reflections, p. 23.*

<sup>21</sup> *See, as well, OSCE/ODIHR, Opinion on the draft act on special rules for conducting the general election of the President of the Republic of Poland ordered in 2020 (Senate Paper No. 99), 27 April 2020.*

<sup>22</sup> Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

<sup>23</sup> ~~OSCE/ODIHR, Opinion on the draft act on special rules for conducting the general election of the President of the Republic of Poland ordered in 2020 (Senate Paper No. 99), 27 April 2020.~~

**DRAFT COMPROMISE AMENDMENT D on part on “Independence of the judiciary and of other institutions and the rights of judges in Poland” (paragraphs 14-33)**

**Covered:** 85 (Šimečka et al.), 88 (López Aguilar et al.), 90 (Šimečka et al.), 91 (López Aguilar et al.), 93 (Metsola et al.), 94-97 (partially) (Metsola et al.), 100 (Šimečka et al.), 102 (López Aguilar et al.), 103 (Metsola et al.), 106 (López Aguilar et al.), 107 (Reintke), 110 (Šimečka et al.), 112 (López Aguilar et al.), 114 (López Aguilar et al.), 116 (López Aguilar et al.), 118 (Šimečka et al.), 119 (Metsola et al.), 121 (Metsola et al.), 123 (Metsola et al.), 125 (Šimečka et al.), 126 (López Aguilar et al.), 130 (Reintke), 132 (Metsola et al.), 133 (Šimečka et al.),

**Fall:** 84 (Šimečka et al.), 86 (Kempa), 87 (Kempa et al.), 89 (Kempa et al.), 92 (Kempa et al.), 98 (Kempa et al.), 99 (Kempa et al.), 101 (Kempa et al.), 104 (Kempa et al.), 105 (Kempa et al.), 108 (Kempa et al.), 109 (Kempa et al.), 111 (Kempa et al.), 113 (Kempa et al.), 115 (Hidvéghi), 117 (Kempa et al.), 120 (Kempa et al.), 122 (Kempa et al.), 124 (Kempa et al.), 127 (Kempa et al.), 128 (Hidvéghi), 129 (Kempa et al.), 131 (Kempa et al.), 134 (Hidvéghi), 135 (Kempa et al.)

***Independence of the judiciary and of other institutions and the rights of judges in Poland***

**Reform of the justice system – general considerations**

14. Recognises that, *while* the organisation of the justice system is a national competence, *the CJEU has repeatedly held that Member States are required to comply with their obligations under Union law when exercising that competence*; reiterates that, ~~all the same,~~ national judges are ~~essentially~~ also European judges, applying Union law, ~~which is the reason why~~ *which makes their independence a common concern for the Union*, including the CJEU, *which* has to ~~watch over the independence of the judiciary in all the Member States as one of the exigencies of~~ *enforce respect for the rule of law and as laid down in Article 19 TEU and Article 47 of the Charter in the field of application of Union law; calls on the Polish authorities to uphold and maintain the independence of Polish courts*; [AM 85 Šimečka et al.];

**The composition and functioning of the Constitutional Tribunal**

15. Recalls that the acts concerning 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<sup>24</sup>*, seriously undermined ~~affected~~ the Constitutional Tribunal’s independence and legitimacy and that the acts of 22 December 2015 and of 22 July 2016 were ~~therefore~~ declared unconstitutional by the Constitutional Tribunal on 9 March 2016 and 11 August 2016, respectively; recalls that those judgments were not published at the time nor implemented by the Polish authorities; seriously deplores that the constitutionality of Polish laws can no longer be effectively guaranteed ~~the lack of independent and~~

<sup>24</sup> Ustawa z dnia 30 listopada 2016 r. o organizacji i trybie postępowania przed Trybunałem Konstytucyjnym (Dz.U. 2016 poz. 2072); ustawa z dnia 30 listopada 2016 r. o statusie sędziów Trybunału Konstytucyjnego (Dz.U. 2016 poz. 2073); Ustawa z dnia 13 grudnia 2016 r. - Przepisy wprowadzające ustawę o organizacji i trybie postępowania przed Trybunałem Konstytucyjnym oraz ustawę o statusie sędziów Trybunału Konstytucyjnego (Dz.U. 2016 poz. 2074).

effective constitutional review in Poland *since the entry into force of the aforementioned legislative changes*<sup>25</sup> [AM 88 López Aguilar et al.]; invites the Commission to consider launching an infringement procedure in relation to the legislation on the Constitutional Tribunal, *its unlawful composition and its role in preventing compliance with the preliminary ruling of the Court of Justice of 19 November 2019*<sup>26</sup> [AM 90 Šimečka et al.];

### **The retirement, appointment and disciplinary regimes for judges of the Supreme Court**

16. Recalls that, already in 2017, changes in the method of nomination of candidates to the position for the office of the First President of the Supreme Court ('the First President') deprived the participation of the Supreme Court judges in the selection procedure of any meaningful effect and put the decision in the hands of the President of the Republic [AM 91 López Aguilar et al.]; denounces the fact that the act of 20 December 2019 amending the act on the organisation of the common courts, the act on the Supreme Court and certain other acts<sup>27</sup> (the 'act of 20 December 2019') that recent amendments to the act on the Supreme Court even further reduces the participation of the judges in the process of selection of the First President of the Supreme Court by introducing a position of *Acting* First President of the Supreme Court ('the Acting First President') *ad interim* appointed by the President of the Republic of Poland and by reducing the quorum in the third round to 32 out of 420/25 judges only, thereby effectively abandoning the model of power-sharing between the President and the judicial community enshrined in Article 183(3) of the Polish Constitution<sup>28</sup> [AM 93 Metsola et al.];

**16a. Notes with concern the irregularities surrounding the nomination of the Acting First President and his further actions; is deeply concerned that the process of electing the candidates for the office of First President did not comply with Article 183 of the Polish Constitution or the Rules of Procedure of the Supreme Court and violated basic standards of deliberation among the members of the General Assembly of the Judges of the Supreme Court ('General Assembly'); notes with regret that doubts concerning the validity of the election process in the General Assembly as well as the impartiality and independence of the Acting First Presidents during the election process could undermine further the separation of powers and the legitimacy of the new First President nominated by the President of the Republic of Poland on 25 May 2020, and could thus call into question the independence of the Supreme Court; recalls that similar violations of law by the President of the Republic of Poland occurred when nominating the President of the Constitutional Tribunal [AM 91 López Aguilar et al. + AMs 94-97 Metsola et al.];**

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<sup>25</sup> Venice Commission Opinion of 14-15 October 2016, para. 128; UN, Human Rights Committee, Concluding observations on the seventh periodic report of Poland, 31 October 2016, paras 7-8; Third Commission Recommendation (EU) 2017/1520, points 10 and 45(1); Parliamentary Assembly of the Council of Europe, Resolution 2316 (2020) of 28 January 2020 on the functioning of democratic institutions in Poland, para. 6.

<sup>26</sup> Judgment of the Court of Justice 19 November 2019, A.K. and Others v Sąd Najwyższy, C-585/18, C-624/18 and C-625/18, ECLI:EU:C:2019:982.

<sup>27</sup> Ustawa z dnia 20 grudnia 2019 r. o zmianie ustawy - Prawo o ustroju sądów powszechnych, ustawy o Sądzie Najwyższym oraz niektórych innych ustaw (Dz.U. 2020 poz. 190).

<sup>28</sup> Venice Commission and DGI of the Council of Europe, Urgent Joint Opinion of 16 January 2020, CDL-PI(2020)002, paras 51-55.

17. Shares the Commission’s concern that the power of the President of the Republic (and in some cases also the Minister of Justice) to exercise influence over disciplinary proceedings against Supreme Court judges by appointing a disciplinary officer who will investigate the case, excluding the disciplinary officer of the Supreme Court from an on-going proceedings, ~~creates~~ raises concerns as regards ~~risks to run counter to~~ the principle of separation of powers and may affect judicial independence<sup>29</sup>;
18. Recalls that the CJEU found in its judgment of 24 June 2019<sup>30</sup> that lowering the retirement age of sitting judges of the Supreme Court is contrary to Union law and breaches the principle of the irremovability of judges and thus that of judicial independence, after it had earlier granted the Commission’s request for interim measures on the matter by order of 17 December 2018<sup>31</sup>; notes that the Polish authorities passed an act of 21 November 2018 amending ~~amendment to~~ the act on the Supreme Court<sup>32</sup> in order to comply with the CJEU’s Order, the only instance so far in which they undid ~~a reform of~~ **changes** to the legislative framework governing the justice system following in connection with a decision by the CJEU [AM 100 Šimečka];

### **The composition and functioning of the Disciplinary Chamber and Extraordinary Chamber of the Supreme Court**

19. Recalls that, in ~~2017~~**2018** [AM 103 Metsola et al.], two new chambers within the Supreme Court were created, namely the Disciplinary Chamber and the Extraordinary Chamber, which were staffed with newly appointed judges selected by the new NCJ and entrusted with special powers – including the power of the Extraordinary Chamber to quash final judgments taken by lower courts or by the Supreme Court itself by way of extraordinary review, and the power of the Disciplinary Chamber to discipline other *judges of the* (Supreme Court) *judges and of common courts* [AM 102 López Aguilar et al.], creating de facto a “Supreme Court within the Supreme Court”<sup>33</sup>;
20. Recalls that, in its ruling of 19 November 2019, the CJEU, answering a request for preliminary ruling by the Supreme Court (Chamber of Labour Law and Social Insurance, hereinafter the ‘Labour Chamber’) concerning the Disciplinary Chamber of the Supreme Court, ruled that national courts have a duty to disregard provisions of national law which reserve jurisdiction to hear a case where Union law may be applied to a body that does not meet the requirements of independence and impartiality;
21. Notes that the referring Supreme Court (Labour Chamber) subsequently concluded in its judgment of 5 December 2019<sup>34</sup> that the Disciplinary Chamber does not fulfil the requirements of an independent and impartial tribunal within the meaning of Polish and Union law, and that the Supreme Court (Civil, Criminal and Labour Chambers) adopted

<sup>29</sup> See Commission Reasoned Proposal of 20 December 2017, COM(2017) 835, para. 133. See also OSCE-ODIHR, Opinion on Certain Provisions of the Draft Act on the Supreme Court of Poland (as of 26 September 2017), 13 November 2017, p. 33.

<sup>30</sup> Judgment of the Court of Justice of 24 June 2019, Commission v Poland, C-619/18, ECLI:EU:C:2019:531.

<sup>31</sup> Order of the Court of Justice of 17 December 2018, Commission v Poland, C-619/18 R, ECLI:EU:C:2018:1021.

<sup>32</sup> Ustawa z dnia 21 listopada 2018 r. o zmianie ustawy o Sądzie Najwyższym (Dz.U. 2018 poz. 2507).

<sup>33</sup> OSCE-ODIHR, Opinion of 13 November 2017, p. 7-20; Venice Commission, Opinion of 8-9 December 2017, para. 43; Fourth Commission Recommendation (EU) 2018/103, para. 25; GRECO, Addendum to the Fourth Round Evaluation Report on Poland (Rule 34) of 18-22 June 2018, para. 31; Venice Commission and DGI of the Council of Europe, Urgent Joint Opinion of 16 January 2020, para. 8.

<sup>34</sup> Judgement of the Supreme Court of 5 December 2019, III PO 7/18.

a resolution on 23 January 2020<sup>35</sup> reiterating that the Disciplinary Chamber is not a court due to its lack of independence and that therefore its judgments cannot be considered to be judgments given by a duly appointed court ~~decisions shall be considered null and void~~; notes with grave concern that the Polish authorities have declared that those decisions are of no legal significance when it comes to the continuing functioning of the Disciplinary Chamber and the NCJ, and that the Constitutional Tribunal has declared the Supreme Court resolution unconstitutional on 20 April 2020<sup>36</sup> ~~‘suspended’ the resolution of 23 January 2020~~, creating a dangerous judiciary duality in Poland in open violation of ~~and moreover openly defying~~ the primacy of Union law and in particular of Article 19(1) TEU as interpreted by ~~the status granted to the CJEU by Article 19(1) TEU~~ ***in that it prevents the effectiveness and application of the CJEU’s ruling of 19 November 2019<sup>37</sup> by the Polish courts [AM 106 López Aguilar et al.]***;

22. Takes note of the order of the CJEU of 8 April 2020<sup>38</sup> instructing ~~the~~ Poland to immediately suspend the application of the national provisions on the powers of the Disciplinary Chamber of the Supreme Court and calls on the Polish authorities to swiftly implement the judgment; ***calls on the Polish authorities to fully comply with the order and calls on the Commission to submit an additional request to the CJEU seeking that payment of a fine be ordered in the event of persisting non-compliance [AM 107 Reintke]***; calls on the Commission to urgently start infringement proceedings in relation to the national provisions on the powers of the Extraordinary Chamber, since its composition suffers from the same flaws as the Disciplinary Chamber;

### **The composition and functioning of the new National Council of the Judiciary**

23. Recalls that it is up to the Member States to establish a council for the judiciary, but that, where such council is established, its independence must be guaranteed in line with European standards and the national constitution; recalls that, following the ~~2017-2018~~ reform of the NCJ by means of the act of 8 December 2017 amending the act on the National Council of the Judiciary and certain other acts<sup>39</sup>, the body responsible for safeguarding the independence of the courts and judges in accordance with Article 186(1) of the Polish Constitution, the judicial community in Poland was deprived of ~~lost~~ the power to delegate representatives to the NCJ, and hence its influence on recruitment and promotion of judges; recalls that before the ~~2017~~ reform, 15 out of 25 members of the NCJ were judges elected by their peers, while since the 2017 reform, those judges are elected by the Polish Sejm; strongly regrets that, taken in conjunction with the ~~immediate replacement~~ ***premature termination*** in early 2018 ***of the mandates*** of all the members appointed under the old rules, this measure led to a far-reaching politicisation of the NCJ<sup>40</sup> ***[AM 110 Šimečka et al.]***;

<sup>35</sup> Resolution of of the Joint Civil, Criminal and Labour Chambers of the Supreme Court of 23 January 2020, BSA I-4110-1/2020.

<sup>36</sup> Judgment of the Constitutional Tribunal of 20 April 2020, U 2/20.

<sup>37</sup> Venice Commission and DGI of the Council of Europe, Urgent Joint Opinion of 16 January 2020, para. 38.

<sup>38</sup> Order of the Court of Justice of 8 April 2020, Commission v Poland, C-791/19 R, ECLI:EU:C:2020:277.

<sup>39</sup> Ustawa z dnia 8 grudnia 2017 r. o zmianie ustawy o Krajowej Radzie Sądownictwa oraz niektórych innych ustaw (Dz.U. 2018 poz. 3).

<sup>40</sup> Consultative Council of European Judges, Opinions of the Bureau of 7 April 2017 and 12 October 2017; OSCE/ODIHR, Final Opinion on Draft Amendments to the Act of the NCJ, 5 May 2017; Venice Commission, Opinion of 8-9 December 2017, p. 5-7; GRECO, Ad hoc Report on Poland (Rule 34) of 19-23 March 2018 and

24. Recalls that the Supreme Court (~~Labour Chamber~~), implementing the criteria set out by the CJEU in its judgment of 19 November 2019, found in its judgment of 5 December 2019 and in its decisions of 15 January 2020<sup>41</sup>, ***as well as in its resolution of 23 January 2020***, that the decisive role of the new NCJ in the selection of the judges of the newly created Disciplinary Chamber undermines the latter's independence and impartiality<sup>42</sup>; ***is concerned about the legal status of the judges appointed or promoted by the new NCJ in its current composition and about the impact their participation in adjudicating may have on the validity and legality of proceedings*** [AM 112 López Aguilar et al.];
25. Recalls that the European Network of Councils for the Judiciary (ENCJ) suspended the new NCJ on 17 September 2018 for reason of no longer fulfilling the requirements of being independent of the executive and legislature and ~~is now considering expelling the new NCJ entirely~~ ***initiated the expulsion procedure in April 2020***<sup>43</sup> [AM 114 López Aguilar et al.];
26. Calls on the Commission to start infringement proceedings against the act of 12 May 2011 on the NCJ<sup>44</sup>, ***as amended on 8 December 2017***, and to ask the CJEU to suspend the activities of the new NCJ by way of interim measures [AM 116 López Aguilar et al. and AM 118 Šimečka et al.];

**The rules governing the organisation of the ordinary common courts, and the appointment of court presidents and the retirement regime for judges of the ordinary common courts** [AM 119 Metsola et al.]

27. Regrets that the Minister of Justice, who is, in the Polish system, also the Prosecutor General, obtained the power to appoint and dismiss court presidents of the lower courts at his discretion during a transitional period of six months, and that in 2017-2018 the Minister of Justice replaced over ~~one~~ ***and fifty*** hundred court presidents and vice-presidents [AM 121 Metsola et al.]; notes that, after this period, removal of court presidents remained in the hands of the Minister of Justice, with virtually no effective checks attached to this power; notes, furthermore, that the Minister of Justice also obtained other “disciplinary” powers vis-à-vis court presidents, and presidents of higher courts, who in turn, now have large administrative powers vis-à-vis presidents of lower courts<sup>45</sup>; regrets this major setback for the rule of law and judicial independence in Poland<sup>46</sup>;

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Addendum of 18-22 June 2018; Venice Commission and DGI of the Council of Europe, Urgent Joint Opinion of 16 January 2020, paras 42 and 61.

<sup>41</sup> Decision of the Supreme Court of 15 January 2020, III PO 8/18. Decision of the Supreme Court of 15 January 2020, III PO 9/18.

<sup>42</sup> ***On this subject, see, as well, the following cases pending before the ECtHR: Reczkowicz and two Others v. Poland (application nos. 43447/19, 49868/19 and 57511/19), Grzęda v. Poland (no. 43572/18), Xero Flor w Polsce sp. z o.o. v. Poland (no.4907/18), Broda v. Poland and Bojara v. Poland (nos. 26691/18 and 27367/18), Żurek v. Poland (no. 39650/18) and Sobczyńska and Others v. Poland (nos. 62765/14, 62769/14, 62772/14 and 11708/18).***

<sup>43</sup> ENCJ, Letter of 21 February 2020 by the ENCJ Executive Board. See as well the letter of 4 May 2020 by the European Association of Judges in support of the ENCJ.

<sup>44</sup> Ustawa z dnia 12 maja 2011 r. o Krajowej Radzie Sądownictwa (Dz.U. 2011 nr 126 poz. 714).

<sup>45</sup> Venice Commission and DGI of the Council of Europe, Urgent Joint Opinion of 16 January 2020, para. 45.

<sup>46</sup> See also Council of Europe, Bureau of the Consultative Council of European Judges (CCJE-BU), CCJE-BU(2018)6REV, 18 June 2018.

28. Regrets that the act of 20 December 2019 ~~amending the act on the common courts and certain other acts~~ that entered into force on 14 February 2020 changed the composition of the assemblies of judges and moved some of the powers of those bodies of judicial self-government to the colleges of courts presidents appointed by the Minister of Justice<sup>47</sup>;

**28a. *Recalls that, in its judgement of 5 November 2019<sup>48</sup>, the CJEU found that the provisions of the Polish act of 12 July 2017 amending the act on the organisation of the common courts and certain other acts<sup>49</sup>, which lowered the retirement age of judges of the common courts, whilst allowing the Minister of Justice to decide on the prolongation of their active service, and which set a different retirement age depending on their gender, were contrary to Union law [AM 123 Metsola et al.];***

### **The rights and independence of judges, including the new disciplinary regime for judges**

29. Denounces the provisions of the act of 20 December 2019 introducing further disciplinary offences and sanctions in respect of judges and court presidents, as they pose serious risk to judicial independence<sup>50</sup>; denounces the provisions of that act prohibiting any political activity of judges, obliging judges to disclose publicly their membership in associations and restricting substantively the deliberations of judicial self-governing bodies, which go beyond the principles of legal certainty, necessity and proportionality in restricting the judges' freedom of expression<sup>51</sup>;

**29a. *Is deeply concerned about the disciplinary proceedings initiated against judges and prosecutors in Poland in connection with their judicial decisions applying Union law or public statements in defence of judicial independence and the rule of law in Poland; condemns the smear campaign against Polish judges and the involvement of public officials therein; calls on the Polish authorities to refrain from the abusive use of disciplinary proceedings and from other activities undermining the authority of the judiciary [AM 125 Šimečka et al., AM 126 López Aguilar et al., AM 130 Reintke];***

30. Calls on the Polish authorities to remove the new provisions (on disciplinary offences and other) that prevent the courts from examining questions of independence and impartiality of other judges from the standpoint of Union law and the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR),

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<sup>47</sup> Venice Commission and DGI of the Council of Europe, Urgent Joint Opinion of 16 January 2020, paras 46 to 50.

<sup>48</sup> *Judgment of the Court of Justice of 5 November 2019, Commission v Poland, C-192/18, ECLI:EU:C:2019:924.*

<sup>49</sup> Ustawa z dnia 12 lipca 2017 r. o zmianie ustawy - Prawo o ustroju sądów powszechnych oraz niektórych innych ustaw (Dz.U. 2017 poz. 1452).

<sup>50</sup> OSCE/ODIHR, Urgent Interim Opinion on the Bill Amending the Act on the Organization of Common Courts, the Act on the Supreme Court and Certain Other Acts of Poland (as of 20 December 2019), 14 January 2020, p. 23-26; Venice Commission and DGI of the Council of Europe, Urgent Joint Opinion of 16 January 2020, paras 44-45.

<sup>51</sup> OSCE/ODIHR, Urgent Interim Opinion, 14 January 2020, p. 18-21; Venice Commission and DGI of the Council of Europe, Urgent Joint Opinion of 16 January 2020, paras 24-30;

hence depriving judges from exercising their duties under Union law to put aside national provisions conflicting with Union law<sup>52</sup>;

31. Welcomes the Commission's initiation of infringement proceedings in relation to the aforementioned new provisions; calls on the Commission to request the CJEU to use the expedited procedure and to grant interim measures, when it comes to a referral of the case to the CJEU;

### **The status of the Prosecutor General and the organisation of the prosecution services**

32. Denounces the merger of the office of the Minister of Justice and that of the Public Prosecutor General, the increased powers of the Public Prosecutor General vis-à-vis the prosecution system, the increased powers of the Minister of Justice in respect of the judiciary (act of 27 July 2001 on the organisation of common courts<sup>53</sup>, as amended) and the weak position of checks to these powers (National Council of Public Prosecutors), which result in the accumulation of too many powers for one person and have direct negative consequences for the independence of the prosecutorial system from the political sphere, as stated by the Venice Commission<sup>54</sup>;
- 32a. ***Recalls that, in its judgement of 5 November 2019, the CJEU found that lowering the retirement age of public prosecutors was contrary to Union law because it established a different retirement age for male and female public prosecutors in Poland [AM 132 Metsola et al.]***;

### **Overall assessment of the rule of law situation in Poland**

33. Concurs with the Commission, the Parliamentary Assembly of the Council of Europe and the Group of States against Corruption ***and the United Nations Special Rapporteur on the Independence of Judges and Lawyers*** that the aforementioned separate reforms ***changes to the legislative framework governing*** the judicial system, considering their interaction and overall impact, amount to a serious, sustained and systemic breach of the rule of law, enabling the legislative and executive powers to interfere throughout the entire structure and output of the justice system ~~to influence the functioning of the judiciary~~ in a ~~critical~~ manner which is incompatible with the principles of separation of powers and the rule of law, thereby significantly weakening the independence of the judiciary in Poland<sup>55</sup>; ***condemns the destabilising impact on the Polish legal order of the measures taken and appointments made by the Polish authorities since 2016 [AM 133 Šimečka et al.]***;

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<sup>52</sup> OSCE/ODIHR, Urgent Interim Opinion, 14 January 2020, p. 13-17; Venice Commission and DGI of the Council of Europe, Urgent Joint Opinion of 16 January 2020, paras 31-43.

<sup>53</sup> Ustawa z dnia 27 lipca 2001 r. Prawo o ustroju sądów powszechnych (Dz.U. 2001 nr 98 poz. 1070).

<sup>54</sup> Venice Commission Opinion of 8-9 December 2017 on the Act on the Public Prosecutor's office, as amended, CDL-AD(2017)028, para. 115.

<sup>55</sup> Recommendation (EU) 2018/103; ***United Nations, Special Rapporteur on the independence of judges and lawyers, Statement of 25 June 2018***; European Commission, 2019 European semester: Country report Poland, 27 February 2019, SWD(2019) 1020 final, p. 42; the Presidents of the European Network of Councils for the Judiciary, the Network of Presidents of the Supreme Courts of the EU and the European Judges Association, letter of 20 September 2019; GRECO, Follow-up to the Addendum to the Fourth Round Evaluation Report (rule 34) – Poland, 6 December 2019, para. 65; PACE, Resolution 2316 (2020) of 28 January 2020 on the functioning of democratic institutions in Poland, para. 4.

**DRAFT COMPROMISE AMENDMENT E on part on “Protection of fundamental rights, including the rights of persons belonging to minorities, in Poland” (paragraphs 33a-42 and paragraphs 45-46)**

**Covered:** 139 (López Aguilar et al.), 142 (Šimečka et al.), 144 (Reintke) (citation), 146 (Metsola et al.), 148 (Arvanitis et al.), 150 (López Aguilar et al.), 151 (López Aguilar et al.), 153 (Arvanitis et al.) (partially), 154 (Metsola et al.), 155 (Šimečka et al.), 156 (Metsola et al.), 157 (Metsola et al.), 163 (López Aguilar et al.), 164 (Reintke), 169 (Reintke), 171 (Metsola et al.), 175 (Metsola et al.), 178 (Reintke), 185 (Reintke), 186 (Metsola et al.), 187 (Björk et al.) (partially), 212 (Reintke), 214 (Reintke) (partially), 216 (Metsola et al.), 217 (Reintke), 219 (Reintke), 223 (Walsh) (partially), 224 (Björk) (partially), 225 (Reintke) (partially), 227 (López Aguilar), 228 (Šimečka et al.), 230 (Metsola et al.), 231 (Reintke), 232 (Björk et al.), FEMM D, FEMM F (partially), FEMM 5, FEMM 9, FEMM 10 (partially), FEMM 11 (partially), FEMM 12, FEMM 13 (partially), FEMM 14, FEMM 15 (partially), FEMM 16

**Fall:** 136 (Kempa et al.), 137 (Kempa et al.), 138 (Kempa et al.), 140 (Hidvéghi), 141 (Kempa et al.), 143 (Hidvéghi), 145 (Kempa et al.), 147 (Hidvéghi), 149 (Kempa et al.), 152 (Kempa et al.), 158 (Kempa et al.), 159 (Kempa et al.), 160 (Hidvéghi), 161 (Kempa et al.), 162 (Kempa et al.), 165 (Kempa et al.), 166 (Wiśniewska et al.), 167 (Kempa et al.), 168 (Kempa et al.), 170 (Jaki et al.), 172 (Kempa et al.), 173 (Kempa et al.), 174 (Jaki et al.), 176 (Kempa et al.), 177 (Hidvéghi), 179 (Jaki et al.), 180 (Kempa et al.), 181 (Kempa et al.), 182 (Hidvéghi), 183 (Kempa), 184 (Jaki et al.), 188 (Jaki et al.), 211 (Kempa et al.), 213 (Kempa et al.), 215 (Jaki et al.), 218 (Jaki et al.), 220 (Jaki et al.), 221 (Kempa), 222 (Kempa et al.), 226 (Jaki et al.), 229 (Hidvéghi), 233 (Kempa), FEMM 1, FEMM 6,

***Protection of fundamental rights, including the rights of persons belonging to minorities, in Poland [AM 146 Metsola et al.]***

**The Polish Commissioner for Human Rights**

**33a. *Is concerned about political attacks on the independence of the Office of the Commissioner for Human Rights<sup>56</sup>; highlights the fact that the Commissioner for Human Rights has been critical publicly within his area of responsibility, about various measures taken by the current government; recalls the fact that the statute of the Commissioner for Human Rights is enshrined in the Polish Constitution and that the term of office of the current Commissioner for Human Rights is due to end in September 2020 [AM 155 Šimečka et al.];***

**The right to a fair trial**

**34. Is concerned about reports alleging undue delays in court proceedings, difficulties in accessing legal assistance during arrest, and instances of insufficient respect for the**

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<sup>56</sup> See, as well, Council of Europe Commissioner for Human Rights, Letter addressed to the Prime Minister of Poland, 19 January 2018; Joint Statement in Support of the Polish Commissioner for Human Rights, signed by ENNHRI, Equinet, GANHRI, IOI, OHCHR Europe, June 2019.

confidentiality of communication between counsel and client<sup>57</sup>; ***calls on the Commission to closely monitor the situation regarding lawyers in Poland; recalls the right of all citizens to be advised, defended and represented by an independent lawyer in accordance with Articles 47 and 48 of the Charter of Fundamental Rights*** [AM 139 López Aguilar et al.];

35. Is concerned that, since the entry into force on 14 February 2020 of ~~the amendments to the Act of 20 December 2019 on the Supreme Court~~, only the Extraordinary Chamber, ***whose independence and impartiality itself is in question***, can decide whether a judge or tribunal or court is independent and impartial, hence depriving citizens of an important element of judicial review at all other instances<sup>58</sup>; ***recalls the fact that following the case law of the Court of Justice, the right to a fair trial obliges every court to check, on its own initiative, whether it fulfils the criteria of independence and impartiality***<sup>59</sup> [AM 142 Šimečka et al.];

**The right to information and freedom of expression, including *media freedom and pluralism*** [AM 146 Metsola et al. (partially)]

- 35b. ***Reiterates that media freedom and media pluralism are inseparable from democracy and the rule of law and that the right to inform and the right to be informed are part of the basic democratic values on which Union is founded*** [AM 148 Arvanitis et al.]; ***recalls that, in its resolution of 16 January 2020, Parliament called on the Council to address in the hearings under Article 7(1) TEU any new developments in the field of freedom of expression, including media freedom*** [AM 151 López Aguilar et al. (partially)];

36. Recalls that in its resolution of 14 September 2016, Parliament has expressed its concern about already adopted and newly suggested changes to Polish media law; repeats its call on the Commission to carry out an assessment of the legislation adopted as regards its compatibility with Union law, in particular, ~~regarding the~~ ***with Article 11 of the Charter of Fundamental Rights and Union law on public media*** [AM 150 López Aguilar et al.];

- 36a. ***Expresses its serious concerns about actions carried out in recent years by the Polish authorities in relation to the public broadcaster, including a re-shaping of the public broadcaster into a pro-government broadcaster, preventing public media and their governing bodies from expressing independent or dissenting voices and exercising control over broadcasting content***<sup>60</sup>; ***recalls the fact that Article 54 of the Polish Constitution guarantees freedom of expression and forbids censorship*** [AM 151 López Aguilar et al. and AM 157 Metsola et al.];

37. Is deeply concerned by the excessive use of libel cases by some politicians against journalists, including by sentencing with criminal fines and suspension from exercising the profession of journalist; fears for a chilling effect on the profession and

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<sup>57</sup> UN Human Rights Committee (HRC), Concluding observations on the seventh periodic report of Poland, 23 November 2016, para. 33.

<sup>58</sup> Venice Commission and DGI of the Council of Europe, Urgent Joint Opinion of 16 January 2020, para 59.

<sup>59</sup> *Judgment of the Court of Justice of 26 March 2020, Simpson v Council and HG v Commission, Joined Cases C-542/18 RX-II and C-543/18 RX-II, ECLI:EU:C:2020:232, para 57.*

<sup>60</sup> *See, as well, the World Press Freedom Index, according to which Poland has fallen from 18th to 62nd place in the ranking since 2015.*

independence of journalists and media<sup>61</sup>; *calls on the Polish authorities to guarantee access to appropriate legal remedies for journalists and their families who fall victim become the subject of lawsuits intended to silence or intimidate independent media; calls on the Polish authorities to fully implement the Council of Europe's Recommendation of 13 April 2016 on the protection of journalism and safety of journalists and other media actors*<sup>62</sup> [AM 153 Arvanitis et al. (partially)]; *regrets that so far the Commission has not come up with the anti-SLAPP (strategic lawsuit against public participation) legislation that would also protect Polish journalists and media from vexatious lawsuits;* [AM 54 Metsola et al.]

37a. *Is concerned about reported cases of detention of journalists for doing their job when reporting on anti-lockdown protests during the COVID-19 epidemic*<sup>63</sup> [AM 156 Metsola et al.];

### Academic freedom

37b. *Expresses concern over the use and threat of libel defamation litigation against academics; calls on the Polish authorities to respect freedom of speech and academic freedom, in line with international standards;*<sup>64</sup> [AM 155 Šimečka et al. (partially); second part see para. 33a]

38. Calls on the Polish parliament to repeal Chapter 6c of the Act of 18 December 1998 on the Institute of National Remembrance – Committee for the Prosecution of the Crimes against the Polish Nation<sup>65</sup>, as amended, which jeopardises freedom of speech and independent research by rendering it a civil offense that is actionable before civil courts to cause harm to the reputation of Poland and its people, such as by making any accusation of complicity of Poland or Poles in the Holocaust<sup>66</sup>;

### Freedom of assembly

39. Reiterates its call on the Polish government to respect the right of freedom of assembly by removing from the current Act of 24 July 2015 on public assemblies<sup>67</sup>, as amended on 13 December 2016<sup>68</sup>, the provisions prioritising government-approved ‘cyclical’ assemblies<sup>69</sup>; urges the Polish authorities to refrain from applying criminal sanctions to people who participate in peaceful assemblies or counter-demonstrations and to drop criminal charges against peaceful protesters; *urges the Polish authorities moreover to adequately protect peaceful assemblies and bring to justice those who violently attack*

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<sup>61</sup> Council of Europe Platform to Promote the Protection of Journalism and Safety of Journalists, 2020 Annual Report, March 2020, p. 42.

<sup>62</sup> Council of Europe, Recommendation CM/Rec(2016)4 of 13 April 2016 of the Committee of Ministers to Member States on the protection of journalism and safety of journalists and other media actors.

<sup>63</sup> *International Press Institute (IPI) Tracker on Press Freedom Violations Linked to COVID-19 Coverage*, <https://ipi.media/covid19-media-freedom-monitoring/>.

<sup>64</sup> *Council of Europe, the Organisation of American States et al., Declaration of the Global Forum on Academic Freedom, Institutional Autonomy, and the Future of Democracy, 21 June 2019.*

<sup>65</sup> Ustawa z dnia 18 grudnia 1998 r. o Instytucie Pamięci Narodowej - Komisji Ścigania Zbrodni przeciwko Narodowi Polskiemu (Dz.U. 1998 nr 155 poz. 1016).

<sup>66</sup> See as well the Statement of 28 June 2018 by the OSCE Representative on Freedom of the Media.

<sup>67</sup> Ustawa z dnia 24 lipca 2015 r. - Prawo o zgromadzeniach (Dz.U. 2015 poz. 1485).

<sup>68</sup> Ustawa z dnia 13 grudnia 2016 r. o zmianie ustawy - Prawo o zgromadzeniach (Dz.U. 2017 poz. 579).

<sup>69</sup> See as well the Communication of 23 April 2018 by UN Experts to urge Poland to ensure free and full participation at climate talks.

*people participating in peaceful assemblies* [AM 163 López Aguilar et al. and AM 164 Reintke];

**39a.** *Is concerned about the very restrictive ban on public assemblies<sup>70</sup> which was in force during the COVID-19 pandemic without the introduction of a state of natural disaster as laid down in Article 232 of the Polish constitution and insists on the need to apply the principle of proportionality when restricting the right to assembly* [AM 163 López Aguilar et al.];

#### **Freedom of association**

40. Calls on the Polish authorities to modify the Act of 15 September 2017 on the National Institute for Freedom - Centre for the Development of Civil Society<sup>71, 72</sup>, in order to ensure access to state funding for critical civil society groups *at local, regional and national levels*, and a fair, impartial and transparent distribution of public funds to civil society, ensuring pluralistic representation<sup>73</sup>; *reiterates its call for adequate funding to be made available for the organisations concerned through different funding instruments at Union level, such as the Union values strand of the new Citizens, Equality, Rights and Values Programme and Union pilot projects* [AM 169 Reintke and AM 171 Metsola]; *is deeply concerned that Polish Members of the European Economic and Social Committee are facing political pressure for the actions taken in the remit of their mandate<sup>74</sup>*;

#### **Privacy and data protection**

41. Reiterates its conclusion set out in its resolution of 14 September 2016 that the procedural safeguards and material conditions laid down in the Act of 10 June 2016 on anti-terrorist actions and the Act of 6 April 1990 on the police<sup>75</sup>, as amended, for the implementation of secret surveillance are not sufficient to prevent its excessive use or unjustified interference with the privacy and data protection of individuals, including of opposition and civil society leaders<sup>76</sup>; repeats its call on the Commission to carry out an assessment of that legislation as regards its compatibility with Union Law, and urges Polish authorities to fully respect the privacy of all citizens;

**41a.** *Is deeply concerned that the Ministry of Digital Affairs of Poland transferred personal data from the Universal Electronic System for Registration of the Population (the ‘PESEL register’) to the postal services operator on 22 April 2020, in order to facilitate the organisation of the presidential elections on 10 May 2020 via*

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<sup>70</sup> *Polish Commissioner for Human Rights, letter to the Ministry of the Interior and Administration, 6 May 2020.*

<sup>71</sup> Ustawa z dnia 15 września 2017 r. o Narodowym Instytucie Wolności - Centrum Rozwoju Społeczeństwa Obywatelskiego (Dz.U. 2017 poz. 1909).

<sup>72</sup> OSCE/ODIHR, Opinion on the Draft Act of Poland on the National Freedom Institute - Centre for the Development of Civil Society, Warsaw, 22 August 2017.

<sup>73</sup> *EESC, Report on Fundamental rights and the rule of law: national developments from a civil society perspective 2018-2019, June 2020, p. 41-42.*

<sup>74</sup> *EESC, Press Statement “Alarming pressure on civil society: Polish EESC member becomes a target of government retaliation and NGOs no longer able to choose their own candidates”, 23 June 2020.*

<sup>75</sup> Ustawa z dnia 6 kwietnia 1990 r. o Policji (Dz.U. 1990 nr 30 poz. 179).

<sup>76</sup> UN Human Rights Committee (HRC), Concluding observations on the seventh periodic report of Poland, 23 November 2016, paras 39-40. See as well Communication by UN Experts to urge Poland to ensure free and full participation at climate talks, 23 April 2018.

*postal ballot, without a proper legal basis to do so, as the Polish parliament did not adopt a bill allowing for an all-postal election until 7 May 2020; notes, furthermore, that the PESEL register is not identical to electoral register and also includes the personal data of citizens of other Member States, and that, therefore, the above-mentioned transfer could constitute a potential breach of Regulation (EU) 2016/679; recalls that the European Data Protection Board (EDPB) stated that public authorities may disclose information on individuals included in electoral lists, but only when this is specifically authorised by national law<sup>77</sup> [AM 175 Metsola et al.]; notes that the Polish Commissioner of Human Rights filed a complaint with the Voivodeship Administrative Court in Warsaw on the basis of a possible breach of Article 7 and Article 51 of the Polish Constitution by the Ministry of Digital Affairs of Poland;*

**Comprehensive sexuality ~~sexual~~ education [AM 178 Reintke]**

42. Reiterates its deep concern expressed in its resolution of 14 November 2019, also shared by the Council of Europe Commissioner for Human Rights<sup>78</sup>, over the draft law amending Article 200b of the Polish Penal Code, *as* submitted to the Sejm by the ‘Stop Paedophilia’ initiative [AM 186 Metsola et al.], for its extremely vague, broad and disproportionate provisions, which de facto seeks to criminalise the dissemination of sexual education to minors and whose scope potentially threatens all persons, in particular parents, teachers and sex educators, with up to three years in prison for teaching about human sexuality, health and intimate relations [FEMM C (partially); FEMM 16 (partially)]; ~~stresses the importance of health and sexual education;~~

42a. *Stresses that age-appropriate and evidence-based comprehensive sexuality and relationship education is key to building young peoples’ skills to form healthy, equal, nurturing and safe relationships, free from discrimination, coercion and violence; believes that comprehensive sexuality education also has a positive impact on gender equality outcomes, including transforming harmful gender norms and attitudes towards gender-based violence, helping prevent intimate partner violence and sexual coercion, homophobia and transphobia, breaking the silence around sexual violence, sexual exploitation or abuse, and empowering young people to seek help; calls on the Polish parliament to refrain from adopting the proposed draft law amending Article 200b of the Polish Penal Code and strongly invites the Polish authorities to ensure access to scientifically accurate and comprehensive sexuality education for all school children in line with international standards and that those who provide such education and information are supported in so doing in a factual and objective manner [AM 185 Reintke; AM 187 Björk et al.; FEMM D; FEMM 2 (partially); FEMM 9; FEMM 10 (partially); FEMM 11 (partially); FEMM 15 (partially)];*

**Hate speech, public discrimination, violence against women, domestic violence and intolerant behaviour against minorities and other vulnerable groups, including LGBTI persons [AM 212 Reintke]**

<sup>77</sup> EDPB, letter on Polish presidential elections data disclosure, 5 May 2020.

<sup>78</sup> Council of Europe Commissioner for Human Rights, Statement of 14 April 2020.

45. ~~Reiterates its call on the Polish government to take appropriate action on and strongly condemn any xenophobic and fascist hate crime or hate speech<sup>79</sup>; Urges the Polish authorities 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, including politicians and media officials<sup>80</sup>, 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 organizations that promote or incite racial discrimination<sup>81</sup> [AM 214 Reintke (partially) and AM 216 Metsola et al.]; calls on the Polish authorities to comply with the 2019 recommendations of the UN Committee on the Elimination of Racial Discrimination<sup>82</sup>;~~
- 45a. *Is deeply concerned about the Polish Deputy Minister of Justice' recent declaration that Poland should denounce the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) [AM 210 Spurek (partially)]; encourages the Polish authorities to give practical and effective application to that Convention, including by ensuring application of the existing legislation across the country, as well as the provision of a sufficient number and quality of shelters for women who are victims of violence and their children [AM 217 Reintke; FEMM 5];*
- 45b. *Notes that the May 2020 LGBTI Survey II conducted by the European Union Agency for Fundamental Rights highlights an increase in intolerance and violence in Poland towards LGBTI persons and complete disbelief in the government's combat against prejudice and intolerance by Polish LGBTI respondents, recording the lowest percentage across the Union (only 4%), and the highest percentage of respondents avoiding going to certain places for fear of being assaulted, harassed or threatened (79%) [AM 14 Walsh, AM 15 Björk, AM 16 Reintke, FEMM citation 5];*
46. *Recalls, also in the context of the 2020 presidential campaign, its stance expressed in its resolution of 18 December 2019, when it strongly denounced any discrimination against LGBTI persons and the violation of their fundamental rights by public authorities, including hate speech by public authorities and elected officials, the banning of and inadequate protection against attacks on Pride marches and awareness-raising programmes [AM 223 Walsh (partially), AM 224 Björk (partially), AM 225 Reintke (partially) and AM 227 López Aguilar et al.], in the context of elections, the declarations of zones in Poland free from so-called 'LGBT ideology' and the adoption of 'Regional Charters of Family Rights', discriminating in particular against single-parent and LGBTI families [AM 223 Walsh (partially), AM 224 Björk (partially) and AM 225 (Reintke) (partially), FEMM F (partially); FEMM 12]; notes the lack of any improvement in the situation of LGBTI persons in Poland since [AM 228 Šimečka] and that mental health and physical safety of Polish*

<sup>79</sup> EP Resolution of 15 November 2017, para. 18; PACE, Resolution 2316 (2020) of 28 January 2020 on the functioning of democratic institutions in Poland, para. 14; UN Human Rights Committee (HRC), Concluding observations on the seventh periodic report of Poland, 23 November 2016, CCPR/C/POL/CO/7, paras 15-18.

<sup>80</sup> EP Resolution of 15 November 2017, para. 18; PACE, Resolution 2316 (2020) of 28 January 2020 on the functioning of democratic institutions in Poland, para. 14; UN Human Rights Committee (HRC), Concluding observations on the seventh periodic report of Poland, 23 November 2016, CCPR/C/POL/CO/7, paras 15-18.

<sup>81</sup> *United Nations Committee on the Elimination of Racial Discrimination, Concluding observations on the combined twenty-second to twenty-fourth periodic reports of Poland, August 2019.*

<sup>82</sup> *Ibid.*

*LGBTI people are particularly at risk [FEMM 6 (partially)]; ~~called on~~ recalls the condemnation of such actions by the Polish Commissioner for Human Rights, who filed nine complaints to administrative courts arguing that the LGBTI-free zones violate Union law, and by the Commission and international organisations to strongly condemn such public discrimination [AM 230 Metsola et al. (partially); recalls that spending under cohesion funds must not discriminate on the basis of sexual orientation and that municipalities acting as employers must respect Council Directive 2000/78/EC<sup>83</sup>, which prohibits discrimination and harassment on the ground of sexual orientation in employment<sup>84</sup> FEMM 13 (partially)]; calls on the Polish authorities to implement the relevant case law of the Court of Justice and the European Court of Human Rights and in that context address the situation of same sex spouses and parents with a view to ensuring their enjoyment of the right to non-discrimination in law and in fact<sup>85</sup> [AM 225 Reintke]; condemns the law suits against the civil society activists who published the so-called “Atlas of Hate” that documents cases of homophobia in Poland [AM 232 Björk et al.]; strongly invites the Polish government to ensure the legal protection of LGBTI people against all forms of hate crime and hate speech [FEMM 6 (partially); FEMM 14 (partially)];*

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<sup>83</sup> Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ L 303, 2.12.2000, p. 16).

<sup>84</sup> European Commission, DG REGIO, letter to the authorities of the Polish regions of Lublin, Łódź, Lesser Poland, Podkarpackie and Świętokrzyskie, 27 May 2020. See, as well, Judgment of the Court of Justice 23 April 2020, Associazione Avvocatura per i diritti LGBTI, C-507/18, ECLI:EU:C:2020:289.

<sup>85</sup> Judgment of the European Court of Justice of 5 June 2018, Coman, C-673/16, ECLI:EU:C:2018:385; ECtHR Judgment of the European Court of Human Rights of 2 March 2010, Kozak v. Poland (application no. 13102/02); Judgment of the European Court of Human Rights of 22 January 2008, E.B. v. France (application no. 43546/02); Judgment of the European Court of Human Rights of 19 February 2013, X and Others v. Austria (application no. 19010/07); Judgment of the European Court of Human Rights of 30 June 2016, Taddeucci and McCall v. Italy (application no. 51362/09); Judgment of the European Court of Human Rights of 21 July 2015, Oliari and Others v. Italy (applications nos. 18766/11 and 36030/11); Judgment of the European Court of Human Rights of 14 December 2017, Orlandi and Others v. Italy (applications nos. 26431/12, 26742/12, 44057/12 and 60088/12); Judgment of the European Court of Human Rights of 14 January 2020, Beizaras and Levickas v. Lithuania (application no. 41288/15).

**DRAFT COMPROMISE AMENDMENT F on part on “Protection of fundamental rights, including the rights of persons belonging to minorities, in Poland” (paragraphs 43-44)**

**Covered:** 197 (Reintke), 199 (Björk et al.), 200 (Bilčík et al.), 209 (Björk et al.) (partially), 210 (Spurek) (partially), FEMM A (partially), FEMM F (partially), FEMM 2 (partially), FEMM 3 (partially), FEMM 4 (partially), FEMM 7 (partially), FEMM 8 (partially), FEMM 9

**Fall:** 189 (Kempa et al.), 190 (Metsola et al.), 191 (Hidvéghi), 192 (Jaki et al.), 193 (Bilčík et al.), 194 (Kempa et al.), 195 (Hidvéghi), 196 (Metsola et al.), 198 (Kempa), 201 (Jaki et al.), 202 (Bilčík et al.), 203 (Bilčík et al.), 204 (Kempa), 205 (Kempa et al.), 206 (Hidvéghi), 207 (Metsola et al.), 208 (Jaki et al.),

### **Sexual and reproductive health and rights**

43. *Recalls that according to the Charter of Fundamental Rights, the ECHR and the case law of the European Court of Human Rights, women’s sexual and reproductive health is related to multiple human rights, including the right to life and dignity, freedom from inhuman and degrading treatment, the right of access to health care, the right to privacy, the right to education and the prohibition of discrimination, as is also reflected in the Polish Constitution [AM 200 Bilcik et al; FEMM A (partially)]; recalls that Parliament has strongly criticised, already in its resolutions of 14 September 2016 and 15 November 2017, any legislative proposal that would prohibit abortion in cases of severe or fatal foetal impairment, **thereby drastically limiting, and thereby coming close to banning in practice, access to abortion care in Poland as most legal abortions are performed under this ground**<sup>86</sup> [AM 199 Björk et al., FEMM 7 (partially)], and emphasized that universal access to healthcare, including sexual and reproductive healthcare and the associated rights, is a fundamental human right<sup>87</sup> [para. 6 FEMM (partially)]; **regrets the proposed amendments to the Act of 5 December 1996 on doctors and dentists professions<sup>88</sup>, under which doctors would no longer be legally obliged to indicate an alternative facility or practitioner in case of denial of sexual and reproductive health services due to personal beliefs; is concerned about the use of the conscience clause including the absence of reliable referral mechanisms and lack of timely appeals for women who are denied such services [FEMM 3]; calls on the Polish parliament to refrain from any further attempts to restrict women’s sexual and reproductive health and rights [AM 197 Reintke; FEMM 2 (partially)]; strongly affirms that the denial of sexual and reproductive health and rights services is a form of violence against women and girls [AM 197 Reintke and AM 209 (Björk et al.) (partially); FEMM 4 (partially); FEMM 8 (partially)]; calls on the Polish authorities to take measures to implement fully the judgments handed down by the European Court of Human Rights in cases against***

<sup>86</sup> *In 2017, abortion due to fetal defects accounted for 97.9 percent all treatments: Center for Health Information Systems, reports of the Statistical Research Program of Public Statistics MZ-29, as published on the website of the Polish Sejm. Sprawozdanie Rady Ministrów z wykonywania oraz o skutkach stosowania w 2016 r. ustawy z dnia 7 stycznia 1993 r. o planowaniu rodziny, ochronie płodu ludzkiego i warunkach dopuszczalności przerywania ciąży (Dz. U. poz. 78, z późn. zm.)*

<sup>87</sup> *See as well the issue paper of the Council of Europe’s Commissioner for Human Rights of December 2017 entitled ‘Women’s sexual and reproductive health and rights in Europe’, [AM 16 Reintke] Statement of 22 March 2018 by UN Experts advising the UN Working Group on discrimination against women, and Statement of 14 April 2020 by the Council of Europe’s Commissioner for Human Rights.*

<sup>88</sup> *Ustawa z dnia 28 maja 2020 r. o zmianie ustawy o zawodach lekarza i lekarza dentysty oraz niektórych innych ustaw.*

*Poland, which has ruled on several occasions that restrictive abortion laws and lack of implementation violates the human rights of women*<sup>89</sup> [AM 197 Reintke; FEMM 3 (partially)];

44. Recalls that previous attempts to further limit the right to abortion, which in Poland is already among the most restricted in the Union, were halted in 2016 and 2018 as a result of mass opposition from Polish citizens as expressed in the ‘Black Marches’; ~~calls for~~ **strongly invites Polish authorities to consider repealing** the law limiting women’s and girls’ access to the emergency contraceptive pill ~~to be repealed~~ [FEMM F (partially); FEMM 3 (partially)];

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<sup>89</sup> *Judgment of the European Court of Human Rights of 20 March 2007, Tysi c v. Poland (application no. 5410/03); Judgment of the European Court of Human Rights of 20 March 2007, R. R. v. Poland (application no. 27617/04); Judgment of the European Court of Human Rights of 30 October 2012, P. and S. v. Poland (application no. 57375/08).*

**DRAFT COMPROMISE AMENDMENT G on concluding paragraphs (“calls on”)  
(paragraphs 47-51)**

**Covered:** AM 42 (Arvanitis et al.), 234 (López Aguilar et al.), 235 (Šimečka et al.), 238 (Metsola et al.), 241 (Šimečka et al.), 242 (Strugariu et al.), 246 (Strugariu et al.), 247 (Arvanitis et al.)

**Fall:** 233 (Kempa), 236 (Kempa et al.), 237 (Hidvéghi), 239 (Kempa), 240 (Kempa et al.), 243 (Kempa), 244 (Hidvéghi), 245 (Kempa et al.), 248 (Kempa et al.), 249 (Hidvéghi), 250 (Arvanitis et al.), 251 (Kempa), 252 (López Aguilar et al.), 253 (Metsola et al.), 254 (Kempa et al.)

47. Notes that the lack of independence of the judiciary in Poland has already started affecting mutual trust between Poland and other Member States, especially in the field of judicial cooperation in criminal matters, ***given that national courts have refused to or hesitated to release Polish suspects under the European Arrest Warrant procedure due to profound doubts about the independence of the Polish judiciary [AM 234 López Aguilar et al.]; considers the threat to the uniformity of the Union legal order posed by rule of law deterioration in Poland to be particularly serious [AM 235 Šimečka et al.];*** points out that mutual trust between the Member States can be restored only once respect for the values enshrined in Article 2 TEU is ensured;
48. Calls on the Polish government to comply with all provisions relating to the rule of law and fundamental rights enshrined in the Treaties, the Charter of Fundamental Rights, the ECHR and international human rights standards, and to engage directly in ***honest*** dialogue with the Commission; ***stresses that such dialogue needs to be conducted in an impartial, evidence-based and cooperative manner; calls on the Polish government to cooperate with the Commission pursuant to the principle of sincere cooperation as set out in the TEU [AM 238 Metsola et al.];*** calls on the Polish government to swiftly ***and fully*** implement the rulings of the CJEU and to respect the primacy of Union law [AM 241 Šimečka et al.];
- 48a. ***Calls 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 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 as highlighted in this report [AM 242 Strugariu et al. + AM 42 Arvanitis et al.];***
49. Calls upon the Council to resume the formal hearings - the last one of which was held as long ago as December 2018 - as soon as possible and to include in those hearings all the latest and major negative developments in the areas of rule of law, democracy and fundamental rights; urges the Council 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 resolution and in so many reports of international and European organisations, the case-law of the CJEU and the European Court of Human Rights and reports by civil society organisations; strongly recommends that the Council address concrete recommendations to Poland, as provided for in Article 7(1) TEU, as a follow-up to the hearings, and that it indicate deadlines for the

implementation of those recommendations; ***calls furthermore on the Council to commit to assessing the implementation of these recommendations in a timely manner***; calls on the Council to keep Parliament regularly informed and closely involved ***and to work in a transparent manner, to allow for meaningful participation and oversight by all European institutions and bodies and by civil society organisations*** [AM 246 Strugariu et al. and 247 Arvanitis et al.];

50. Calls on the Commission to make full use of the tools available to it in order 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 CJEU, as well as budgetary tools; calls on the Commission to continue to keep Parliament regularly informed and closely involved;
51. Instructs its President to forward this resolution to the Council and the Commission and to the President, government and parliament of the Republic of Poland, the governments and parliaments of the Member States, the Council of Europe and the Organisation for Security and Cooperation in Europe.

**DRAFT COMPROMISE AMENDMENT H on citations**

**Covered:** 1 (López Aguilar et al.), 4 (Arvanitis et al.), 10 (López Aguilar et al.), 11 (López Aguilar et al.), 13 (Reintke) (see new para. 45c), 14 (Walsh) (see new para. 45c), 15 (Björk) (see new para. 45c), 16 (Reintke) (see footnote to para. 43), 17 (Reintke) (partially), 144 (Reintke), FEMM citation 3 (partially), FEMM citation 4,

**Fall:** 2 (Hidvéghi), 3 (Hidvéghi), 5 (Kempa), 6 (Jaki et al.), 7 (Kempa), 8 (Jaki et al.), 9 (Kempa), 12 (Šimečka et al.)

*The European Parliament,*

- having regard to the proposal for a Council decision (COM(2017)0835),
- having regard to the Treaty on European Union, and in particular Article 2 and Article 7(1) thereof,
- having regard to the Charter of Fundamental Rights of the European Union,
- having regard to the European Convention for the Protection of Human Rights and Fundamental Freedoms and the Protocols thereto,
- having regard to the Universal Declaration of Human Rights,
- having regard to the international human rights treaties of the United Nations, such as the International Covenant on Civil and Political Rights,
- ***having regard to the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention), [AM 1 López Aguilar et al.]***
- having regard to its legislative resolution of 20 April 2004 on the Commission communication on Article 7 of the Treaty on European Union: Respect for and promotion of the values on which the Union is based<sup>90</sup>,
- having regard to Communication of 15 October 2003 from the Commission to the Council and the European Parliament on Article 7 of the Treaty on European Union - Respect for and promotion of the values on which the Union is based<sup>91</sup>,
- having regard to Communication of 11 March 2014 from the Commission to the European Parliament and the Council, ‘A new EU Framework to strengthen the Rule of Law’<sup>92</sup>,

<sup>90</sup> OJ C 104 E, 30.4.2004, p. 408.

<sup>91</sup> COM(2003)0606.

<sup>92</sup> COM(2014)0158.

- having regard to its resolution of 13 April 2016 on the situation in Poland<sup>93</sup>,
- having regard to its resolution of 14 September 2016 on the recent developments in Poland and their impact on fundamental rights as laid down in the Charter of Fundamental Rights of the European Union<sup>94</sup>,
- having regard to its resolution of 15 November 2017 on the situation of the rule of law and democracy in Poland<sup>95</sup>,
- having regard to the activation by the Commission of the structured dialogue under the Rule of Law Framework in January 2016, ~~to the four Commission Rule of Law Recommendations regarding the rule of law in Poland (Recommendations (EU) 2016/1374<sup>96</sup>, (EU) 2017/146<sup>97</sup> and (EU) 2017/1520<sup>98</sup>, (EU) 2018/103<sup>99</sup>) and to the Commission’s reasoned proposal of 20 December 2017 in accordance with Article 7(1) TEU regarding the rule of law in Poland<sup>100</sup>~~;
- having regard to Commission Recommendation (EU) 2016/1374 of 27 July 2016 regarding the rule of law in Poland<sup>101</sup>,
- having regard to Commission Recommendation (EU) 2017/146 of 21 December 2016 regarding the rule of law in Poland complementary to Recommendation (EU) 2016/1374<sup>102</sup>,
- having regard to Commission Recommendation (EU) 2017/1520 of 26 July 2017 regarding the rule of law in Poland complementary to Recommendations (EU) 2016/1374 and (EU) 2017/146<sup>103</sup>,
- having regard to Commission Recommendation (EU) 2018/103 of 20 December 2017 regarding the rule of law in Poland complementary to Commission Recommendations (EU) 2016/1374, (EU) 2017/146 and (EU) 2017/1520<sup>104</sup>,
- 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 Poland<sup>105</sup>,
- having regard to its resolution of 14 November 2019 on the criminalisation of sexual education in Poland<sup>106</sup>,

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<sup>93</sup> Texts adopted, [P8\\_TA\(2016\)0123](#).

<sup>94</sup> Texts adopted, [P8\\_TA\(2016\)0344](#).

<sup>95</sup> Texts adopted, [P8\\_TA\(2017\)0442](#).

<sup>96</sup> ~~OJ L 217, 12.8.2016, p. 53.~~

<sup>97</sup> ~~OJ L 22, 27.1.2017, p. 65.~~

<sup>98</sup> ~~OJ L 228, 2.9.2017, p. 19.~~

<sup>99</sup> ~~OJ L 17, 23.1.2018, p. 50.~~

<sup>100</sup> ~~COM(2017) 835 final.~~

<sup>101</sup> OJ L 217, 12.8.2016, p. 53.

<sup>102</sup> OJ L 22, 27.1.2017, p. 65.

<sup>103</sup> OJ L 228, 2.9.2017, p. 19.

<sup>104</sup> OJ L 17, 23.1.2018, p. 50.

<sup>105</sup> Texts adopted, [P8\\_TA\(2018\)0055](#).

<sup>106</sup> Texts adopted, [P9\\_TA\(2019\)0058](#).

- having regard to its resolution of 18 December 2019 on public discrimination and hate speech against LGBTI people, including LGBTI free zones<sup>107</sup>,
- having regard to its resolution of 16 January 2019 on the situation of fundamental rights in the European Union in 2017<sup>108</sup>,
- ***having regard to its resolution of 3 May 2018 on media pluralism and media freedom in the European Union***<sup>109</sup> [AM 4 Arvanitis et al.],
- having regard to its resolution of 16 January 2020 on ongoing hearings under Article 7(1) of the TEU regarding Poland and Hungary<sup>110</sup>,
- having regard to its resolution of 17 April 2020 on EU coordinated action to combat the COVID-19 pandemic and its consequences<sup>111</sup>,
- having regard to its resolution of 25 October 2016 with recommendations to the Commission on the establishment of an EU mechanism on democracy, the rule of law and fundamental rights<sup>112</sup>,
- ***having regard to its resolution of 13 February 2019 on experiencing backlash in women’s rights and gender equality in the EU***<sup>113</sup> [FEMM citation 4],
- ***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 violence*** [AM 10 López Aguilar et al.]<sup>114</sup>,
- having regard to its legislative resolution of 4 April 2019 on the proposal for a regulation of the European Parliament and of the Council on the protection of the Union’s budget in case of generalised deficiencies as regards the rule of law in the Member States<sup>115</sup>,
- ***having regard to its legislative resolution of 17 April 2019 on the proposal for a regulation of the European Parliament and of the Council establishing the Rights and Values programme***<sup>116</sup> [AM 11 López Aguilar et al.],
- having regard to the four infringement procedures launched by the Commission against Poland in relation to the reform of the Polish judicial system, of which the first two resulted in judgments of the Court of Justice finding violations of the second subparagraph of Article 19(1) of the Treaty on European Union enshrining the principle of effective judicial protection, while the two other procedures are still pending,

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<sup>107</sup> Texts adopted, [P9\\_TA\(2019\)0101](#).

<sup>108</sup> Texts adopted, [P8\\_TA\(2019\)0032](#).

<sup>109</sup> Texts adopted, [P8\\_TA\(2018\)0204](#).

<sup>110</sup> Texts adopted, [P9\\_TA\(2020\)0014](#).

<sup>111</sup> Texts adopted, [P9\\_TA\(2020\)0054](#).

<sup>112</sup> Texts adopted, [P8\\_TA\(2016\)0409](#).

<sup>113</sup> ***Texts adopted, P8\_TA(2019)0111.***

<sup>114</sup> ***Texts adopted, P9\_TA(2019)0080.***

<sup>115</sup> Texts adopted, [P8\\_TA\(2019\)0349](#).

<sup>116</sup> ***Texts adopted, P8\_TA(2019)0407.***

- having regard to the three hearings of Poland held in 2018 by the General Affairs Council within the framework of the Article 7(1) TEU procedure,
- having regard to the mission report of 3 December 2018, following the visit by the Committee on Civil Liberties and Justice and Home Affairs to Warsaw from 19 until 21 September 2018, and to the hearings on the rule of law situation in Poland held in that Committee on 20 November 2018 and 23 April 2020;
- having regard to the annual reports of the European Union Agency for Fundamental Rights and the European Anti-Fraud Office,
- ***having regard to the 2018 WHO recommendations on adolescent sexual and reproductive health and [AM 17 Reintke (partially), FEMM citation 3 (partially)],***
- ***having regard to the judgment of the European Court of Human Rights of 24 July 2014, Al Nashiri v. Poland (application No. 28761/11) [AM 144 Reintke],***
- having regard to Rules 89 and 105(5) of its Rules of Procedure,
- having regard to the opinions of ~~the Committee on Constitutional Affairs and the~~ Committee on Women’s Rights and Gender Equality,
- having regard to the interim report of the Committee on Civil Liberties, Justice and Home Affairs (A9-xxxx/2020),