Thursday 9 June 2022

P9_TA(2022)0240

The rule of law and the potential approval of the Polish national Recovery Plan (RRF)

European Parliament resolution of 9 June 2022 on the rule of law and the potential approval of the Polish national recovery plan (RRF) (2022/2703(RSP))

(2022/C 493/10)

The European Parliament,

— having regard to Articles 1, 2, 7(1) and 19 of the Treaty on European Union (TEU),

— having regard to the Charter of Fundamental Rights of the European Union,

— having regard to Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 establishing the Recovery and Resilience Facility [1] (RRF Regulation),

— having regard to the Commission's reasoned proposal of 20 December 2017 in accordance with Article 7(1) TEU regarding the rule of law in Poland: proposal for a Council decision on the determination of a clear risk of a serious breach by the Republic of Poland of the rule of law (COM(2017)0835),

— having regard to its resolution of 1 March 2018 on the Commission's decision to activate Article 7(1) TEU as regards the situation in Poland [2],

— having regard to the Commission recommendation of 23 May 2022 for a Council Recommendation on the 2022 National Reform Programme of Poland and delivering a Council opinion on the 2022 Convergence Programme of Poland (COM(2022)0622) (hereinafter 'the 2022 European Semester country-specific recommendations'),

— having regard to its resolution of 17 September 2020 on the proposal for a Council decision on the determination of a clear risk of a serious breach by the Republic of Poland of the rule of law [3],

— having regard to Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget (the Rule of Law Conditionality Regulation),

— having regard to its resolution of 24 June 2021 on the Commission's 2020 Rule of Law report [4],

— having regard to its resolution of 8 July 2021 on the creation of guidelines for the application of the general regime of conditionality for the protection of the Union budget [5],

— having regard to its resolution of 16 September 2021 on media freedom and further deterioration of the rule of law in Poland [6],

— having regard to its resolution of 21 October 2021 on the rule of law crisis in Poland and the primacy of EU law [7],

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(1) OJ L 57, 18.2.2021, p. 17.
(2) OJ C 129, 5.4.2019, p. 13.
(3) OJ C 385, 22.9.2021, p. 317.
(4) OJ C 81, 18.2.2022, p. 27.
(5) OJ C 99, 1.3.2022, p. 146.
(6) OJ C 117, 11.3.2022, p. 151.
(7) OJ C 184, 5.5.2022, p. 154.

— having regard to its resolution of 10 March 2022 on the rule of law and the consequences of the ECJ ruling ([8]),

— having regard to its resolution of 5 May 2022 on ongoing hearings under Article 7(1) TEU regarding Poland and Hungary ([9]),

— having regard to the case-law of the Court of Justice of the European Union (CJEU) and the European Court of Human Rights (ECtHR),

— having regard to the Commission proposal for a Council implementing decision of 1 June 2022 on the approval of the assessment of the recovery and resilience plan for Poland (COM(2022)0268),

— having regard to the statement by the Council and the Commission of 7 June 2022 on the rule of law and the potential approval of the Polish national recovery plan (RRF),

— having regard to Rule 132(2) and (4) of its Rules of Procedure,

A. whereas the Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities, as set out in Article 2 TEU, and as reflected in the Charter of Fundamental Rights of the EU and embedded in international human rights treaties; whereas those values, which are common to the Member States and to which all Member States have freely subscribed, constitute the foundation of the rights enjoyed by those living in the Union;

B. whereas any clear risk of a serious breach by a Member State of the values enshrined in Article 2 TEU does not concern solely the individual Member State where the risk materialises, but also has an impact on the other Member States, on the mutual trust between them and on the very nature of the Union and the functioning of its institutions as well as its citizens' fundamental rights under Union law;

C. whereas changes initiated by the Polish Government, in particular in the justice system, have led to a serious erosion of democracy and the rule of law;

D. whereas the decision taken on 1 June 2022 by the College of Commissioners on a proposal for a Council implementing decision on the approval of the assessment of the recovery and resilience plan for Poland was reportedly not unanimous;

E. whereas during the October 2021 plenary session, Commission President von der Leyen outlined three criteria for the approval of the Polish recovery and resilience plan: dismantling the disciplinary chamber of the supreme court; reforming the disciplinary proceedings for judges; and reinstating the judges suspended by the disciplinary chamber;

F. whereas Parliament has repeatedly called for the Commission and the Council to refrain from approving Poland's draft recovery and resilience plan until the Government of Poland implements the judgments of the CJEU and international courts fully and properly, and to ensure that the assessment of the plan guarantees compliance with the relevant country-specific recommendations, in particular on safeguarding judicial independence;

G. whereas reforms in Poland in the field of justice are still ongoing and recent bills being put to the vote and proposals being discussed have not effectively addressed all concerns regarding the independence of the judicial bodies and disciplinary procedures at stake; whereas the Polish Senate is trying to amend these proposals to bring them into line with the principle of judicial independence; whereas several judges are still facing disciplinary procedures and/or have not been reinstated;

H. whereas the Polish authorities have recently taken a number of measures in direct contradiction with the three conditions set by the Commission President, among others, the suspension of a judge in February 2022 for applying European law and the judgments of the European courts; whereas, furthermore, the President of Poland appointed more than 200 new, defectively nominated (at the request of the National Council of the Judiciary (neo-NCJ)) so-called 'neo

([8]) Texts adopted, P9_TA(2022)0074.
([9]) Texts adopted, P9_TA(2022)0204.

judges', including 4 appointments to the Supreme Court; whereas, moreover, on 10 March 2022, at the request of the Minister of Justice; the politicised and fully subordinated 'Constitutional Tribunal' (with the participation of so-called 'stand-in judges') undermined the validity of Article 6 of the European Convention on Human Rights in Poland by questioning the ability of the ECtHR and Polish courts to examine the correctness of the appointment of judges and the independence of the neo-NCJ;

I. whereas the RRF Regulation clearly lays down the necessary conditions for the preparation, approval and implementation of a national plan, and in particular, in Article 19 and Annex V, the 11 criteria for the Commission to assess, and notably whether the arrangements proposed by the Member State concerned are expected to prevent, detect and correct corruption, fraud and conflicts of interests when using the funds provided under the Recovery and Resilience Facility (RRF); whereas the RRF Regulation requires that the bodies tasked with control and supervision have the legal empowerment and administrative capacity to exercise their tasks independently and whereas the draft Council implementing decision itself emphasises that effective judicial protection is a prerequisite for the functioning of an internal control system;

J. whereas in the 2022 European Semester country-specific recommendations, the Commission stated that the independence, efficiency and quality of the justice system are essential components in this respect and that in Poland, the rule of law has deteriorated and judicial independence remains a serious concern, which has also been noted in several rulings from the CJEU and the ECtHR;

K. whereas in the 2022 European Semester country-specific recommendations, the Commission recommended that Poland take action in 2022 and 2023, inter alia, to enhance its investment climate, in particular by safeguarding judicial independence and ensuring effective public consultations and the involvement of social partners in the policymaking process;

L. whereas the RRF is expected to cushion EU economies and citizens from the most acute impacts of the COVID-19 pandemic and is expected to contribute positively to the EU's recovery and resilience and to catalyse the green and digital transitions if implemented effectively while strictly observing the rule of law and the sound financial management of EU funds;

M. whereas the Commission considers that Poland's plan includes milestones related to the independence of the judiciary to improve the investment climate and put in place the conditions for an effective implementation of the recovery and resilience plan; whereas no disbursement under the RRF can be made until the fulfilment of those milestones is demonstrated;

N. whereas in accordance with Article 13(1) of the RRF Regulation, no plan adopted after 31 December 2021 is eligible for pre-financing;

1. Expresses its grave concerns about the Commission's positive assessment, on 1 June 2022, of Poland's recovery and resilience plan, which was submitted by Poland on 3 May 2021, considering the country's existing and continued breaches of the values enshrined in Article 2 TEU, including of the rule of law and the independence of the judiciary; reiterates that the existence of such breaches has been properly documented by many court judgments, assessments and positions of EU institutions, including in Parliament's resolutions and in the ongoing procedure under Article 7(1) TEU, as well as by other international organisations; recalls that compliance with CJEU and ECtHR rulings and compliance with the primacy of EU law are non-negotiable and cannot be treated as a bargaining chip;

2. Regrets that the conditions set in the RRP do not envisage the immediate reinstatement of all the unlawfully suspended judges to their former positions and urges the Government of Poland to significantly accelerate the process of their reinstatement to their former positions and the Commission to monitor and facilitate this process; considers that a judicial review of the decision on suspension can proceed while the judges are in office; deplores and condemns the current practices against some judges, who have been transferred to another department and/or forced to go on leave upon their return or who have been affected by similar tactics in violation of various Polish and European Court rulings;

3. Strongly urges the Council to only approve Poland's national plan under the RRF once it has fully complied with the requirements of the RRF Regulation, and in particular Article 22 thereof, notably with a view to safeguarding the Union's financial interests against conflict of interest and fraud, and with all the European Semester country-specific recommendations in the field of the rule of law, and once it has implemented all the relevant judgments of the CJEU and the ECtHR; recalls that cooperation based on mutual recognition and mutual trust between the Member States, the European Union and their authorities cannot function if there are deficiencies in respect for the rule of law;

4. Recalls that compliance with the rule of law and with Article 2 TEU are prerequisites to gaining access to the fund, that the rule of law conditionality mechanism is fully applicable to the RRF and that no measures should be financed under the RRF that are contrary to the EU values enshrined in Article 2 TEU; recalls that the Commission must constantly monitor very carefully the risks to EU financial interests in the implementation of the RRF and any breaches or potential breaches of the principles of the rule of law and take immediate action if the financial interests of the EU could be harmed, in accordance with Rule of Law Conditionality Regulation and the RRF Regulation;

5. Insists that the milestones and targets related to the protection of the financial interests of the Union, the establishment of an adequate control system, the independence of the judiciary, and the prevention and detection of and fight against fraud, conflicts of interest and corruption are pre-conditions and must be fulfilled before the submission of a first payment request and recalls that no payment under the RRF can be made before their fulfilment;

6. Considers that no payments can be made to Poland under the RRF until the full implementation of all relevant judgments of the CJEU and the ECtHR; stresses that the Commission and the Council are politically accountable to Parliament for their actions;

7. Acknowledges the decision of the Commission to set the closure of the illegal Disciplinary Chamber of the Supreme Court and transfer of disciplinary functions to another chamber of the Supreme Court as one of the key conditions for the release of funds under the RRF; urges the Commission to apply a robust verification mechanism as well as a probation period to ensure that the new chamber meets the criteria of an independent and impartial court established by law as required under Article 19 TEU before the release of any funds; underlines the need to strictly keep to the timetable envisaged in the RRP;

8. Recalls that Poland is bound by the order of the CJEU and still has to pay a daily penalty of EUR 1 million until it addresses the rulings related to the Disciplinary Chamber of the Supreme Court; calls therefore on the Commission to scrutinise the reform of the disciplinary system in order to ensure that it is strictly in line with the rulings of the CJEU;

9. Regrets that the issues regarding the illegitimate 'Constitutional Tribunal' and the illegitimate 'National Council of the Judiciary' (NCJ) undermining the impartiality and independence of the NCJ are not addressed in the 'milestones'; calls on the Commission to open an infringement procedure on this matter without delay;

10. Deplores the lack of information, especially towards Parliament, regarding the negotiations between the Commission and the Polish authorities; expects the Commission to inform Parliament swiftly and regularly of any relevant developments;

11. Recalls, furthermore, that adherence to the rule of law and the sound financial management of EU funds are to be continuously evaluated throughout the lifecycle of the RRF and that the satisfactory fulfilment of milestones and targets and the related payments presuppose that there has been no reversal of measures related to milestones and targets that have already been satisfactorily fulfilled; stresses that the Commission must refrain from disbursing funding and, where applicable, recover funds in the event that such conditions are no longer fulfilled;

12. Recalls that the Commission, as the guardian of the Treaties, should use all tools at its disposal to ensure compliance with the values enshrined in Article 2 TEU and the primacy of EU law;

13. Recalls that the purpose of the RRF is to boost the recovery and resilience of the EU and its Member States, including Poland; deplores that, because of the Polish Government's actions, the RRF funding has not yet reached the people and regions of Poland;

14. Instructs its President to forward this resolution to the Council, the Commission, and the governments and parliaments of the Member States.