

Joint NGO letter to the General Affairs Council meeting on 14 December 2021

RE: State of play of the Article 7(1) TEU procedures concerning Poland and Hungary

Dear Minister,

We, the undersigned organisations, write to you ahead of the General Affairs Council on 14 December when EU affairs ministers will hear from the European Commission on the latest developments and take stock of the situation regarding respect for EU values in Hungary and Poland as part of the Article 7 (1) TEU procedure. The briefing by the European Commission is bound to include several highly problematic developments in both countries since the last Article 7(1) Council discussions in June, following years of proceedings. These developments include bold defiance of the authority of the Court of Justice of the EU and the European Court of Human Rights by the governments of both Poland¹ and Hungary². The failure to respect, let alone comply with, judgments of these courts constitute a further degradation of the rule of law within the EU that must be halted as a matter of urgency.

Despite legal proceedings initiated by the European Commission, rulings of the Court of Justice of the European Union, including the imposition of fines for non-compliance with EU judgments³, the Commission's 2021 Annual Rule of Law report setting out specific concerns on these rule of law issues and its ongoing inquiries regarding the protection of the EU budget⁴; despite numerous resolutions⁵, missions⁶ and other actions by the European Parliament; and despite the years of ongoing Article 7(1) proceedings and the clear expression of concern by the large majority of member states, the governments of Hungary and Poland have continued on their path away from the founding values of the EU. The series of legal actions, court judgments and European Parliament reports since the last Council discussions in June have confirmed or exposed, in one or both countries, abusive practice by the governments, including in Hungary the hacking of political opponents and journalists with the Pegasus spyware⁷, repeated attacks against judges and human rights defenders, continued assaults against women's sexual and reproductive rights⁸ and LGBTIQ+ rights, and denial of human rights of migrants, asylum seekers and refugees⁹.

Against such an appalling record, it is high time for the Council to clearly state what is expected from the Hungarian and Polish authorities. The December exchange in the General Affairs Council should serve as a final warning to remedy the long list of human rights and rule of law violations, before the Council proceeds to adopt formal recommendations under Article 7(1) TEU.

¹ https://ec.europa.eu/commission/presscorner/detail/en/statement_21_5142;

https://ec.europa.eu/commission/presscorner/detail/en/speech_21_5361

² <https://www.reuters.com/world/europe/hungarian-court-discusses-government-motion-challenging-supremacy-eu-law-2021-11-15/>

³ <https://curia.europa.eu/jcms/upload/docs/application/pdf/2021-10/cp210192en.pdf>;

https://ec.europa.eu/commission/presscorner/detail/en/ip_21_5801

⁴ <https://www.politico.eu/article/eu-commission-questions-hungary-on-corruption-judiciary/>

⁵ https://www.europarl.europa.eu/doceo/document/B-9-2021-0532_EN.html

⁶ https://multimedia.europarl.europa.eu/en/mission-of-the-ep-libe-delegation-to-hungary-budapest-statement-by-gwendoline-delbos-corfield-greensefafr_1211219-V_v

⁷ <https://www.politico.eu/article/hungarian-spyware-scandal-bolsters-fears-of-orban-critics/>

⁸ <https://www.europarl.europa.eu/news/en/press-room/20211108IPR16844/poland-no-more-women-should-die-because-of-the-restrictive-law-on-abortion>

⁹ <https://www.europarl.europa.eu/news/en/press-room/20211110IPR17001/poland-belarus-border-meps-alarmed-by-humanitarian-and-political-crisis>; see also footnote 3 on Hungary.

The upcoming French Council Presidency has committed to making real progress regarding the rule of law challenges the EU is facing. President Macron described this as “a historic and existential struggle” before the Committee of Regions on 1 December. In his statement, he explicitly referred to the merits of the Article 7 procedure, which “targets violation of fundamental values and opens the way to regular state of plays that may lead to political sanction”.¹⁰

The coming months are an opportunity for the adoption of concrete recommendations which both countries should address within a set timeframe. The Council should further commit to assessing their implementation in a timely manner. Following this assessment, the Council can proceed to reach a determination under Article 7(1) TEU and, should conditions warrant it, move forward under Article 7(2) TEU.

We remain ready to provide further information on developments in both countries where needed. The pace at which rule of law and human rights protections are being dismantled is almost impossible to keep up with.¹¹ What is clear though, is that the Council needs to step up and take concrete action, as called upon by the other EU institutions, legal practitioners and civil society including academics, journalists, human rights defenders and organisations across Europe. Full use should be made of these important Article 7 proceedings designed to protect the very foundation of the European Union. The future of the people of Hungary and Poland and of the Union itself depends on all institutions playing their role in unity and for the Council to fulfil its responsibility.

Yours sincerely,

Amnesty International
Center for Reproductive Rights
CIVICUS
Civil Liberties Union for Europe
Helsinki Committee in Poland
Human Rights Watch
Hungarian Civil Liberties Union
Hungarian Helsinki Committee
ILGA-Europe – the European Region of the International Lesbian, Gay, Bisexual, Trans and Intersex Association
International Commission of Jurists
International Federation for Human Rights (FIDH)
International Planned Parenthood Federation European Network (IPPF EN)
Open Society European Policy Institute
Protection International (PI)
Reporters without Borders (RSF)
The Good Lobby and The Good Lobby Profs
Transparency International EU

¹⁰ See Opening Speech by Emmanuel Macron, President of the French Republic, at the 147th plenary session of the Committee of the Regions, 1-2 December 2021:

<https://cor.europa.eu/en/news/Documents/4644-opening%20speech.pdf>

¹¹ Please note that the references in the footnotes are only indicative and not exhaustive, neither of the concerns as documented, notably by civil society, nor of actions taken by the governments of Poland and Hungary, and by the EU institutions and member states in response.