

# How will the European Commission triggering Article 7 affect Polish politics?



Last month Poland became the first EU member state to have an Article 7 rule of law procedure launched against it. [Aleks Szczerbiak](#) writes that while sanctions appear extremely unlikely, the domestic political impact will depend on whether Poles accept the opposition's argument that the government is isolating Poland internationally, or the ruling party's claim that it is defending national sovereignty against EU interference in the country's internal affairs.



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At the end of December, in a major escalation of a conflict with Poland that has been rumbling on for the past two years, the European Commission recommended triggering the so-called Article 7 procedure, the first ever against an EU member state. This followed its criticisms of the Polish government – led, since autumn 2015, by the right-wing Law and Justice (PiS) party – as posing a threat to the rule of law. The Commission's original concerns stemmed from a dispute over appointments to, and the functioning of, Poland's constitutional tribunal, but since last July escalated to include the government's controversial judicial reform programme. The Commission argued that, as a result of a set of 13 laws passed by the Law and Justice-dominated parliament, the ruling party had undermined the independence of the judiciary which meant that the constitutionality of the country's legislation could no longer be guaranteed.

Warning of a drift towards authoritarian rule, Poland's main opposition groupings – led by the liberal-centrist Civic Platform (PO), the governing party from 2017-15 – and the legal establishment, have accused Law and Justice of failing to respect the Constitution and separation of powers. They argue that the government's judicial reforms and other actions have subverted democratic values by allowing the ruling party to pack the courts with its own hand-picked nominees. In addition to launching the Article 7 procedure, the Commission also confirmed that it would refer Poland to the European Court of Justice for an alleged infringement of EU law, arguing that legislation changing the way that the heads of lower district and appeal courts are appointed gives the Polish justice minister too much power and is discriminatory because it introduces separate retirement ages for men and women.

The government's supporters responded by saying that Poland was as committed to the rule of law as any other EU country and that its actions were in line with the Polish Constitution. They argued that judicial reforms were sorely needed because Polish courts were too slow, inefficient and tolerated frequent irregularities. Law and Justice believes that, following the country's flawed transition to democracy in 1989, the judiciary, like many key institutions, was already politicised and expropriated by a well-entrenched, and often deeply corrupt, post-communist elite, which then co-opted a new legal establishment that perpetuated its legacy. They also accused the Commission of double standards arguing that the Polish government's reforms were in line with practices that existed in many other established Western democracies, and that Brussels was biased and acting on political motives because Law and Justice has challenged the interests of the major EU powers and is out of favour with the socially liberal and cosmopolitan policies supported by the EU political establishment.

### **Law and Justice won't back down**

The Commission's latest move shifts the 'rule of law' dispute to the EU inter-governmental level but no firm date has been set for member states to vote on its recommendation, allowing some space for diplomatic efforts. The Commission has also said that if the Polish government reverses its legislative changes within the next three months it could rescind its decision. However, within hours of the Commission's announcement, Poland's Law and Justice-backed President Andrzej Duda signed into law the two judicial reform bills whose earlier approval by the Polish parliament Brussels felt marked a point of no return. One of these potentially ended the tenure of around 40% of current Supreme Court judges by lowering their retirement age from 70 to 65, with the President deciding if their terms could be extended. The other reformed the National Judicial Council (KRS), a body that selects judges and decides how the courts are run, so that most of its members were elected by parliament rather than judicial bodies.

Earlier last month, Poland's finance minister and respected former banker Mateusz Morawiecki was also appointed as the country's new prime minister partly in the hope that he would be able to 're-set' Warsaw's relations with the EU political establishment. Due to his excellent international business contacts, Mr Morawiecki understands the mentality of Western elites and generates their respect for his competence and professionalism. However, judicial reform is one of the most important elements of Law and Justice's programme to radically re-construct the Polish state. Although Mr Morawiecki's greater familiarity with diplomatic niceties should enable him to develop better contacts with Western politicians, the new prime minister's statements since his appointment make it clear that, other than adopting a somewhat gentler rhetorical tone, the government does not intend to change course even if this brings it into conflict with the EU elites.

### **No sanctions, but Poland marginalised?**

Member states are likely to vote on whether to enact Article 7 at an EU General Affairs Council meeting scheduled for the end of February. In the first stage of the procedure the decision on whether the Polish reforms constitute a 'clear risk of a serious breach of rule of law' requires the support of 22 of the EU's remaining 27 members (Poland is excluded from the vote) to move to the next stage. Given that France and Germany have already signalled that they will back the Commission, most other EU states are likely to fall into line, so blocking the Article 7 procedure at this stage would be a huge diplomatic triumph for Law and Justice and Mr Morawiecki. However, a subsequent vote to trigger sanctions against Poland – including, in the worst-case scenario, suspending the country's European Council voting rights – requires unanimity and the Hungarian government, for one, has made it clear that it will oppose such a move.

Nonetheless, Law and Justice's critics argue that even if no sanctions are eventually imposed the Article 7 procedure will further damage Poland's international reputation and undermine the government's ability to advance the country's interests on other issues such as the distribution of EU funds when states begin negotiating the 2021-27 EU budget later this year. Poland is the main beneficiary from these fiscal transfers but the current EU budget was always likely to be the last from which the country would gain so substantially, given that British withdrawal from the Union will reduce the overall level of the funding available. At the same time, some EU leaders and officials have argued that the disbursement of Union funds should reflect the extent to which countries are felt to uphold so-called 'European values', including democracy and the rule of law. For its part, Law and Justice argues that, as EU budgets require unanimity, Poland can prevent any attempts to develop such linkages, although some commentators say that this can be by-passed.

### **Support for the EU is broad but shallow**

The question of whose interpretation of the meaning of the dispute between Poland and the EU political establishment Poles come to accept will be one of the most important arenas of political conflict in the country's politics over the coming months. While they are extremely critical of the way that the courts and legal institutions function in their country, Poles are much more divided on the merits of Law and Justice's specific judicial reforms.

They are also, on the face of it, overwhelmingly pro-EU: a December 2017 survey by the CBOS polling agency found that 85% of respondents supported their country's EU membership compared with only 8% against. However, Poles are more wary about the idea of EU institutions becoming involved in the country's internal affairs and are likely to be extremely hostile if they perceive that the government's domestic political opponents are trying to settle Polish disputes in international forums. Many are also sympathetic to Law and Justice's claim that the Commission's criticisms of the Polish government are motivated, in part at least, by Warsaw's rejection of what they see as the hegemonic EU liberal-left consensus in the moral-cultural sphere that undermines Poland's traditional values and national identity.

Moreover, some commentators argue that Polish public support for the EU is very broad but also rather shallow, with Poles increasingly instrumental in their attitudes towards membership. A key motivation for their voting overwhelmingly for EU accession in a 2003 referendum was the idea it represented a historical and civilisational choice to re-unite with the West and the culmination of the post-communist democratisation process. However, this idea of EU membership as a natural and obvious civilisational choice has been undermined in recent years due to an increasing sense of cultural distinctiveness that many Poles feel towards Western Europe.

This issue surfaced in the reaction of Poles (and other Central Europeans) to the EU's compulsory migrant relocation scheme developed in response to the 2015 migration crisis. An overwhelming majority of Poles oppose accepting refugees (never mind economic migrants) from Muslim countries even if Poland is threatened with financial penalties by the EU for refusing to do so. Poles, therefore, view the European integration process increasingly in terms of a cost-benefit analysis with the extent to which Poland benefits from EU fiscal transfers obviously a key element of this.

### **Marginalising Poland or defending national sovereignty?**

How the triggering of Article 7 will play out in Polish domestic politics, therefore, depends critically on who frames the terms of the debate on this issue most successfully, and particularly whose arguments Poles find most convincing as to who is to blame for (the threat of) EU sanctions or reduced fiscal transfers.

The government's opponents will obviously continue to argue that Law and Justice's dispute with the EU political establishment is about fundamental constitutional issues because the ruling party has violated basic liberal democratic norms. But they will also try to present Poland's future relationship with the EU as one of the key issues at stake. They will argue that, at worst, Law and Justice is preparing the ground for 'Polexit': Poland following the UK's example and leaving the EU. But they will also say that, even if the country formally remains an EU member, it could become so marginalised within the Union's decision making structures that a process of 'slow motion' or 'de facto' Polexit will develop: with Poland progressively weakening its ties with the Union in a way that undermines its economic and geo-political interests.

The government's supporters will, on the other hand, continue to vigorously deny that Law and Justice has any plans for 'Polexit', while framing the Article 7 debate in terms of a defence of national sovereignty. They will argue that Poland's dispute with the Commission is a political one and not about the rule of law, while presenting the government as the defender of Polish national interests against the EU political establishment's interference in the country's domestic affairs. This narrative not only solidifies Law and Justice's support among its core voter base, it also potentially casts the government's opponents in a negative light in the eyes of less politically committed Poles.

While the government's opponents are keen to use their close links with the EU political elites, who share their dislike of Law and Justice, to exert pressure on the ruling party by presenting it as isolated within the Union, this also leaves them open to criticism that they are themselves undermining Poland's international standing by involving Union institutions in domestic political disputes. If the government can persuade Poles to interpret the Article 7 procedure in this way then playing the 'rule of law' card could end up backfiring on both the EU political establishment and Law and Justice's domestic opponents.

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*Note: This article originally appeared at Aleks Szczerbiak's [personal blog](#). The article gives the views of the author, not the position of EUROPP – European Politics and Policy or the London School of Economics.*

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