

# Has the EU-Polish rule of law standoff reached a tipping point?

Blog post by Senior Associate Anikó Zsebik, 21 October 2021

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For several years tensions around the conduct of the PiS government have buffeted bilateral relations between Warsaw and Brussels and other members of the European Council without quite reaching breaking point. In part this is because both sides have tiptoed around pushing it there. However, in the wake of the [Polish Constitutional Court's \(PCC\) ruling](#) on the supremacy of Polish law over aspects of EU law, there has even been talk of a possible Polish exit from the EU. Is this even slightly plausible, or will the familiar pattern of tense political de-escalation apply again?

On one level, the issue at hand continues to be the long-standing rule of law debate between Warsaw and Brussels. The PCC ruling is about the very aspects of Polish constitutional law that the ECJ's ruling on the judicial reform in Poland addressed, and that were the main issue behind the launching of the Article 7 procedure back in 2017. But the ruling takes the issue to a new level. The judgement potentially raises fundamental doubts about the legality of the EU Treaties' supremacy over Polish law. If this is how the Polish government choose to interpret the ruling, it is a wider challenge than similar narrower issues identified by the German Constitutional Court, to take one recent example.

Speaking in the European Parliament this week, Polish PM Mateusz Morawiecki seemed to want to hedge his bets. He defined the scope of the PCC judgement as only applying to "a certain provision of the Treaty". But he also framed the problem as a fundamental threat to the future of the EU. It is clearly tempting for the leaders of the Law and Justice party to cast the conflict as a standoff between a vision of a federalist future for the EU or one based on strong member states.

But Morawiecki's strategy has some important limitations. A large majority of his population favours EU membership. The government cannot therefore allow to be seen in any way contemplating leaving the bloc and cannot afford to play into the hands of its national opposition by appearing to contemplate such a radical route. No serious Polish politician is suggesting that the logic of the PCC ruling is leaving the EU, or a fundamentally revised interpretation of the EU's legal order.

Indeed, Poland has a lot to lose from a new standoff. It counted on EU recovery funds to finance its major economic reform and investment package, the Polish New Deal, and it has been already taken by surprise when the ECJ ruled in favour of Czechia in the [Turów lignite mine case](#). The PiS government knows foreign investors are watching closely. Poland President Duda has fired several warning shots that a social conservative ethos among right-of-centre Poles should not translate into self-defeating economic nationalism.

When the issue returns to the political level at the European Council meeting later this week, the battle lines will be clear, and we will probably get some sense of what will happen next. The pressure coming from the European Parliament and member states such as the Netherlands or Luxembourg will be strong. Even if not all member states are ready to condemn Poland, Warsaw has so far only secured the unconditional support of Hungary. This is, however, still enough to block any progress in the Article 7 procedure. With the traditional advocate of compromise, Germany, not fully ready to return to the [table after its elections](#), this voice may be notable by its absence.

However, strong statements aside, a complete isolation of Poland is not in the interest of the EU. There is a need for Polish cooperation on Nord Stream 2, the [Fit for 55 package](#) or the migration crisis unfolding at the Belarus border. This means that after a lot of grumbling, the issue will be passed along to be dealt with at a later stage. Warsaw will sustain a critical tone, but it can be expected to comply with the conditions set by the Commission on Recovery Funds. This includes liquidating the contentious disciplinary chambers of the judiciary and proving how it protects EU money disbursement, even if insisting that the rule of law conditionality is not yet in effect. The Commission is expected to launch an infringement procedure against the Polish Constitutional Court's ruling, similar to the one against the [German Constitutional Court](#), partly as a pro-forma warning about challenging the EU's legal order. But beyond that? The most likely outcome is a tense stalemate that reflects both sides' interest in not pushing this dispute further than they want it to go.