

European Commission triggers Article 7.1 against Poland

The move undermines the political standing of Poland, but the sanctions are highly unlikely as Hungary and other member states break unanimity required from the European Council



Source: Shutterstock

What has the European Commission accused Poland of?

Today, the European Commission (EC) invoked Article 7.1 of the EU Treaty declaring that it sees a clear risk of a serious breach of the rule of law in Poland, due to the subordination of the judiciary system to the ruling party. More specifically, the EC condemns the following four measures adopted by the Polish parliament during last two years:

1. Changing the rules of appointment of members of the Constitutional Court and dismissal of some previously elected judges.
2. Subordination of presidents of the ordinary courts and public prosecutors the Ministry of Justice.
3. Dismissal of the members of National Judiciary Council after changing the rules of their appointment giving more power the Parliament.
4. Changes in the structure of the Highest Court and removal of some of its members.

The last two bills have been vetoed by President A.Duda in July 2017 but underwent minor changes in the Parliament and now are due for his final signature.

What are the next steps?

1. The European Commission initiated the preventive part of the procedure. Now, the government of Poland has been given three months to address the concerns, which ultimately means withdrawal from most of the changes mentioned above. It is unlikely that the Polish government will do that.
2. After at least three months (no earlier than March 2018), the Council of European Union and European Parliament must hear Polish PiS government position and may decide to proceed further by giving its recommendations. Poland will be given unspecified time to comply with them, but not less than another three months.
3. If the Polish government decides to disobey, the Council of European Union by the same majority may recommend the European Council (comprised of the heads of the EU member states) the next step in the procedure, i.e. impose sanctions on Poland under the Article 7.2 of EU Treaty.
4. The European Council may unanimously (not counting Poland) decide to impose sanctions ranging from suspension of voting rights of Poland in the Council of EU to suspension of EU funds.

There is a big question mark why the European Commission decided to initiate first part of the Article VII now. We understand the EC hoped that the July veto of President Duda signals a change of PiS approach to more conciliatory tone down the road. However, Parliament recently passed only marginally amended bills. The changes are enough for President Duda to sign them but still seem to violate the rule of law according to European Commission. Effectively, the area of the conflict expanded, so European Commission decided to act, even if it is fully aware that sanctions are unlikely to be imposed.

To pass them the unanimity of the European Council is needed which is rather unlikely. Hungary has already pledged to veto any attempt to impose sanctions on Poland, and other countries (i.e. Romania) have expressed their reservations. We also note sure whether the European Commission alone finds the sanction as the optimal solution. The eurosceptic forces all around Europe would find them as an argument against closer integration and excessive involvement of Bruxelles in local politics.

But the preventive part of the procedure is something which pushes the PiS government to obey EU rules. The European University Institute claims that entire procedure (actually both parts, i.e. preventive and sanctions) may last even few years, so access to the EU funds in the 2014-2020 EU perspective is not at risk, but bargaining power of Polish government in the process of setting next EU perspective may be negatively affected.

Bottom line

The decision of the European Commission undeniably undermines the reputation of the Polish government and institutional framework. Even though critical media coverage concerning Poland will follow, it is highly unlikely that any political or financial sanctions will be imposed.

Such a move requires unanimity of the European Council which in fact is divided on this matter, and Hungary has already pledged to veto any attempt to impose sanctions on Poland. Other countries including Romania and Austria have expressed their reservations too.

Author

Rafal Benecki

Chief Economist, Poland

rafal.benecki@ing.pl

Karol Pogorzelski

Senior Economist, Poland

Karol.Pogorzelski@ing.pl

Disclaimer

This publication has been prepared by the Economic and Financial Analysis Division of ING Bank N.V. ("ING") solely for information purposes without regard to any particular user's investment objectives, financial situation, or means. *ING forms part of ING Group (being for this purpose ING Group N.V. and its subsidiary and affiliated companies).* The information in the publication is not an investment recommendation and it is not investment, legal or tax advice or an offer or solicitation to purchase or sell any financial instrument. Reasonable care has been taken to ensure that this publication is not untrue or misleading when published, but ING does not represent that it is accurate or complete. ING does not accept any liability for any direct, indirect or consequential loss arising from any use of this publication. Unless otherwise stated, any views, forecasts, or estimates are solely those of the author(s), as of the date of the publication and are subject to change without notice.

The distribution of this publication may be restricted by law or regulation in different jurisdictions and persons into whose possession this publication comes should inform themselves about, and observe, such restrictions.

Copyright and database rights protection exists in this report and it may not be reproduced, distributed or published by any person for any purpose without the prior express consent of ING. All rights are reserved. ING Bank N.V. is authorised by the Dutch Central Bank and supervised by the European Central Bank (ECB), the Dutch Central Bank (DNB) and the Dutch Authority for the Financial Markets (AFM). ING Bank N.V. is incorporated in the Netherlands (Trade Register no. 33031431 Amsterdam). In the United Kingdom this information is approved and/or communicated by ING Bank N.V., London Branch. ING Bank N.V., London Branch is authorised by the Prudential Regulation Authority and is subject to regulation by the Financial Conduct Authority and limited regulation by the Prudential Regulation Authority. ING Bank N.V., London branch is registered in England (Registration number BR000341) at 8-10 Moorgate, London EC2 6DA. For US Investors: Any person wishing to discuss this report or effect transactions in any security discussed herein should contact ING Financial Markets LLC, which is a member of the NYSE, FINRA and SIPC and part of ING, and which has accepted responsibility for the distribution of this report in the United States under applicable requirements.

Additional information is available on request. For more information about ING Group, please visit www.ing.com.