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Letter | 24.03.2022

Letter to Commission President von der Leyen on the approval of Poland's RRP

Dear President von der Leyen,

Following our letter of 15th November and given the recent media reports on a possible political agreement for the Polish recovery plan, we would like to reiterate and affirm our position that the approval of the national plans under the Recovery and Resilience Facility should be made conditional on the fulfillment of all 11 criteria set out in Article 19 of and Annex V to the regulation on the Recovery and Resilience Facility. We believe that the respect of the Rule of Law is fundamental and the war unfolding in Ukraine keeps on reminding us of the value of our shared duty to effectively protect democracy, the rule of law and our values as enshrined in Article 2 TEU with all the means at our disposal within and outside the Union.

Judicial independence and respect of the Rule of Law are not only relevant criteria for the assessment of national recovery and resilience plans but fundamental prerequisites. The RRF requires that the bodies tasked with control and supervision have the legal empowerment and administrative capacity to exercise their tasks independently. Proper protection of the EU's financial interests is impossible until independence of the Polish judicial system if fully restored and without such a full restoration, it is impossible for Poland to meet the relevant assessment criteria under the Recovery and Resilience Facility. The restoration of the Polish judicial system is therefore a precondition to a positive assessment of the plan.

The three conditions you set out in front of the Parliament on 19 October 2021 for disbursing the Recovery and Resilience Facility funds to Poland, namely 1) the liquidation of the illegal Disciplinary Chamber, 2) the reinstatement of the judges suspended by it 3) changes in the disciplinary system for judges, have not yet been fulfilled.

As you are well aware, currently, there are four reform proposals on the table: One by Poland's Minister of Justice Zbigniew Ziobro, one by Polish president Andrzej Duda,one by the Law and Justice party (PiS) as well as a draft by the opposition parties . All, except for the opposition proposal, fail to meet the criteria you established and would not fully implement the judgments of the CJEU and the ECHR as demonstrated in the Annex to our letter.

Moreover, in spite of the ongoing discussions between the Polish government and the European Commission, the situation in the country has in fact been deteriorating rather than improving, as one could have hoped. Indeed, since the outbreak of the war in Ukraine, the Polish authorities have taken a number

of measures directly in contradiction with the three conditions you set. First, on February 25, 2022 Polish judge Anna Głowacka was suspended for applying European law and the judgments of the European courts; second, the President handed out appointments to more than 200 new, defectively nominated (at the request of the neo-NCJ) so-called neo judges, including 4 appointments to the Supreme Court and on 10 March 2022, at the request of the Minister of Justice Zbigniew Ziobro, and thirdly, the politicized and fully subordinated Constitutional Tribunal (with the participation of so-called "stand-in judges") undermined the validity of Article 6 of the ECHR in Poland by questioning the ability of the ECtHR and Polish courts to examine the correctness of the appointment of judges and the independence of the neo-NCJ.

Without broad and coherent reforms, we risk that cases concerning the RRF funds directly or indirectly will be within the jurisdiction of Polish courts not established by law or are not independent, and therefore not able to guarantee a fair trial and we are convinced that setting relevant milestones or targets however stringent is not a strong enough guarantee that there will be real change on the ground.

It is obvious that the Russian aggression of Ukraine creates a new context, in which the Member-States bordering Ukraine, including Poland, are suddenly confronted with the need to welcome millions of refugees. They - and in particular the NGOs and citizens who are delivering the major share of the effort, deserve our unconditional support. However, this context can in no way justify turning a blind eye on major challenges to that foundation of the EU that rule of law constitutes.

Like all committed Europeans, we eagerly aspire to the restoration of constructive relations between Poland and the European Union, in a true spirit of sincere cooperation. However, this can only be based on a substantial change of course by the Polish Government. In our view, it would be disastrous for the EU that the European Commission and the Council of Ministers agree to major concessions in exchange of empty promises, at a moment when every action of the Polish Government on the ground betrays an unwavering will to subjugate the judiciary branch. This would send a catastrophic signal to all those, in Poland and elsewhere, who are committed to preserve the foundations of our Union.

We therefore urge the European Commission to stand firm in its coherence and continue to be the faithful guardian of the Treaties and refrain from any commitments on the Polish National Recovery and Resilience plan until the 11 assessment criteria are fully met.

Yours sincerely,

MEP Iratxe García Pérez
President of the Group of the Progressive Alliance of Socialists & Democrats

MEP Stéphane Séjourné
President of the Renew Europe Group

MEP Ska Keller and MEP Philippe Lamberts
Co-Presidents of the Greens/EFA Group

MEP Manon Aubry and MEP Martin Schirdewan
Co-Chairs of The Left Group

Annexes :

1) A Comparative table of the reform bills filed by Duda, PiS and the opposition parties, including a list of all other judgments to implement

2) A list of the latest measures taken by the Polish authorities

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Responsible MEPs

Ska Keller

Member

Philippe Lamberts

Member

Attached documents

Letter to Commission President von der Leyen on the approval of Poland's RRP
Measures taken deteriorating RoL
Comparative table reform bills including a list of all judgments to implement

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