**Follow up to the European Parliament non-legislative resolution** **on ongoing hearings under Article 7(1) of the TEU regarding Poland and Hungary**

1. **Resolution tabled pursuant to Rule 132(2) of the European Parliament's Rules of procedure**
2. **Reference numbers:** 2020/2513(RSP) / B9-0032/2020 / P9\_TA-PROV(2020)0014
3. **Date of adoption of the resolution:** 16 January 2020
4. **Competent Parliamentary Committee:** N/A
5. **Brief analysis/assessment of the resolution and requests made in it:**

The European Parliament calls on the Commission to make full use of the tools available to address a clear risk of a serious breach by Poland and Hungary of the values on which the Union is founded, in particular expedited infringement procedures and applications for interim measures before the Court of Justice.

The European Parliament further calls on the Commission and the Council to enter without delay into negotiations with the Parliament on the interinstitutional agreement in accordance with Article 295 of the Treaty on the Functioning of the European Union with a view to establishing an EU mechanism on democracy, the rule of law and fundamental rights (DRF). It would consist of an annual independent, evidence-based, non-discriminatory review assessing, on an equal footing, the compliance of all EU Member States with the values stipulated in Article 2 of the Treaty on European Union (TEU) and including country-specific recommendations, to be followed by an interparliamentary debate and a permanent DRF policy cycle among the EU institutions. This mechanism would complement and reinforce, rather than substitute, the ongoing and future proceedings under Article 7 TEU.

1. **Response to the requests in the resolution and overview of the action taken, or intended to be taken, by the Commission:**

The Commission recalls that it is essential that all EU institutions contribute within their respective roles to upholding the rule of law in the EU.

As regards the situation in **Poland**, the Commission considers that there is in that Member State, a clear risk of a serious breach of the rule of law. For this reason, the Commission adopted, on 20 December 2017, a reasoned proposal in accordance with Article 7(1) TEU. The key consideration for the Commission to activate the Article 7(1) TEU procedure was that the cumulative effect of the different components of the reform limits the independence of the judiciary and infringes upon the separation of powers in Poland. The common pattern of these reforms is that the executive and legislative powers can interfere with the entire structure of the justice system.

The Commission is aware of ongoing disciplinary proceedings against judges and prosecutors. On 10 October 2019, the Commission decided to refer Poland to the Court of Justice regarding a number of issues relating to the disciplinary regime for judges in Poland. In the context of that infringement case on 14 January 2020, the Commission decided to request the Court of Justice to impose interim measures ordering Poland to suspend the functioning of the Disciplinary Chamber of the Supreme Court. The Court of Justice decided to impose the interim measures on 8 April 2020.

This request was not linked to the new law on the judiciary that entered into force on 14 February 2020. On 29 April 2020, the European Commission launched an infringement procedure by sending a Letter of Formal Notice to Poland regarding the new law on the judiciary of 20 December 2019, which entered into force on 14 February 2020. The new law on the judiciary undermines the judicial independence of Polish judges and is incompatible with the primacy of EU law. Moreover, the new law prevents Polish courts from directly applying certain provisions of EU law protecting judicial independence, and from putting references for preliminary rulings on such questions to the Court of Justice. The Polish Government has two months from this date to reply to the Letter of Formal Notice.

As regards the situation in **Hungary**, the Commission has had occasion to explain that it shares a number of concerns expressed by the European Parliament in its proposal of 12 September 2018 triggering the Article 7(1) TEU procedure. The Commission has also made clear that the Council must ensure a fair handling of the reasoned proposal put forward by the European Parliament. Most recently, the Commission stressed this again during the hearing of Hungary in the General Affairs Council on 10 December 2019.

The Commission is following closely all these developments and has already shown that it is determined to use all the instruments at its disposal to address the concerns raised by certain measures adopted by the Hungarian authorities. In particular, the Commission has launched a number of infringement proceedings against Hungary. These relate to the rights of civil society organisations, academic freedom and the rights of migrants and asylum seekers.

The Commission is also using other instruments such as the European Semester. On 9 July 2019, the Council, following a Commission proposal, recommended that Hungary strengthen judicial independence and reinforce its anti-corruption framework, including by improving prosecutorial efforts and access to public information.

As regards the **new rule of law mechanism**, as announced in the political guidelines of President von der Leyen, the Commission is putting in place a comprehensive European Rule of Law Mechanism with an EU-wide scope and objective annual reporting. The establishment of this new mechanism is based on the recognition that EU institutions need to develop stronger awareness and understanding of developments in the individual Member States as they occur, to be able to identify risks to the rule of law, develop possible solutions, and target support early on. This also aims at avoiding any misunderstanding and at having early and transparent exchanges before an actual problem could arise.

To support this process, the Commission will prepare an annual Rule of Law Report. As explained in the Commission Communication on Strengthening the rule of law within the Union – A blueprint for action[[1]](#footnote-1), the annual Rule of Law Report will provide a synthesis of significant developments – both positive and negative – in all the Member States and at EU level, including the case-law of the European Court of Justice. It will be based on a variety of sources in order to reflect the reality on the ground.

The Rule of Law Mechanism takes into due account the Parliament’s proposal for an EU mechanism on democracy, rule of law and fundamental rights. The Commission considers that it is important to strengthen the dialogue with the European Parliament and the Council and involve them in the preparation of and follow-up to the Report. One of the key objectives of the mechanism is exactly to shape a better-coordinated inter-institutional approach based on a single Rule of Law Report. In particular, the Commission calls on the Parliament, and on the Council, to follow up on its annual Rule of Law Report in their discussions.

As regards the monitoring of fundamental rights, as announced in its Work Programme for 2020, the Commission will present a new Strategy for the Implementation of the Charter of Fundamental Rights. As regards democracy, as also announced in its Work Programme for 2020, the Commission will present a European Democracy Action Plan to help improve the resilience of our democracies and address the threats of external interference in European elections.

As regards the proposal for a regulation on the protection of the Union budget in case of generalised deficiencies as regards the rule of law in the Member States, the Commission thanks the Parliament for the continued support and counts on its cooperation to find an agreement when interinstitutional negotiations start.

1. COM(2019) 343 final, 17 July 2019 [↑](#footnote-ref-1)