



Council of the
European Union

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NOTE

From: General Secretariat of the Council
To: Delegations

Subject: Determination of a clear risk of a serious breach by Poland of rule of law
- Resolution of the European Committee of the Regions

Delegations will find attached the above-mentioned resolution.



**European Committee
of the Regions**

RESOL-VI/30

127th plenary session, 31 January-1 February 2018

RESOLUTION

**on the Commission proposal for a Council decision on the determination
of a clear risk of a serious breach by Poland of the rule of law**

**Resolution of the European Committee of the Regions
on the Commission proposal for a Council decision on the determination of a clear risk of a
serious breach by Poland of the rule of law**

THE EUROPEAN COMMITTEE OF THE REGIONS (CoR),

- having regard to the Commission's proposal of 20 December 2017 to the Council to adopt a decision under Article 7(1) of the Treaty on European Union;
 - having regard to its resolution of 23 March 2017 on the Rule of Law in the EU from a local and regional perspective;
 - having regard to its opinion of 12 February 2015 on Local and regional authorities and the multilevel protection of the rule of law and fundamental rights in the EU;
 - having regard to the European Parliament's resolution of 15 November 2017 on the Situation of the rule of law and democracy in Poland;
 - having regard to the Venice Commission opinion of 8-9 December 2017 on the Draft Act amending the Act on the National Council of the Judiciary; on the Draft Act amending the Act on the Supreme Court, proposed by the President of Poland; and on the Act on the Organisation of Ordinary Courts, adopted by the Commission at its 113th plenary session;
1. reiterates its attachment to the common set of fundamental values upon which the European Union is founded, which include respect for democracy and the rule of law, as stipulated in Article 2 of the Treaty on European Union (TEU), the Charter of Fundamental Rights of the EU, and the European Convention on Human Rights (ECHR);
 2. considers that these values form the basis for mutual trust between the Member States, between the Member States and the EU institutions, and between all levels of government;
 3. stresses that most principles underlying the rule of law – legality, respect for fundamental rights, equality before the law, freedom of expression and freedom of assembly, transparency, accountability, separation of powers, a democratic and pluralistic process for the enactment of laws, legal certainty, prohibition of arbitrary acts by the executive powers, independent and impartial courts and effective judicial review – are of direct and immediate relevance for the functioning of local and regional authorities and a prerequisite for their active participation in the process of European integration;
 4. supports, therefore, the Commission's proposal of 20 December 2017 to the Council to adopt a decision under Article 7(1) of the Treaty on European Union based on the assessment that a clear risk of a serious breach of the rule of law exists in Poland;
 5. expects the Polish government and the Commission to engage in a constructive dialogue on how to address the situation before 20 March 2018, notably in order to avoid harmful spill-over effects on the EU decision-making process, including with regard to proposals to be presented by the Commission for the programming period after 2020;
 6. rejects any political ex-post conditionality, which would mean that local and regional authorities could be held hostage to policies pursued by national governments that would prompt a

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suspension of EU funding for cities and regions. Cohesion Policy must not be subject to conditionalities at European level that cannot be influenced by local and regional authorities and other beneficiaries. However, the CoR draws attention to already existing provisions in the Partnership Agreements which allow funding to be suspended in case of a breach of the rule of law by local and regional authorities. Expresses concerns over the compliance of potential political conditionalities over access to EU funding for cities and regions with the principle of proportionality;

7. also stresses that an infringement procedure against a Member State before the European Court of Justice can lead the latter to decide that fines should be paid at the expense of the central government;
8. instructs its president to forward this resolution to the European Commission, the European Parliament, the Bulgarian Presidency of the Council and the President of the European Council.

Brussels, 1 February 2018

The President
of the
European Committee of the Regions

Karl-Heinz Lambertz

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