

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



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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 to the Ministry of Justice.
3. Dismissal of the members of National Judiciary Council after changing the rules of their appointment giving more power to 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.

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