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NOTE

From:	Presidency
To:	Delegations
No. prev. doc.:	16007/17; 10354/18; 11458/18; 12060/18
Subject:	Rule of Law in Poland / Article 7(1) TEU Reasoned Proposal - Hearing of Poland on 11 December 2018

I. INTRODUCTION

1. On 20 December 2017, the Commission adopted a reasoned proposal with regard to the rule of law situation in Poland which it submitted to the Council, thus triggering the mechanism set out in Article 7(1) TEU. This was preceded by a dialogue between the Commission and Poland since 13 January 2016 which continued in parallel to the triggering of the Article 7 procedure.
2. The reasoned proposal (doc. 16007/17) contains a detailed explanatory memorandum as well as a proposal for a Council decision under which the Council would (i) determine that there is a clear risk of a serious breach by Poland of the rule of law and (ii) make recommendations for Poland to bring its judicial reform into line with rule of law standards.

3. On 27 February 2018, the Commission presented its reasoned proposal to the Council (General Affairs), and informed on the state of play and on the on-going dialogue with Poland.
4. Thereafter, the Commission informed the Council on the situation in Poland and on the ongoing dialogue on 20 March, 17 April and 14 May 2018. During the information item on 14 May 2018, the Commission presented its assessment that, despite some progress, key concerns, identified in the Commission's reasoned proposal, remained unaddressed.
5. At Coreper on 7 June 2018, when discussing the provisional agenda for the meeting of the Council (General Affairs) on 26 June 2018, the Commission requested that a hearing, which constitutes a necessary step of the process under Article 7(1) TEU¹, take place at that meeting. Following this request, Poland was heard by the Council (General Affairs) on 26 June 2018 in accordance with Article 7(1) TEU. The modalities and the substantive scope of this hearing (as set out in 10354/18) were endorsed by Coreper on 20 June 2018.
6. On 4 July 2018, a majority of delegations requested hearing Poland also during the next meeting of the General Affairs Council on 18 September 2018. The updated modalities and the substantive scope of the second hearing (as set out in 11458/18) were prepared by Coreper on 5 and 12 September 2018. On 18 September 2018, Poland was heard by the Council (General Affairs) in accordance with Article 7(1) TEU.
7. On 16 October and 12 November, the Council (General Affairs) took note of the state of play regarding the rule of law situation in Poland. The Commission requested that another hearing take place at the next meeting of the Council (General Affairs) on 11 December 2018.

¹ Article 7(1) TEU provides that "*before making such a determination, the Council shall hear the Member State in question and may address recommendations to it, acting in accordance with the same procedure*".

II. MODALITIES

8. The hearing foreseen in Article 7 (1) TEU is, essentially, a peer review exercise, which will enable Council Members to have a more in-depth exchange with Poland on the key concerns identified. Poland will have the possibility to adapt the format of its delegation to the specificity of the meeting and will be offered sufficient, up to eight, seats (in a 3 + 2 + 3 format).
9. It is proposed that the substantive scope of the hearing would cover the topics set out in the Annex, which correspond to those on which the Commission regularly informed the Council and on which the Reasoned Proposal of the Commission from 20 December 2017 is based.
10. At the outset of the hearing, the Commission will have the possibility to provide a latest update on the key areas of concern covered by this hearing.
11. Poland will be given the opportunity to make a statement with regard to the said areas.
12. Subsequently, delegations will be invited to put up to two questions each to Poland, limited to the substantive scope indicated above. One question should not exceed two minutes. Poland will be given the opportunity to respond after each question without time limitation. If additional clarification is needed, delegations can ask follow-up questions, while respecting the same time limit of two minutes. Where necessary, Poland will have the possibility to further elaborate its answers in writing.
13. At the end, the Commission will be given the opportunity to make observations on the facts provided by Poland, and Poland will be given the opportunity to present its own observations and remarks.
14. The Presidency will then present procedural conclusions. No assessment on the substance of the issues will be made at this stage.
15. The Council could decide to continue the hearing at a next meeting of the General Affairs Council.

Minutes of the hearing will reflect the procedural conclusions. In addition, a formal report will be made by the GSC.

LIST OF TOPICS FOR THE HEARING

1. **Supreme Court:** retirement regime of current Supreme Court judges, including the First President, and regime for prolongation of judicial mandates.
 2. **National Council for the Judiciary:** election regime of the judges-members of the National Council, premature termination of the mandates of the former judges-members.
 3. **Ordinary Court Judges:** retirement regime of current Ordinary Court judges, regime for prolongation of judicial mandate and situation of Ordinary Court judges already affected by the new retirement regime.
 4. **Disciplinary regime,** including the new autonomous disciplinary chamber in the Supreme Court.
 5. **Extraordinary appeal procedure.**
 6. **Court Presidents:** situations of Court Presidents already affected by the dismissal and appointment regime.
 7. **Constitutional Tribunal:** publication of the 2016 judgments and the recomposition of the Tribunal, including the procedure to appoint a new president
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