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From:	General Secretariat of the Council
To:	Delegations
Subject:	Rule of Law in Poland - Article 7(1) TEU Reasoned Proposal - Report on the hearing held by the Council on 22 February 2022

As provided for in 10641/2/19 REV2 (paragraph 23 of the Annex), delegations will find in the Annex the formal report on the hearing of Poland, held on 22 February 2022, in accordance with Article 7(1) TEU.

On 22 February 2022, the Council heard Poland in accordance with Article 7(1) TEU. The hearing was conducted during the meeting of the General Affairs Council and lasted approximately 1 hour 45 minutes.

In line with the standard modalities for hearings referred to in Article 7(1) TEU (10641/2/19 REV2), the substantive scope of the issues to be covered by the hearing was agreed by Coreper on 9 February 2022 (5808/22). The hearing covered all the topics included in the Commission's reasoned proposal of 20 December 2017.

At the start of the hearing, the Presidency reminded participants that the hearing would be conducted in accordance with the standard modalities (10641/2/19 REV2). The Presidency also indicated that, due to the COVID-19 situation and the specific social distancing measures, the number of persons present in the Council meeting room needed to be limited.

The Commission was then given the floor so that it could update the Council on the issues covered by the hearing. The Commission focused on: the independence of the Constitutional Tribunal and its rulings calling into question the primacy of EU law; the independence of the National Council for the Judiciary; the disciplinary regime for judges and the role of the Disciplinary Chamber of the Supreme Court, including recent proposals for their reform.

The Polish delegation was then given the floor so that it could present its initial views on the topics of the hearing and reply to the remarks made by the Commission.

Afterwards, 13 delegations intervened to put questions to Poland: LU, SE, DK, FI, IE, AT, DE, BE, ES, EL, NL, PT and MT.

Those questions mainly concerned:

- the content and the timing of the proposed reforms concerning the disciplinary regime for judges and the Disciplinary Chamber of the Supreme Court;
- Poland's respect for the primacy of the EU law and for the obligations which stem from EU law, and its implementation of rulings by the Court of Justice of the European Union, including the payment of financial penalties;
- the implementation by Poland of rulings by the European Court of Human Rights;
- the lack of independence of the National Council for the Judiciary;
- the role of the Minister for Justice as Prosecutor-General and its impact on the independence of prosecutors and, indirectly, on defence lawyers;
- the lack of independence and legitimacy of the Constitutional Tribunal;
- the recognition by Poland of judicial decisions by other Member States, notably on family law;
- the involvement of the Venice Commission in judicial reforms.

The Polish delegation was given the opportunity to provide detailed answers to the questions from delegations.

In particular, the Polish delegation stated that debates on the proposed reforms concerning the disciplinary regime for judges and the Disciplinary Chamber of the Supreme Court were ongoing in its Parliament and that their timeline was in the hands of the Parliament. The delegation further stated that one of those proposed reforms intended to abolish the Disciplinary Chamber and replace it with an 'official accountability chamber', composed of 11 members appointed by the President of the Republic out of a pool of 33 randomly selected Supreme Court judges, for a five-year mandate. The delegation also stated that interim measures applied by the Disciplinary Chamber would be reviewed and that convicted judges would be entitled to a right of appeal.

The Polish delegation stated that Poland had always fulfilled its obligations under EU law and implemented rulings by the Court of Justice of the European Union – with the exception of one ruling, of 15 July 2021, which had not been fully implemented – and that EU law ranked higher than national legislation. The delegation further stated that the Polish Constitution remained the supreme law of Poland and a higher source of law than EU or international law, and that it was for the Constitutional Tribunal to interpret the Polish Constitution.

The Polish delegation stated that the procedure for appointing members of the National Council for the Judiciary enhanced transparency and enabled public debate, stressing that the involvement of the Parliament in the appointments was fully in line with the Polish Constitution and that the overall procedure was similar to the ones used in other Member States. The delegation further stated that strong constitutional guarantees ensured the independence of judges and that calling into question the status of judges and their legitimacy would pose a serious threat to the whole Polish legal order.

The Polish delegation stated that the 2016 reform that conferred upon the Minister for Justice the role of Prosecutor-General was intended to address previous shortcomings as regards prosecution.

The Polish delegation stated that possible reforms concerning the independence of the Constitutional Tribunal were a prerogative of the Parliament.

The Polish delegation stated that Poland recognised judicial decisions by other Member States and that family law was not the subject of the recent reforms concerning the judiciary.

The Polish delegation stated that in spite of the important role played by the Venice Commission, the focus should remain on the EU system and its bodies.

The Commission presented its final remarks, stating that the principle of judicial independence was a requirement of EU law. The Commission also stated that ensuring the respect for the principles of primacy of EU law and sincere cooperation, as well as compliance with rulings by the Court of Justice of the European Union were fundamental elements. The Commission further stated that justice systems needed to be assessed in a comprehensive manner, and that the analysis of single provisions should take into account the full context and the checks and balances in place in a given Member State.

After questions and answers, the Polish delegation presented its closing comments.

The Presidency concluded that the General Affairs Council would remain seized of this matter.