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Excellencies,

I am writing to you because it has come to the attention of the European Commission that, in the Polish Parliament, draft legislation has been introduced amending the laws on the ordinary courts organisation, on the Supreme Court and certain other laws, which touch upon matters such as judicial independence, further raising the Commission's existing concerns in this area.

There should be no question about the solid grounding of EU concerns in the area of rule of law, as required by EU law and interpreted by the European Court of Justice. The EU institutions and Member States have a shared responsibility to strengthen the rule of law and a common interest in preventing problems and resolving them when they arise.

The European Court of Justice has recently recalled<sup>1</sup> that although the organisation of justice in the Member States falls within the competence of Member States, the fact remains that, when exercising that competence, Member States are required to comply with their obligations under EU law. The Court stated that the requirement that courts be independent forms part of the essence of the right to effective judicial protection and the fundamental right to a fair trial. These rights are of cardinal importance as a guarantee that all the rights which individuals derive from EU law will be protected and that the values common to the Member States set out in Article 2 TEU, notably the rule of law, will be safeguarded. The Court also reiterated that the principle of primacy of EU law requires all Member State bodies to give full effect to EU law. National law must not be used to undermine EU law.

The Court has also made clear that the disciplinary regime governing the behaviour of judges must include the necessary guarantees against its use as a system of political control over judicial decisions. Finally, national courts have the widest discretion in referring questions to the Court of Justice involving the interpretation of relevant provisions of EU law. These courts should have an unimpeded access to the Court of Justice. This is established case law, which any legislation must respect in full.

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<sup>1</sup> Judgment in Joined Cases C-585/18, C-624/18 and C-625/18, A.K. v Krajowa Rada Sądownictwa, and CP and DO v Sąd Najwyższy

Any legislative development must comply with the requirements underpinning the EU legal order and should not lead to a further deterioration of the situation of the rule of law in Poland. In addition, the preparation of any new legislation in these areas requires careful consideration and proper consultation of all stakeholders. This should take place in a spirit of loyal cooperation between State organs, including the judiciary. The Commission also strongly encourages the Polish authorities to consult the Council of Europe's Venice Commission on this draft legislation. I would therefore invite all State organs not to take forward the proceedings on the new draft legislation before carrying out all the necessary consultations.

The Commission remains ready to engage in a constructive dialogue with the Polish authorities and would be grateful for information concerning the government's intentions on the new draft legislation. The Commission will continue to monitor the situation closely, with a strong expectation that Poland will take full account of the case law of the Court of Justice.

Yours sincerely,



Věra Jourová  
Vice-President for Values and Transparency

H.E. Mr Andrzej Duda, President of the Republic of Poland  
H.E. Mr Tomasz Grodzki, President of the Senate of the Republic of Poland  
H.E. Ms Elżbieta Witek, President of the Sejm of the Republic of Poland  
H.E. Mr Mateusz Morawiecki, Prime Minister of the Republic of Poland