

Controversial ruling in Poland: change of direction needed to protect the rule of law

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Dear friends,

Dear everyone,

This judgement is sending shock waves through Europe!

On Thursday, the politically composed, so-called "Constitutional Tribunal" in Poland ruled that Polish law takes precedence over European law. The primacy of European law over national law is a cornerstone of European integration, which is being called into question by this ruling. The judgement has not yet been published, only announced, and therefore has not yet entered into force.

Prime Minister Mateusz Morawiecki had requested the ruling after Poland had been criticised several times by the European Court of Justice at the request of the Commission for its controversial judicial reforms.

A farewell to the European legal order

With this judgement, Poland is saying goodbye to the European legal order. As soon as the judgement becomes legally binding, there must be financial consequences. Without a European legal order, there can be no payment of EU funds. European money can only be spent according to European rules! The "Common Provisions Regulation"* forms the legal basis for an immediate freeze of subsidy payments to Poland. The approval of the reconstruction plan for Poland by the EU Commission is now also an absolute taboo. We cannot transfer billions to a Member State without being able to legally ensure that the money reaches those for whom it is intended.

EU has watched for too long

The court decision in Warsaw came as little surprise. It is also the result of a policy that has refused for too long to stand up decisively for the protection of the rule of law in the European Union. For months, the EU Commission has had at its disposal the Rule of Law Conditionality Mechanism, an effective instrument with which it should have reacted to the judicial restructuring in Poland. Instead, Ursula von der Leyen opted for dialogue (also with Budapest). This did not work. On the contrary: The enemies of the rule of law have felt emboldened by the EU Commission's inaction.

What we need now is a decisive change of direction by the EU Commission and the Member States in protecting the rule of law, European values and democracy. The European Parliament continues to hold out its hand here. It is time to take it. Nothing less than the cornerstones of our European Union are at stake.

The judging "constitutional tribunal" is illegitimate

The so-called "Constitutional Tribunal" is not a legitimate court because of the political influence that the Polish ruling party exerts on the appointment of judges. Almost all judges of the Tribunal are hand-picked loyalists of the PiS party. This includes the president of the tribunal, who chaired the panel in the current case. The European Court of Human Rights had already found the appointment procedure of the judges and, accordingly, their composition to be unlawful several months ago.

***Immediate suspension possible in case of deficient management and control systems**

According to the Common Provisions Regulation (Regulations 1303/2013, Art 142 (1a) and 2021/1060, Art. 97 (1b)), the Commission may suspend payments from certain funds in shared management to Member States if their management and control mechanisms show serious deficiencies.

This includes the following funds and thus affects a large part of the EU money distributed to Member States: European Regional Development Fund, European Social Fund (plus), Cohesion Fund, European Agricultural Fund for Rural Development, European Maritime and Fisheries Fund (and Aquaculture Fund), Just Transition Fund, Asylum, Migration and Integration Fund, Internal Security Fund, as well as the Instrument for Financial Support for Border Management and Visa Policy.

Suspensions of payments via the Common Provisions Regulation do not require a vote in the Council of Member States. The Commission can decide unilaterally in this case.

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