



FRANS TIMMERMANS
First Vice-President

Brussels, **13. 01. 2016**
BM/kr-Ares S(2016)192765

Dear Minister,

I would like to thank you for your letter of January 11, 2016, by which you reply to my letter of 23 December 2015.

At the outset, let me clarify that the European Commission does not wish to put into question any of the democratic choices made by the Polish people. The European Commission fully respects the sovereignty of the Republic of Poland, and carries out its duties in an objective and non-partisan manner.

However, the European Union is founded on a common set of values enshrined in Article 2 of the Treaty on European Union, which include in particular the respect for the rule of law. Mutual trust among EU Member States and their respective legal systems depends on the confidence that the rule of law is observed in all Member States. This is why the European Commission, taking account of its responsibilities under the Treaties, adopted, in March 2014, a Framework on the Rule of Law which sets out how the European Commission will react should a threat to the rule of law emerge in a Member State of the Union.

In this regard, I note that in Poland there is an ongoing dispute concerning the composition of the Constitutional Tribunal, as well as on the shortening of the mandates of its current President and Vice-President. Despite the fact that the Constitutional Tribunal has rendered two judgments on these matters, it appears that these judgments have not been executed.

I appreciate very much the explanations which you have provided in your letter concerning the background of the ongoing dispute concerning the composition of the Constitutional Tribunal. I have taken good note of the explanations you have provided concerning the constitutional customs in Poland regarding the nomination of judges. Similar explanations were also provided by Under Secretary of State Stepkowski during his meeting with my Cabinet.

Mr Zbigniew Ziobro
Minister of Justice
Republic of Poland

However, the fact remains that the binding and final judgments of the Constitutional Tribunal have not been implemented. In this respect, I would like to stress that compliance with final judgments is an essential requirement inherent in the rule of law.

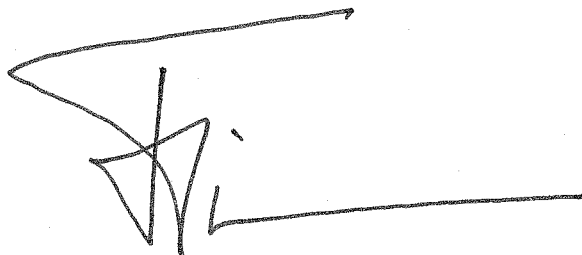
I would also note that your letter does not address the amendments to the law concerning the Constitutional Tribunal adopted by the Sejm on 23 December. It is my understanding that the combined effect of these amendments is to render the control by the Constitutional Tribunal of the constitutionality of laws passed by the Parliament more difficult. Certain amendments also seem to increase political involvement in disciplinary matters. I note that the Polish government asked, on 23 December, for an opinion of the Venice Commission on this law. However, the Polish parliament did not await this opinion, and the law has in the meantime entered into force.

I am also conscious of the recent reform to the media law, which raises issues relating to freedom and pluralism of the media. I would like to recall that the rule of law, as defined in the Rule of Law Framework, requires the respect for democracy and for fundamental rights and that there can be no democracy and respect for fundamental rights without respect for the rule of law and vice versa. Fundamental rights are effective only if they are justiciable. Democracy is protected if the fundamental role of the judiciary, including constitutional courts, can ensure freedom of expression, freedom of assembly and respect of the rules governing the political and electoral processes.

In view of these outstanding concerns, I would like to inform you that the European Commission is examining the situation under the Rule of Law Framework, and has mandated me to enter into a dialogue with the institutions of the Republic of Poland in order to clarify the issues at hand and identify possible solutions.

I would therefore be most pleased to meet you at your earliest convenience in Brussels or in Warsaw in order to discuss these matters further. I look forward to your proposals for a suitable time for a meeting.

Yours sincerely,

A handwritten signature in black ink, consisting of a large, stylized 'F' and 'T' followed by a horizontal line extending to the right.

Frans TIMMERMANS

Cc: Mr Witold Waszczykowski, Minister of Foreign Affairs, Republic of Poland