

# Poland: Rule-of-Law Developments in the First Half of 2024

Thomas Wahl

## News

This news item continues the overview of the rule-of-law developments in Poland (as far as they are relevant under a European law perspective). It covers the period from the second half of January to the end of June 2024 and follows the overview in → [eucriM 4/2023, 308-312](#).

- 20 February 2024: The General Affairs [Council takes stock of the recent rule-of-law developments in Poland](#) in the framework of the Article 7 TEU procedure. The new Polish Justice Minister *Adam Bodnar* briefs the Council on the reforms the Polish government has undertaken, and is planning to undertake, to address the issues raised under the Article 7 procedure. He presents an ambitious Action Plan. The Commission also updates ministers on the developments since 15 November 2023 when the last hearing took place. The Commission launched the Article 7 procedure for Poland in 2017; since then, the Council has conducted six hearings with Poland.
- 23-26 February 2024: After the change of government, the Polish Justice Minister *Adam Bodnar* approves a number of [personnel decisions](#) that herald a turnaround from the justice policy of the previous PiS government. He dismisses two neo-judges at the District Court of Poznań. More dismissals of judges appointed by predecessor *Zbigniew Ziobro* are to follow. In addition, *Dariusz Korneluk* is chosen to be the new National Prosecutor. In 2016, when *Ziobro* took over control of the prosecution, *Korneluk* was demoted to a district prosecutor's office and he faced disciplinary action for a critical statement regarding *Ziobro's* prosecution policy. It is the first time that the National Prosecutor was selected by a competition commission. *Bodnar* also announces that there will be further competitions, including the selection of a new director for the National School of Judiciary and Public Prosecution and the European Prosecutor representing the country at the EPPO. Lastly, *Bodnar* signals that he will prepare a bill that will separate the positions of Attorney General and Polish Minister of Justice, merged by the former government.
- 29 February 2024, the European Commission confirms Poland's participation in the enhanced cooperation on the establishment of the EPPO (→ [separate news item](#)).
- 29 February 2024: The European [Commission gives green light to unblock EU money](#) of a total of €137 billion for Poland. The Commission particularly refers to Poland's action plan to restore the rule of law in Poland that the new Polish government under Prime Minister *Donald Tusk* presented on 20 February 2024 (see above). With regard to funding of nearly €60 billion in RRF funds, the Commission positively assesses Poland's fulfillment of several milestones set out in the [Council Implementing Decision](#) approving Poland's RRP. This includes the fulfillment of two "super milestones": (1) to strengthen important aspects of the independence of the Polish judiciary through reforming the disciplinary regime for judges; (2) to use Arachne, the EU's IT tool for preventing fraud and irregularities.

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In addition, the Commission endorses the disbursement of around €76.5 billion from the 2021–2027 Cohesion Policy, Maritime and Fisheries, and Home Affairs funding programmes. In this context, the Commission considers that Poland's reforms have satisfactorily fulfilled the horizontal enabling conditions related to the EU Charter of Fundamental Rights (→ article by *Lothar Kuhl*, *eucri* 4/2023, 339-345).

- 21 March 2024: In the [case \*Sieć Obywatelska Watchdog Polska v. Poland\*](#) (application no. 10103/20), the ECtHR finds a violation of Art. 10 ECHR because an NGO was not given access to diaries of meetings of two judges of the Polish Constitutional Court. The request for information was made against the background to verify whether the two judges had met with a politician whose status in criminal proceedings was being decided by the Constitutional Court, thus raising doubts over impartiality.
- 25 March 2024: A [quarrel begins](#) between Polish President *Andrzej Duda* and Minister of Justice *Adam Bodnar* over the dismissal and replacements in the judiciary. *Duda* believes that dismissal of a prosecutor requires consent of the President whereas *Bodnar* argues that the person concerned was never effectively appointed to this position at all. Furthermore, *Duda* claims that *Dariusz Korneluk* has been illegally appointed as the new National Prosecutor (see above).
- 12 April 2024: The Sejm (the lower house of the Polish parliament) adopts a law that will [reform the controversial National Council of the Judiciary \(KRS\)](#). The KRS restructured since 2018 under the former PiS government has been considered not in line with international standards, acknowledged *inter alia*, by the CJEU and the ECtHR. The main feature will be that the members of the Council will be elected by judges and no longer by the parliament, as has been the case since 2018. Controversially seen is the exclusion of “neo-judges” appointed by the current KRS since 2018, from the possibility of candidacy. Poland's President *Andrzej Duda* announces that he will veto the law.
- 12 April 2024: Polish Justice Minister, *Adam Bodnar*, [appoints a codification commission](#) for the system of common courts and the prosecutor's office. The commission is tasked to clean the law from bad changes introduced during the PiS government and to adapt it to the present times. It will also make proposals what happens with neo-judges appointed by the KRS when it was under the control of the PiS government. Codification commissions for criminal law and civil law with similar tasks were appointed earlier in April 2024. A codification commission for family law will follow.
- 20 April 2024: Polish Justice Minister, *Adam Bodnar*, initiates [a reform of the Polish system of judges' secondments](#). The new legislation will overturn the policy of former justice minister *Zbigniew Ziobro*. It will also implement a CJEU judgment of November 2021 which declared that the justice minister's power to second judges to higher criminal courts and to terminate the secondments at any time without stating reasons is contrary to Art. 19(1) TEU.
- 6 May 2024: The Commission announces that it [intends to withdraw its reasoned proposal from 2017](#) that Poland is at “a clear risk of a serious breach of the rule of law”. As a result, this decision would close the Article 7(1) procedure for Poland. The [Commission positively assesses](#) in particular the following measures from Poland's new government that came to office at the end of 2023: measures to re-establish the independence in the Polish justice system; recognition of the primacy of EU law and commitment to implementing all the CJEU and ECtHR judgments related to rule of law including judicial independence; accession to the European Public Prosecutor's Office. The Commission also considered relevant the Action Plan presented by Poland on 20 February 2024, and the fact that Poland has taken the first concrete steps to implement the Action Plan. The measures under the Action Plan and other steps to promote the rule of law in Poland will continue to be regularly monitored, in particular, under the Rule of Law Report process.
- 21 May 2024: The General Affairs [Council discusses the rule-of-law situation in Poland](#). The Commission informs ministers about the reasons for its intention to close the Article 7 procedure (see above). The Belgian Council Presidency concludes that “the Council had taken note of the intention of the

Commission to withdraw its reasoned proposal” under Article 7 TEU. A clearer statement is [blocked by Hungary](#) which said that the Commission’s decision was taken “purely on political grounds”.

- 29 May 2024: The [Commission formally adopts a decision to close the Article 7 procedure for Poland](#) by withdrawing its reasoned proposal that had triggered this procedure in 2017. The decision is based on the finalized analyses regarding the requirements of Article 7(1) TEU presented on 6 May 2024 (see above). The Commission considers that there is no longer a clear risk of a serious breach of the rule of law in Poland. Commission Vice-President for Values and Transparency, *Věra Jourová*, says: “Today marks an important day for the rule of law in Poland and in the European Union. After more than six years, following the positive steps taken by the Polish authorities as well as the strong support expressed by Member States in that respect, we have now closed the Article 7 procedure for Poland. We will continue engaging with the Polish authorities to support them in their endeavour to promote the rule of law.”
  - 29 May 2024: The [General Court dismisses an action](#) brought by Poland and confirms that the Commission could legitimately offset the amounts payable in respect of periodic penalty payments for not having ceased mining activities at the Turów mine against amounts owed to Poland by the European Union. The case is referred as [T-200/22 and T-314/22](#) (*Poland v Commission*).
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