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Legislation

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<sup>(1)</sup> Text with EEA relevance.

EN

Acts whose titles are printed in light type are those relating to day-to-day management of agricultural matters, and are generally valid for a limited period.

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## II

(Non-legislative acts)

## DECISIONS

## COMMISSION IMPLEMENTING DECISION (EU) 2017/1519

of 1 September 2017

**amending the Annex to Implementing Decision (EU) 2017/247 on protective measures in relation to outbreaks of the highly pathogenic avian influenza in certain Member States**

(notified under document C(2017) 6056)

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Directive 89/662/EEC of 11 December 1989 concerning veterinary checks in intra-Community trade with a view to the completion of the internal market <sup>(1)</sup>, and in particular Article 9(4) thereof,

Having regard to Council Directive 90/425/EEC of 26 June 1990 concerning veterinary and zootechnical checks applicable in intra-Community trade in certain live animals and products with a view to the completion of the internal market <sup>(2)</sup>, and in particular Article 10(4) thereof,

Whereas:

- (1) Commission Implementing Decision (EU) 2017/247 <sup>(3)</sup> was adopted following outbreaks of highly pathogenic avian influenza of subtype H5 in a number of Member States ('the concerned Member States'), and the establishment of protection and surveillance zones by the competent authority of the concerned Member States in accordance with Council Directive 2005/94/EC <sup>(4)</sup>.
- (2) Implementing Decision (EU) 2017/247 provides that the protection and surveillance zones established by the competent authorities of the concerned Member States in accordance with Directive 2005/94/EC are to comprise at least the areas listed as protection and surveillance zones in the Annex to that Implementing Decision. Implementing Decision (EU) 2017/247 also lays down that the measures to be applied in the protection and surveillance zones, as provided for in Article 29(1) and Article 31 of Directive 2005/94/EC, are to be maintained until at least the dates for those zones set out in the Annex to that Implementing Decision.
- (3) The Annex to Implementing Decision (EU) 2017/247 was subsequently amended by Commission Implementing Decisions (EU) 2017/417 <sup>(5)</sup>, (EU) 2017/554 <sup>(6)</sup>, (EU) 2017/696 <sup>(7)</sup>, (EU) 2017/780 <sup>(8)</sup>, (EU) 2017/819 <sup>(9)</sup>, (EU) 2017/977 <sup>(10)</sup>, (EU) 2017/1139 <sup>(11)</sup>, (EU) 2017/1240 <sup>(12)</sup>, (EU) 2017/1397 <sup>(13)</sup>, (EU) 2017/1415 <sup>(14)</sup> and (EU) 2017/1484 <sup>(15)</sup> in order to take account of changes to the protection and surveillance zones established by the competent authorities of the Member States in accordance with Directive 2005/94/EC, following further outbreaks of highly pathogenic avian influenza of subtype H5 in the Union. In addition, Implementing Decision (EU) 2017/247 was amended by Implementing Decision (EU) 2017/696 in order to lay down rules regarding the dispatch of consignments of day-old chicks from the areas listed in the Annex to Implementing Decision (EU) 2017/247, following certain improvements in the epidemiological situation as regards that virus in the Union.
- (4) The overall disease situation in the Union has been steadily improving. However, since the date of the last amendment made to Implementing Decision (EU) 2017/247 by Implementing Decision (EU) 2017/1484, Italy has detected and notified to the Commission new outbreaks of highly pathogenic avian influenza of subtype H5N8 in poultry holdings, namely in the regions of Lombardia and Veneto of that Member State. Italy has also notified the Commission that it has taken the necessary measures required in accordance with Directive 2005/94/EC, including the establishment of protection and surveillance zones around the infected poultry holdings.

- (5) The Commission has examined the measures taken by Italy in accordance with Directive 2005/94/EC, following the recent outbreaks of avian influenza of subtype H5N8 in that Member State, and it has satisfied itself that the boundaries of the protection and surveillance zones, established by the competent authority of Italy, are at a sufficient distance to any holding where an outbreak of highly pathogenic avian influenza of subtype H5N8 has been confirmed.
- (6) In order to prevent any unnecessary disturbance to trade within the Union, and to avoid unjustified barriers to trade being imposed by third countries, it is necessary to rapidly describe at Union level, in collaboration with Italy, the protection and surveillance zones established in Italy, in accordance with Directive 2005/94/EC, following the recent outbreaks of highly pathogenic avian influenza of subtype H5N8 in that Member State. Therefore, the entries for Italy in the Annex to Implementing Decision (EU) 2017/247 should be updated to take account of the up-to-date epidemiological situation in that Member State as regards that disease. In particular, new entries for certain areas in the regions of Lombardia and Veneto need to be added in order to address this new situation.
- (7) The Annex to Implementing Decision (EU) 2017/247 should therefore be amended to update regionalization at Union level to include the protection and surveillance zones established by Italy, in accordance with Directive 2005/94/EC and the duration of the restrictions applicable therein.
- (8) Implementing Decision (EU) 2017/247 should therefore be amended accordingly.
- (9) The measures provided for in this Decision are in accordance with the opinion of the Standing Committee on Plants, Animals, Food and Feed,

HAS ADOPTED THIS DECISION:

*Article 1*

The Annex to Implementing Decision (EU) 2017/247 is amended in accordance with the Annex to this Decision.

*Article 2*

This Decision is addressed to the Member States.

Done at Brussels, 1 September 2017.

*For the Commission*

Vytenis ANDRIUKAITIS

*Member of the Commission*

<sup>(1)</sup> OJ L 395, 30.12.1989, p. 13.

<sup>(2)</sup> OJ L 224, 18.8.1990, p. 29.

<sup>(3)</sup> Commission Implementing Decision (EU) 2017/247 of 9 February 2017 on protective measures in relation to outbreaks of the highly pathogenic avian influenza in certain Member States (OJ L 36, 11.2.2017, p. 62).

<sup>(4)</sup> Council Directive 2005/94/EC of 20 December 2005 on Community measures for the control of avian influenza and repealing Directive 92/40/EEC (OJ L 10, 14.1.2006, p. 16).

<sup>(5)</sup> Commission Implementing Decision (EU) 2017/417 of 7 March 2017 amending the Annex to Implementing Decision (EU) 2017/247 on protective measures in relation to outbreaks of the highly pathogenic avian influenza in certain Member States (OJ L 63, 9.3.2017, p. 177).

<sup>(6)</sup> Commission Implementing Decision (EU) 2017/554 of 23 March 2017 amending the Annex to Implementing Decision (EU) 2017/247 on protective measures in relation to outbreaks of the highly pathogenic avian influenza in certain Member States (OJ L 79, 24.3.2017, p. 15).

<sup>(7)</sup> Commission Implementing Decision (EU) 2017/696 of 11 April 2017 amending Implementing Decision (EU) 2017/247 on protective measures in relation to outbreaks of the highly pathogenic avian influenza in certain Member States (OJ L 101, 13.4.2017, p. 80).

<sup>(8)</sup> Commission Implementing Decision (EU) 2017/780 of 3 May 2017 amending the Annex to Implementing Decision (EU) 2017/247 on protective measures in relation to outbreaks of the highly pathogenic avian influenza in certain Member States (OJ L 116, 5.5.2017, p. 30).

<sup>(9)</sup> Commission Implementing Decision (EU) 2017/819 of 12 May 2017 amending the Annex to Implementing Decision (EU) 2017/247 on protective measures in relation to outbreaks of the highly pathogenic avian influenza in certain Member States (OJ L 122, 13.5.2017, p. 76).

- (<sup>10</sup>) Commission Implementing Decision (EU) 2017/977 of 8 June 2017 amending Implementing Decision (EU) 2017/247 on protective measures in relation to outbreaks of the highly pathogenic avian influenza in certain Member States (OJ L 146, 9.6.2017, p. 155).
- (<sup>11</sup>) Commission Implementing Decision (EU) 2017/1139 of 23 June 2017 amending the Annex to Implementing Decision (EU) 2017/247 on protective measures in relation to outbreaks of the highly pathogenic avian influenza in certain Member States (OJ L 164, 27.6.2017, p. 59).
- (<sup>12</sup>) Commission Implementing Decision (EU) 2017/1240 of 7 July 2017 amending the Annex to Implementing Decision (EU) 2017/247 on protective measures in relation to outbreaks of the highly pathogenic avian influenza in certain Member States (OJ L 177, 8.7.2017, p. 45).
- (<sup>13</sup>) Commission Implementing Decision (EU) 2017/1397 of 27 July 2017 amending the Annex to Implementing Decision (EU) 2017/247 on protective measures in relation to outbreaks of the highly pathogenic avian influenza in certain Member States (OJ L 197, 28.7.2017, p. 13).
- (<sup>14</sup>) Commission Implementing Decision (EU) 2017/1415 of 3 August 2017 amending the Annex to Implementing Decision (EU) 2017/247 on protective measures in relation to outbreaks of the highly pathogenic avian influenza in certain Member States (OJ L 203, 4.8.2017, p. 9).
- (<sup>15</sup>) Commission Implementing Decision (EU) 2017/1484 of 17 August 2017 amending the Annex to Implementing Decision (EU) 2017/247 on protective measures in relation to outbreaks of the highly pathogenic avian influenza in certain Member States (OJ L 214, 18.8.2017, p. 28).
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## ANNEX

The Annex to Implementing Decision (EU) 2017/247 is amended as follows:

(1) in Part A, the entry for Italy is replaced by the following:

**Member State: Italy**

Area comprising:	Date until applicable in accordance with Article 29(1) of Directive 2005/94/EC
<ul style="list-style-type: none"> <li>— Municipality of CASTIGLIONE DELLE STIVIERE (MN): East of SP10, West and South of via Levadello, East of via Gerra, East of via L.T.Casalini, East of via Napoleone Bonaparte, via Dante Alighieri, South of via Barche di Solferino, via Bertasetti, via Barche; and North of via Levadello</li> <li>— Municipality of SOLFERINO (MN): South of via Barche, West of via G. Garibaldi, via Cavriana, North of SP12</li> </ul>	4.9.2017
<ul style="list-style-type: none"> <li>— Municipality of CASTIGLIONE DELLE STIVIERE (MN): East of via Castellina, via Pigliaquaglie, via Berettina, South of via Dottorina, via Levadello</li> <li>— Municipality of SOLFERINO (MN): South of SP12</li> <li>— Municipality of CAVRIANA (MN): South West of SP8, via Capre, West of Monte 3 Galline</li> <li>— Municipality of GUIDIZZOLO (MN): West of via S. Cassiano, North East of via Tiziano, North East of SP236, West of country road that connect SP236 to str. S. Martino, South of str. S. Martino, West of country road that connect str. S. Martino to via S. Andrea, North of str. per Medole, West of via Oratorio, South of Canale Virgilio, West of via Lombardia, South West of SP10</li> <li>— Municipality of MEDOLE (MN)</li> <li>— Municipality of CASTEL GOFFREDO (MN): North East of SP6, East and North of Contrada S. Anna, North of str. Baldese, West of country road that intersects SP6 at km 13, North East of SP6, East of via Martiri di Belfiore, of str. Medole, North East of via Malfada, East and North of Contrada Perosso Sopra, East of str. Profondi, via Castellina</li> </ul>	10.9.2017
<ul style="list-style-type: none"> <li>— Municipality of SOLFERINO (MN): North of via della Baita, of country road that connect via della Baita to via Ca' Morino, West of via Ca' Morino</li> <li>— Municipality of POZZOLENGO (BS): South West of Loc. Bella Vista, West of country road that connect Località Bella Vista to Località Volpe, West of country road that connect Località Volpe to Località Rondotto, North of Località Rondotto, West of Località Celadina Nuova, via Valletta</li> <li>— Municipality of CASTIGLIONE DELLE STIVIERE (MN): East of via Fabio Filzi, North of via Levaldello, East of SP82, via L.T.Casilini, South of via Giuseppe Verdi, East of via dei Morei, South of via Barche di Solferino, North East of via Bertasetti, via Fichetto, East and South of via Astore, East of via del Bertocco, South West of via Albana</li> <li>— Municipality of CAVRIANA (MN): West of SP8, via Georgiche, via Madonna della Porta, via Pozzone, North West of SP15, North East of SP13, East of SP8</li> <li>— Municipality of DESENZANO DEL GARDA (BS): East of via Vaccarolo, South West of Località Taverna, Località Bella Vista</li> <li>— Municipality of LONATO DEL GARDA (BS): South East of via Mantova, South and West of via Navicella, East of via Montefalcone, South and East of via Fenil Bruciato, East of Pietra Pizzola, South East of via Castel Venzago, via Centenaro</li> </ul>	3.9.2017
<ul style="list-style-type: none"> <li>— Municipality of RONCO ALL'ADIGE (VR): West of via Paluvecchio, North and West of via Valle Tomba, North of SP21, West of SP19</li> </ul>	13.9.2017

Area comprising:	Date until applicable in accordance with Article 29(1) of Directive 2005/94/EC
<ul style="list-style-type: none"> <li>— Municipality of ZEVIO (VR): East of via S. Spirito, South of via Botteghe, East of via Bertolda</li> <li>— Municipality of PALU' (VR): North East of via Rizza, North East and North of Località Stagnà Nuovo/Vecchio, East of via Piave</li> <li>— Municipality of OPPEANO (VR): East of SP20, North of SP44</li> </ul>	
<ul style="list-style-type: none"> <li>— Municipality of ZIMELLA (VR): East of via Fedriga, South of via Fiorette and via Baffa, East and South of via S. Martino; West of SP500, South of via Callesella, West of via Larga</li> <li>— Municipality of VERONELLA (VR): North East of SP7b, South East of via Fiume, South of via Colonnello Rossi, piazza S. Gregorio, East of via Brusio; North of fosso Fossa Bassa</li> <li>— Municipality of ALBAREDO D'ADIGE (VR): North of via Pascoloni, via Carotta, East of via Presina, North East of via Cadelsette, East of SP18</li> <li>— Municipality of COLOGNA VENETA (VR): West and North of via S. Giustina, West of SP7</li> </ul>	14.9.2017
<ul style="list-style-type: none"> <li>— Municipality of ANGIARI (VR): South East of SP44c, East of via Lungo Bussè, South and East and North of via Boscarola</li> <li>— Municipality of BONAVIGO (VR): West and South of SP44b</li> <li>— Municipality of LEGNAGO (VR): North West of via Palazzina, SP46c dir, via G.B. Giudici, North of via Corradina, West of via Lungo Bussè, North West of via Regina Margherita, North of via XXIV Maggio, East of via Passeggio, via Disciplina, North West and West of via degli Alpini, via Padana Inferiore Est, North West of SR10, West of via Custoza, South East of via S. Vito, South of SP44b</li> <li>— Municipality of CEREIA (VR): South of SP44c, West of via Palesella, South of via Guanti, East of SP45, South of via Cesare Battisti, East of via Paride da Cerea, East and North of SR10</li> </ul>	15.9.2017
<ul style="list-style-type: none"> <li>— Municipality of CERVIGNANO D'ADDA (LO)</li> <li>— Municipality of BOFFALORA D'ADDA (LO): West of SP1, SP25</li> <li>— Municipality of MULAZZANO (LO): North East of SP202, SP158, East of via Quartiano, North East of via Roma, Piazza della Chiesa, East of via Cassino, SP 158</li> <li>— Municipality of ZELO BUON PERSICO (LO): West of SP16, South and East of country road that connect SP16 to SP16d, East of SP16d, South East of Circonvallazione Zelo Buon Persico, North East of via Dante</li> <li>— Municipality of GALGAGNANO (LO)</li> <li>— Municipality of SPINO D'ADDA (CR): South of Canale Vacchelli, West of SP1, viale della Vittoria, South and West of SP1</li> </ul>	16.9.2017
<ul style="list-style-type: none"> <li>— Municipality of SAN PIETRO DI MORUBIO (VR): East of via Casari, via Borgo, via Farfusola</li> <li>— Municipality of ROVERCHIARA (VR): South of via Molaro, South West of via Anesi, West of via Borcola, South of via Viola, West of via Bussè, South of SP3, South and West of via Casalino</li> <li>— Municipality of CEREIA (VR): North of SP44c, East of via Polesella, North of via Guanti, West of SP45, North of via Cesare Battisti, East of SP2, via Isolella Bassa</li> <li>— Municipality of ANGIARI (VR): North West of SP44c, West of via Lungo Bussè, North and West and South of via Boscarola</li> </ul>	20.9.2017

Area comprising:	Date until applicable in accordance with Article 29(1) of Directive 2005/94/EC
<ul style="list-style-type: none"> <li>— Municipality of CHIGNOLO PO (PV): East of SP193, South of via Don Sbarsi, East of via Mariotto</li> <li>— Municipality of MONTICELLI PAVESE (PV)</li> <li>— Municipality of ROTTOFRENO (PC): North of E70</li> <li>— Municipality of SARMATO (PC): North of E70</li> <li>— Municipality of PIEVE PORTO MORONE (PV): East of SP412, South of SP193</li> <li>— Municipality of BADIA PAVESE (PV): South East of SP193, via Roma</li> </ul>	21.9.2017'

(2) in Part B, the entry for Italy is replaced by the following:

**'Member State: Italy**

Area comprising:	Date until applicable in accordance with Article 31 of Directive 2005/94/EC
<ul style="list-style-type: none"> <li>— Municipality of CASTIGLIONE DELLE STIVIERE (MN): South of via Astore, of via Fichetto, of via Astore, East of SP83, South of via Giuseppe Mazzini, East of via Casino Pernestano, of via Roversino, North of via Dottorina, West of SP10, East and South of via Levadello, West of via Gerra, West of via L.T.Casalini, West of via Napoleone Bonaparte, via Dante Alighieri, North of via Barche di Solferino, via Bertasetti, via Barche</li> <li>— Municipality of SOLFERINO (MN): North of via Barche, West of via San Martino</li> </ul>	From 25.8.2017 to 19.9.2017
<ul style="list-style-type: none"> <li>— Municipality of GUIDIZZOLO (MN): South of str. to Medole, South-West of via Casarole, West of via Marchionale; South of str. per Medole, East of via Oratorio, North of Canale Virgilio, East of via Lombardia, North East of SP10</li> <li>— Municipality of CASTEL GOFFREDO (MN): East of SP8, of via Prof. B. Ubertini, of via Monteverdi, North of SP6, North-East of via C. Battisti, East of via Ospedale, North-East of str. Zocca; South West of SP6, West and South of Contrada S.Anna, South of str. Baldese, East of country road that intersects SP6 at km 13, South West of SP6, West of via Martiri di Belfiore, of str. Medole, South West of via Malfada</li> </ul>	From 10.8.2017 to 19.9.2017
<ul style="list-style-type: none"> <li>— Municipality of DESENZANO DEL GARDA (BS): North of Highway A4</li> <li>— Municipality of MONTICHIARI (BS): South of SP668, East of via Sant'Eurosia, of via Boschetti of Sopra, South of via Mantova, East of via Padre Annibale of Francia, of str. Vicinale Scoler, of via Scoler, South of SP236, of SP668, East of SP29, North-East of via Montechiaresa; and West of Chiese river, West of via Mantova</li> <li>— Municipality of LONATO DEL GARDA (BS): South-West of SP11, East of SP25, South-East of SP668; and North of SP668, North-East of via Malocche, West and North via Fossa, North of via Cominello, West of via Monte Mario, North of via S. Tommaso, West and North of via Monte Semo, West of via Bordena, South-West of via Marziale Cerruti, North of Highway A4</li> <li>— Municipality of MONZAMBANO (MN): West of SP19, South of SP74, West of str. S. Pietro; and East of Localita Caccia, SP18</li> <li>— Municipality of POZZOLENGO (BS): South of E70; and North of Localita Cobue Sotto, East of Localita Cascina Ceresa, North of Localita Giacomo Sotto, East of via Sirmione, North-West of SP106</li> </ul>	2.9.2017



Area comprising:	Date until applicable in accordance with Article 31 of Directive 2005/94/EC
<ul style="list-style-type: none"> <li>— Municipality of SORGA' (VR): East of via S. Pietro</li> <li>— Municipality of ISOLA della SCALA (VR): East of via S. Zeno, South of SP20a, East of country road that intersects via S.Gabriele at number n.30, West and South of via S. Gabriele, West and South of via Guasto, East of via Gabbietta, South of via Cognare</li> <li>— Municipality of SALIZZOLE (VR): West of SP48c, South of SP20, West of via G. Rossini, South of via Dante Alighieri, West of via Lavacchio, South of via Franchine</li> <li>— Municipality of NOGARA (VR): North of via Spin, East of via Montalto, of via Olmo, North of SR10, West of SS12, of SP20</li> </ul>	From 22.8.2017 to 2.9.2017
<ul style="list-style-type: none"> <li>— Municipality of CASTELLUCCHIO (MN): East of via Mantellazze, of via Marchiodola, North of SP55, and North-West of via Borsatta, of str. Picco, of str. Fontana</li> <li>— Municipality of RODIGO (MN): South-East of SP1, South-West of SP1</li> </ul>	From 26.8.2017 to 3.9.2017
<ul style="list-style-type: none"> <li>— Municipality of CURTATONE (MN)</li> <li>— Municipality of PIUBEGA (MN): South-East of SP7, South of SP1</li> <li>— Municipality of MARCARIA (MN): South-East of SP10, East of SP57</li> <li>— Municipality of MARMIROLO (MN): West of SP236</li> <li>— Municipality of SAN MARTINO DALL'ARGINE (MN): North of SP58, East of SP78, North-East of left bank of Oglio river</li> <li>— Municipality of GAZZUOLO (MN): East of SP58</li> <li>— Municipality of ACQUANEGRA SUL CHIESE (MN): North-East of SP67, South-East of SP17</li> <li>— Municipality of RODONDESCO (MN)</li> <li>— Municipality of GOITO (MN): East of SP7, South-West of SP16, West and South of SP236</li> <li>— Municipality of MANTOVA (MN): North-West of via Brescia, East of SR62, North-West of SP10, West of viale Pompillio, West of SP29</li> <li>— Municipality of PORTO MANTOVANO (MN): West of SP236, of via Brescia</li> <li>— Municipality of GAZOLDO DEGLI IPPOLITI (MN)</li> <li>— Municipality of CASTELLUCCHIO (MN): West of via Mantellazze, of via Marchiodola, SP55, South-East of via Borsatta, str. Picco, str. Fontana</li> <li>— Municipality of RODIGO (MN): North-West of SP1, North-East of SP1</li> </ul>	3.9.2017
<ul style="list-style-type: none"> <li>— Municipality of TREVENZUOLO (VR): North-East of SP50a, East of via N. Sauro, South of via Decima, of str. Marinella, East of Corte Mantellina</li> <li>— Municipality of ISOLA della SCALA (VR): South of SP50b, West of country road that intersects SP50b at 4th km, South of SP50b, South of SP24, East of via Verona, South and East of via Tavole di Casalbergo, West of SS12, South of SP24, West of via Rosario, North of via Selesetto, West of country road that intersects via S.Gabriele at number n.30, West and South of via S. Gabriele, West of country road that intersects via Ave, North of SP20a, West of via S. Zeno</li> <li>— Municipality of ERBE' (VR): South and East of SP50a</li> <li>— Municipality of SORGA' (VR): North of via Albarella, East and West of SP20a, North of SP50, East of via Bosco, East and North of via Gamandone</li> </ul>	From 25.8.2017 to 2.9.2017
<ul style="list-style-type: none"> <li>— Municipality of ERBE' (VR): North and West of SP50a</li> </ul>	2.9.2017

Area comprising:	Date until applicable in accordance with Article 31 of Directive 2005/94/EC
<ul style="list-style-type: none"> <li>— Municipality of TREVENZUOLO (VR): South-West of SP50a, West of via N. Sauro, North of via Decima, of str. Marinella, West of Corte Mantellina</li> <li>— Municipality of ISOLA della SCALA (VR): North of SP50b, East of country road that intersects SP50b at 4th km, North of SP50b, North of SP24, West of via Verona, North and West of via Tavole di Casalbergo, East of SP12, North of SP24, East of via Rosario, South of via Selesetto, East of country road that intersects via S. Gabriele at number 30, North of via S. Gabriele, via S. Guasto, West of via Gabbietta, North of via Franchine</li> <li>— Municipality of SORGA' (VR): West and South of via Gamandone, West of via Bosco, South of SP50, East and West of SP20a, South of via Albarella, West of via S. Pietro</li> <li>— Municipality of SALIZZOLE (VR): North West of via Pascoletto, South West of via Capitello, North West of SP20, East of via G. Rossini, North of via Dante Alighieri, East of via Lavacchio, North of via Franchine</li> <li>— Municipality of NOGARA (VR): South of via Spin, West of via Montalto, of via Olmo, South of SR10, East of SS12, of SP20, West of SP48c, South of SR10</li> <li>— Municipality of VIGASIO (VR)</li> <li>— Municipality of BUTTAPIETRA (VR): South of SP51</li> <li>— Municipality of SAN GIOVANNI LUPATOTO (VR): South of via Acque</li> <li>— Municipality of OPPEANO (VR): West of SP2, South east of via Antonio Salieri, West of SS434, North of via Spinetti, West of via Marco Biagi, North of via Ferruccio Busoni, West of SP2</li> <li>— Municipality of BOVOLONE (VR): West of via Dosso, viale del Silenzio, South West of SP2</li> <li>— Municipality of CASTEL D'ARIO (MN)</li> <li>— Municipality of BIGARELLO (MN)</li> <li>— Municipality of CASTELBELFORTE (MN)</li> <li>— Municipality of ROVERBELLA (MN): East of Autostrada del Brennero (A22)</li> <li>— Municipality of NOGAROLE ROCCA (VR): East of via Colombare, of via Guglielmo Marconi, of via Molinare, of country road that intersects Torre Storta at number n. 22</li> <li>— Municipality of POVEGLIANO VERONESE (VR): East of SP52, South of via dei Ronchi</li> </ul>	
<ul style="list-style-type: none"> <li>— Municipality of SORBOLO (PR): South of str. Certosino — Stradone Dell'Aia — via della Mina — str. del Ferrari</li> <li>— Municipality of BRESCELLO (RE): South of str. Vignoli; East of str. Provinciale SP62R and of str. della Cisa</li> <li>— Municipality of MEZZANI (PR): East of str. provinciale 72, South of Po river</li> </ul>	From 1.9.2017 to 9.9.2017
<ul style="list-style-type: none"> <li>— Municipality of PARMA (PR): East of str. provinciale SP9, North of tangenziale di Parma (until exit n. 7), of str. statale SS9</li> <li>— Municipality of GATTATICO (RE)</li> <li>— Municipality of POVIGLIO (RE)</li> <li>— Municipality of BORETTO (RE)</li> <li>— Municipality of TORRILE (PR)</li> <li>— Municipality of COLORNO (PR)</li> <li>— Municipality of CASTELNOVO DI SOTTO (RE): North of via A. Alberici, West of via Villafranca, West of str. Pescatora and of via Tolara</li> </ul>	9.9.2017

Area comprising:	Date until applicable in accordance with Article 31 of Directive 2005/94/EC
<ul style="list-style-type: none"> <li>— Municipality of CAMPEGINE (RE): North of str. provinciale SP112, West of str. Pescatora</li> <li>— Municipality of VIADANA (MN): South-West of via Ottoponti Bragagnina — via Ottoponti Salina, West of via Ottoponti e dell'abitato di Salina</li> <li>— Municipality of CASALMAGGIORE (CR): South-Est of SP 343 R — Ponte Asolana, South of SP ex SS 420, West of Case San Quirico, South of Case Sparse Quattro Case — via Valle, West of via Manfrassina</li> </ul>	
<ul style="list-style-type: none"> <li>— Municipality of CASTIGLIONE DELLE STIVIERE (MN): East of SP10, West and South of via Levadello, East of via Gerra, East of via L.T.Casalini, East of via Napoleone Bonaparte, via Dante Alighieri, South of via Barche di Solferino, via Bertasetti, via Barche; and North of via Levadello</li> <li>— Municipality of SOLFERINO (MN): South of via Barche, West of via G. Garibaldi, via Cavriana, North of SP12</li> </ul>	From 5.9.2017 to 19.9.2017
<ul style="list-style-type: none"> <li>— Municipality of CASTIGLIONE DELLE STIVIERE (MN): East of via Castellina, via Pigliaquaglie, via Berettina, South of via Dottorina, via Levadello</li> <li>— Municipality of SOLFERINO (MN): South of SP12</li> <li>— Municipality of CAVRIANA (MN): South West of SP8, via Capre, West of Monte 3 Galline</li> <li>— Municipality of GUIDIZZOLO (MN): West of via S.Cassiano, North East of via Tiziano, North East of SP236, West of country road that connect SP236 to str. S. Martino, South of str. S. Martino, West of country road that connect str. S. Martino to via S. Andrea, North of str. per Medole, West of via Oratorio, South of Canale Virgilio, West of via Lombardia, South West of SP10</li> <li>— Municipality of MEDOLE (MN)</li> <li>— Municipality of CASTEL GOFFREDO (MN): North East of SP6, East and North of Contrada S. Anna, North of str. Baldese, West of country road that intersects SP6 at km 13, North East of SP6, East of via Martiri di Belfiore, of str. Medole, North East of via Malfada, East and North of Contrada Perosso Sopra, East of str. Profondi, via Castellina</li> </ul>	From 11.9.2017 to 19.9.2017
<ul style="list-style-type: none"> <li>— Municipality of CERESARA (MN): North-West of SP16, North-East of via Colombare Bocchere and via S. Martino, North of SP16, North-West of SP7, SP15</li> <li>— Municipality of CASALOLDO (MN): East of str. Grassi, North of via Squarzieri</li> </ul>	From 10.8.2017 to 19.9.2017
<ul style="list-style-type: none"> <li>— Municipality of DESENZANO DEL GARDA (BS): South of Highway A4; and East of via S. Piero, West and North of Localita Taverna, North of Localita Bella vista</li> <li>— Municipality of LONATO DEL GARDA (BS): South of SP668, South-West of via Malocche, East and South via Fossa, South of via Cominello, East of via Monte Mario, South of via S. Tommaso, East and South of via Monte Semo, East of via Bordena, North-East of via Marziale Cerruti, South of Highway A4; and West of via delle Cocche, Localita Pradei, North of via Malomocco, via S. Marco, via Vallone, West and North of via Brodena, West of SP567</li> <li>— Municipality of POZZOLENGO: South of Localita Cobue Sotto, West of Localita Cascina Ceresa, South of Localita Giacomo Sotto, West of via Sirmione, South-East of SP106; and North of Localita Bella Vista, str. comunale Desenzano-Pozzolenigo, East and North of SP13</li> <li>— Municipality of VOLTA MANTOVANA (MN): West of SP19, str. Dei Colli, via S. Martino, via Goito; and North East of str. Bezzetti, South of SP19, East via I Maggio</li> <li>— Municipality of CALCINATO (BS): South of SP668</li> </ul>	13.9.2017

Area comprising:	Date until applicable in accordance with Article 31 of Directive 2005/94/EC
<ul style="list-style-type: none"> <li>— Municipality of SOLFERINO (MN): East of via Caviana, of via XX Settembre, of via G. Garibaldi, of via Ossario, of via San Martino</li> <li>— Municipality of CASTIGLIONE DELLE STIVIERE (MN): North of via Astore, of via Fichetto, West of SP83, North of via Giuseppe Mazzini, West of via Casino Pernestano, of via Roversino, of via Berettina, via Piagliaquaglie, via Castellina</li> <li>— Municipality of CAVRIANA (MN): North East of SP8, via Capre, East of Monte 3 Galline</li> <li>— Municipality of GUIDIZZOLO (MN): East of via S.Cassiano, South West of via Tiziano, South West of SP236, East of country road that connect SP236 to str. S. Martino, North of str. S. Martino, East of country road that connect str. S. Martino to via S. Andrea, South of str. per Medole, North East of via Casarole, East of via Marchionale</li> <li>— Municipality of CERESARA (MN): South East of SP16, South West of via Colom-bare Bocchere and via S. Martino, South of SP16, South East of SP7, of SP15; North of str. Goite, via Don Ottaviano Daina</li> <li>— Municipality of CASALOLDO (MN): West of str. Grassi, South of via Squarzieri</li> <li>— Municipality of CASTEL GOFFREDO (MN): West of SP8, of via Prof. B. Umber-tini, of via Monteverdi, South of SP6, South West of via C. Battisti, West of via Ospedale, South West of str. Zocca, South West of Contrada Perosso Sopra, West of str. Profondi, of via Castellina</li> <li>— Municipality of DESENZANO DEL GARDA (BS): West of via S. Piero, East and South of Localita Taverna, South of Localita Bella vista</li> <li>— Municipality of LONATO DEL GARDA (BS): East of via delle Cocche, Localita Pradei, South of via Malomocco, via S. Marco, via Vallone, East and South of via Brodena, East of SP567</li> <li>— Municipality of POZZOLENGO: South of Localita Bella Vista, str. comunale Desenzano-Pozzolengo, West and South of SP13</li> <li>— Municipality of MONZAMBANO (MN): West of Localita Caccia, SP18</li> <li>— Municipality of MONTICHIARI (BS): East of Chiese river, South of SP668, Sp236, East and South of via Mantova, East of via Franche, South of via Morea</li> <li>— Municipality of CARPENEDOLO (BS)</li> <li>— Municipality of CALVISANO(BS): East of via Chiese, of via Tesoli, of via Paolo Brognoli, North of SP69, East of via Montechiaresa</li> <li>— Municipality of ACQUAFREDDA (BS)</li> <li>— Municipality of CASALMORO (MN): North of via solferino, via Piave, West of via Roma, North of via IV Novembre, of SP68</li> <li>— Municipality of ASOLA(MN): North of via Mantova, North-East of SP68, East of SP1</li> <li>— Municipality of GOITO (MN): West of the country road that intersects the SP16, North of SP16, West of str. Cavacchia Cerlongo, Pazza San Pio X, South of SP236</li> <li>— Municipality of VOLTA MANTOVANA (MN): South and West of str. Bezzetti, North of Sp19, West of via I Maggio, via S. Martino, via Goito</li> <li>— Municipality of PIUBEGA (MN): North of SP1</li> </ul>	19.9.2017
<ul style="list-style-type: none"> <li>— Municipality of CASTEL SAN GIOVANNI (PC)</li> <li>— Municipality of SOMAGLIA (LO): East of SP223, SP142</li> <li>— Municipality of CASALPUSTERLENGO (LO)</li> </ul>	9.9.2017

Area comprising:	Date until applicable in accordance with Article 31 of Directive 2005/94/EC
<ul style="list-style-type: none"> <li>— Municipality of MIRADOLO TERME (PV): North of via Privata dei Colli, East of SP189</li> <li>— Municipality of ARENA PO (PV): North of SP200, West of SP199</li> <li>— Municipality of COSTA DE' NOBILI (PV): West of SP31</li> <li>— Municipality of SAN ZENONE AL PO (PV): West and North of SP35</li> <li>— Municipality of INVERNO E MONTELEONE (PV)</li> <li>— Municipality of GRAFFIGNANA (LO): North of SP125, West of SP19, North of via Monteleone</li> <li>— Municipality of BREMBIO (LO): North of SP168, East of SP141</li> <li>— Municipality of BORGHETTO LODIGIANO (LO): East and North of SP125, North of SP23, North of SP125</li> <li>— Municipality of VILLANOVA DEL SILARO (LO)</li> <li>— Municipality of OSSANO LODIGIANO (LO)</li> <li>— Municipality of SANT'ANGELO LODIGIANO (LO)</li> <li>— Municipality of CORTEOLONA E GENZONE (PV)</li> </ul>	
<ul style="list-style-type: none"> <li>— Municipality of SOLFERINO (MN): North of via della Baita, of country road that connect via della Baita to via Ca' Morino, West of via Ca' Morino</li> <li>— Municipality of POZZOLENGO (BS): South West of Loc. Bella Vista, West of country road that connect Località Bella Vista to Località Volpe, West of country road that connect Località Volpe to Località Rondotto, North of Località Rondotto, West of Località Celadina Nuova, via Valletta</li> <li>— Municipality of CASTIGLIONE DELLE STIVIERE (MN): East of via Fabio Filzi, North of via Levaldello, East of SP82, via L.T.Casilini, South of via Giuseppe Verdi, East of via dei Morei, South of via Barche di Solferino, North East of via Bertasetti, via Fichetto, East and South of via Astore, East of via del Bertocco, South West of via Albana</li> <li>— Municipality of CAVRIANA (MN): West of SP8, via Georgiche, via Madonna della Porta, via Pozzone, North West of SP15, North East of SP13, East of SP8</li> <li>— Municipality of DESENZANO DEL GARDA (BS): East of via Vaccarolo, South West of Località Taverna, Località Bella Vista</li> <li>— Municipality of LONATO DEL GARDA (BS): South East of via Mantova, South and West of via Navicella, East of via Montefalcone, South and East of via Fenil Bruciato, East of Pietra Pizzola, South East of via Castel Venzago, via Centenaro</li> </ul>	From 4.9.2017 to 12.9.2017
<ul style="list-style-type: none"> <li>— Municipality of MONZAMBANO (MN)</li> <li>— Municipality of VOLTA MANTOVANA (MN): West of SP19, str. Volta Monzambano, viale della Libertà, North West of via A. Solferino, via Volta — Acquanegra, East of SP19, West of str.Cantonale, country road that connect str.Cantonale to via Avis, West of SP7, North East of SP236</li> <li>— Municipality of CASTIGLIONE DELLE STIVIERE (MN): West of via Fabio Filzi, South of via Levaldello, West of SP82, via L.T.Casilini, North of via Giuseppe Verdi, West of via dei Morei, North of via Barche di Solferino, South West of via Bertasetti, via Fichetto, West and North of via Astore, West of via del Bertocco, North East of via Albana</li> <li>— Municipality of GUIDIZZOLO (MN): North East of str. Villanova, North West of SP15, North East of via Sajore, West of via S. Giorgio, North West of via Marchionale</li> </ul>	12.9.2017

Area comprising:	Date until applicable in accordance with Article 31 of Directive 2005/94/EC
<ul style="list-style-type: none"> <li>— Municipality of CASTEL GOFFREDO (MN): North East of SP6, East of Contrada S. Anna, North of str. Baldese, West of country road that connect str. Baldese to SP6 at 13 km, North of SP6, East and North of Contrada Selvole</li> <li>— Municipality of MEDOLE (MN)</li> <li>— Municipality of SIRMIONE (BS)</li> <li>— Municipality of PONTI SUL MINCIO (MN): West of SP19</li> <li>— Municipality of DESENZANO DEL GARDA (BS): West of via Vaccarolo, North East of Località Taverna, Località Bella Vista; South of SP572, via S. Benedetto, South and East of via B. Vinghenzi, West of Lungo Lago Cesare Battisti up to number n.71</li> <li>— Municipality of SOLFERINO (MN): South of via della Baita, of country road that connect via della Baita to via Ca' Morino, East of via Ca' Morino</li> <li>— Municipality of POZZOLENGO (BS): North East of Località Bella Vista, East of country road that connect Località Bella Vista to Località Volpe, East of country road that connect Località Volpe to Località Rondotto, South of Località Rondotto, East of Località Celadina Nuova, via Valletta</li> <li>— Municipality of CARPENEDOLO (BS): East of SP105, North West of SP343, via XX Settembre, Giuseppe Zanardelli, viale Santa Maria</li> <li>— Municipality of MONTICHIARI (BS): East of via S. Giorgio, via Madonnina, SP668</li> <li>— Municipality of CALCINATO (BS): South of SP668</li> <li>— Municipality of LONATO DEL GARDA (BS): South of SP668, South east of Campagna Sotto, Campagna Sopra, West and South East of N. Tirale, South of via Roma, East of via dell'Olmo, South East of via Regia Antica, South of via Fontanone, East of SP78, South and East of via Bariselli, via Valsorda, via Benaco, South of country road that connect via Benaco to via Maguzzano, West of via Maguzzano, Vallio di Sopra</li> <li>— Municipality of CAVRIANA (MN)</li> <li>— Municipality of PESCHIERA DEL GARDA (VR): South of via Miralago, West of via Bell'Italia, West of SR11, SP28</li> </ul>	
<ul style="list-style-type: none"> <li>— Municipality of RONCO ALL'ADIGE (VR): West of via Mazza, North and East of via Pezze Albaro, North West of via Lasta, West of via Ponzilovo, West of via Pieve, South of via Cantonà, West of via Ronchi, North of SP19, West of via Fornetto</li> <li>— Municipality of ZEVIO (VR): East of via S. Spirito, South of via Botteghe, East of via Bertolda</li> <li>— Municipality of PALU' (VR): North East of via Rizza, North East and North of Località Stagnà Nuovo/Vecchio, East of via Piave, North West of via Casoti, West of via Ponte Rosso, North West of Località Motte I/II</li> </ul>	From 14.9.2017 to 22.9.2017
<ul style="list-style-type: none"> <li>— Municipality of ZIMELLA (VR): East of via Fedriga, South of via Fiorette and via Baffa, East and South of via S. Martino; West of SP500, South of via Callesella, West of via Larga</li> <li>— Municipality of VERONELLA (VR): North East of SP7b, South East of via Fiume, South of via Colonnello Rossi, piazza S. Gregorio, East of via Brusio; North West and North East of via Giavone</li> <li>— Municipality of ALBAREDO D'ADIGE (VR): North East of via Cadelsette, East of SP18</li> <li>— Municipality of COLOGNA VENETA (VR): West and North of via S. Giustina, West of SP7</li> </ul>	From 15.9.2017 to 23.9.2017

Area comprising:	Date until applicable in accordance with Article 31 of Directive 2005/94/EC
<ul style="list-style-type: none"> <li>— Municipality of CERVIGNANO D'ADDA (LO)</li> <li>— Municipality of BOFFALORA D'ADDA (LO): West of SP1, SP25</li> <li>— Municipality of MULAZZANO (LO): North East of SP202, SP158, East of via Quartiano, North East of via Roma, Piazza della Chiesa, East of via Cassino, SP 158</li> <li>— Municipality of ZELO BUON PERSICO (LO): West of SP16, South and East of country road that connect SP16 to SP16d, East of SP16d, South East of Circonvallazione Zelo Buon Persico, North East of via Dante</li> <li>— Municipality of GALGAGNANO (LO)</li> <li>— Municipality of SPINO D'ADDA (CR): South of Canale Vacchelli, West of SP1, viale della Vittoria, South and West of SP1</li> </ul>	<p>From 17.9.2017 to 25.9.2017</p>
<ul style="list-style-type: none"> <li>— Municipality of RONCO ALL'ADIGE (VR): North and East of SP19</li> <li>— Municipality of ZIMELLA (VR): West of via Fedriga, North of via Fiorette, via Baffa, North and West of via S. Martino; East of SP500, North of via Callesella, East of via Larga</li> <li>— Municipality of VERONELLA (VR): West of via Brusio; North of Piazza S. Gregorio, West of via Fiume, West of SP7b, North of country road that connect SP7b to SP18</li> <li>— Municipality of COLOGNA VENETA (VR): East and South of via S. Giustina, East of SP7</li> <li>— Municipality of BELFIORE (VR): East of SP39, North of str. Porcilana, East of SP38b</li> <li>— Municipality of SAN BONIFACIO (VR): South of via Circonvallazione, East of via Masetti, South East of SP38, East of SP7 and Cavalcavia Monteforte, South of SR11</li> <li>— Municipality of ARCOLE (VR)</li> <li>— Municipality of LONIGO (VI): South of via Trassegno, East of via Albaria, South of via Fontane</li> <li>— Municipality of ALONTE (VI)</li> <li>— Municipality of ORGIANO (VI): West of via Borgomale, via Cree Storte, via Ca' Muzzana, via Perara, South West of via S. Feliciano</li> <li>— Municipality of ASIGLIANO VENETO (VI)</li> <li>— Municipality of PRESSANA (VR): North East of SP40b, East of SP500</li> <li>— Municipality of ROVEREDO DI GUA' (VR): South of via Ca' Dolfina, West of Scolo Giacomelli Centrale and Scolo Sperona</li> <li>— Municipality of MONTAGNANA: West of SP90 and North of SR10</li> </ul>	<p>23.9.2017</p>
<ul style="list-style-type: none"> <li>— Municipality of LEGNAGO (VR): South West of SP46, South of SP46b, via Valverde, East of via Scolo Pisani, South East of via Villabona, West of SS434</li> <li>— Municipality of CEREIA (VR): South West of Località Muri</li> <li>— Municipality of CASALEONE (VR): South and East of via Carpania</li> <li>— Municipality of PRESSANA (VR): South- of SP40b, East of SP500, North of SP40b, via Braggio, West of SP500</li> <li>— Municipality of MINERBE (VR): North East of via Nuvolea, North of SR10, East of via Serraglio, via Amedeo di Savoia, North of SP41, East of via Comuni, SP500</li> </ul>	<p>24.9.2017</p>

Area comprising:	Date until applicable in accordance with Article 31 of Directive 2005/94/EC
<ul style="list-style-type: none"> <li>— Municipality of BOSCHI SANT'ANNA (VR): South of via Scaranella, East of via Olmo, South of via Faro, East of SP42A</li> <li>— Municipality of BEVILACQUA (VR)</li> <li>— Municipality of TERRAZZO (VR): West of via Brazzetto, North West of SP42, West of SP41</li> <li>— Municipality of VILLA BARTOLOMEA (VR): North-East of SP47, West of via Beccascogliera, East of via Argine della Valle, West of via Zanardi, via Ferranti, North of via Arzaron, via Rodigina, West of via Brazzetto</li> </ul>	
<ul style="list-style-type: none"> <li>— Municipality of ZEVIO (VR): West of via S. Spirito, North of via Botteghe, West of via Bertolda East of via Campagnol, via Casa Nuova, via Fienil Molino, South of via Speranza, East of via Monti Lessini, East and North of via Pontoncello</li> <li>— Municipality of PALU' (VR): South West of via Rizza, South West and South of Località Stagnà Nuovo/Vecchio, North East of via Piave, via Belledonne, West and South of SP20</li> <li>— Municipality of OPPEANO (VR): East of SS434, South of via Spinetti, East of via Marco Biagi, South of via Ferruccio Busoni, East of SP2; and North East and North West of SP21, South and West of via degli Oppi, North and West of via Fornello, via Spin, via 44a</li> <li>— Municipality of SAN MARTINO BUON ALBERGO (VR): South of Marco Pantani pedestrian cycle track, via Casotton, South east of via Giarrette, East of via Pantina, via Coetta, South West of and South East of via Ferraresa, South of via Mariona, East of SP20</li> <li>— Municipality of LAVAGNO (VR): South of St. Porcilana, East of SP20</li> <li>— Municipality of COLOGNOLA AI COLLI (VR): South and West of SP37, South of via Peschieria, SP37</li> <li>— Municipality of SOAVE (VR): South of Località Val Ponsara, via Mondello, West of via Bassano, South of via Carantiga, West of via Ca' del Bosco, East of SP37a, South of via Ugo Foscolo, via Bissoncello di Sopra, via Ghiaia</li> <li>— Municipality of CALDIERO (VR)</li> <li>— Municipality of BOVOLONE (VR): North and West of via Capitello, North of SP21</li> <li>— Municipality of BELFIORE (VR): West of SP39, South of str. Porcilana, West of SP38b</li> <li>— Municipality of SAN BONIFACIO (VR): North of via Circonvalazione, West of via Masetti, North West of SP38, West of SP7, Cavalcavia Monteforte, North of SR11, West of Francesco Perlini</li> </ul>	22.9.2017
<ul style="list-style-type: none"> <li>— Municipality of CASALMAIOCCO (LO)</li> <li>— Municipality of TRIBIANO (MI)</li> <li>— Municipality of VAIANO CREMASCO (CR)</li> <li>— Municipality of SORDIO (LO)</li> <li>— Municipality of LODI (LO)</li> <li>— Municipality of MELEGNANO (MI): North East of SS9, East of via Vittorio Veneto, via Camillo Benso di Cavour, Vicolo Monastero, via Stefano Bersani, South of via Frisi, via Conciliazione, East of viale S. Predabissi, East and South of via Giardino</li> <li>— Municipality of CERRO AL LAMBRO (MI): East of SP17</li> <li>— Municipality of BOFFALORA D'ADDA (LO): East of SP1, SP25</li> <li>— Municipality of CASALETTO LODIGIANO (LO): East of SP17, North of SP115</li> </ul>	25.9.2017



Area comprising:	Date until applicable in accordance with Article 31 of Directive 2005/94/EC
<ul style="list-style-type: none"> <li>— Municipality of SALERANO SUL LAMBRO (LO): North of SP115, East of SP204, North of SP140</li> <li>— Municipality of LODI VECCHIO (LO)</li> <li>— Municipality of PIEVE FISSIRAGA (LO): North and North West of SP235</li> <li>— Municipality of CORNEGLIANO LAUDENSE (LO): North West of SP235</li> <li>— Municipality of MULAZZANO (LO): South West of SP202, SP158, West of via Quartiano, South West of via Roma, Piazza della Chiesa, West of via Cassino, SP 158</li> <li>— Municipality of ZELO BUON PERSICO (LO): East of SP16, North and West of country road that connect SP16 to SP16d, West of SP16d, North West of Circonvallazione Zelo Buon Persico, South West of via Dante</li> <li>— Municipality of VIZZOLO PREDABISSI (MI)</li> <li>— Municipality of SAN ZENONE AL LAMBRO (MI)</li> <li>— Municipality of TAVAZZANO CON VILLAVESCO (LO)</li> <li>— Municipality of MONTANASO LOMBARDO (LO)</li> <li>— Municipality of SPINO D'ADDA (CR): North of Canale Vacchelli, East of SP1, viale della Vittoria, North and East of SP1</li> <li>— Municipality of MERLINO (LO)</li> <li>— Municipality of COMAZZO (LO)</li> <li>— Municipality of DRESANO (MI)</li> <li>— Municipality of COLTURANO (MI)</li> <li>— Municipality of PAULLO (MI)</li> <li>— Municipality of MONTE CREMASCO (CR)</li> <li>— Municipality of DOVERA (CR)</li> <li>— Municipality of PANDINO (CR)</li> <li>— Municipality of SAN GIULIANO MILANESE (MI): East of SS9, South and East of via L. Tolstoi, East of str. Vicinale Cascinetta, South east of str. Provinciale Mediglia S.Giuliano</li> <li>— Municipality of MEDIGLIA (MI): West of str. Provinciale Bettola Sondrio, South of Cascina Meleganello, East of via Piero Capponi, via della Liberazione</li> <li>— Municipality of PANTIGLIATE (MI)</li> <li>— Municipality of LISCATE (MI): South of SP14</li> <li>— Municipality of TRUCCAZZANO (MI): South of SP14</li> <li>— Municipality of RIVOLTA D'ADDA (CR): South of SP14, SP185</li> <li>— Municipality of CRESPIATICA (LO)</li> <li>— Municipality of CORTE PALASIO (LO)</li> <li>— Municipality of SETTALA (MI)</li> <li>— Municipality of AGNADELLO (CR): West of SP472, SP34, South of SP34</li> <li>— Municipality of PALAZZO PIGNANO (CR)</li> </ul>	
<ul style="list-style-type: none"> <li>— Municipality of CHIGNOLO PO (PV): West of SP193, North of via Don Sbarsi, West of via Mariotto</li> <li>— Municipality of BADIA PAVESE (PV): East of via Guglielmo Marconi</li> <li>— Municipality of SAN COLOMBANO AL LAMBRO (MI): South of SP19, viale F. Petrarca, West of SP23, South of S. Giovanni di Dio, West of via Privata Colombana, via del Pilastrello, West of str. comunale per Campagna</li> </ul>	From 1.9.2017 to 30.9.2017

Area comprising:	Date until applicable in accordance with Article 31 of Directive 2005/94/EC
<ul style="list-style-type: none"> <li>— Municipality of RONCO ALL'ADIGE (VR): West of SP19, East of via Quadrelli, South and West of via Valmarana, South of via Casona, South and East of via Ponzilovo, East of via Lasta, West and South of via Pezze Albaro, East of via Mazza</li> <li>— Municipality of PALU' (VR): East of via Piave, South East of via Casoti, East of via Ponte Rosso, South of Località Motte I/II.</li> <li>— Municipality of OPPEANO (VR): East of SP20, North of SP44</li> </ul>	From 14.9.2017 to 29.9.2017
<ul style="list-style-type: none"> <li>— Municipality of ALBAREDO D'ADIGE (VR): South of via Caldasette, East of via Palazzetto, via Presina, North East of via Villaraspa, via Carotta, via Pascoloni</li> <li>— Municipality of VERONELLA(VR): East and North West of via Giavone</li> </ul>	From 15.9.2017 to 29.9.2017
<ul style="list-style-type: none"> <li>— Municipality of CEREIA (VR): South of SP44c, West of via Palesella, South of via Guanti, East of SP45, South of via Cesare Battisti, East of via Paride da Cerea, East and North of SR10</li> <li>— Municipality of ANGIARI (VR): South East of SP44c, East of via Lungo Bussè, South and East and North of via Boscarola</li> <li>— Municipality of BONAVIGO (VR): West and South of SP44b</li> <li>— Municipality of LEGNAGO (VR): North West of via Palazzina, SP46c dir, via G.B. Giudici, North of via Corradina, West of via Lungo Bussè, North West of via Regina Margherita, North of via XXIV Maggio, East of via Passeggio, via Disciplina, North West and West of via degli Alpini, via Padana Inferiore Est, North West of SR10, West of via Custoza, South East of via S. Vito, South of SP44b</li> </ul>	From 16.9.2017 to 29.9.2017
<ul style="list-style-type: none"> <li>— Municipality of CHIGNOLO PO (PV): East of SP193, South of via Don Sbarsi, East of via Mariotto</li> <li>— Municipality of MONTICELLI PAVESE (PV)</li> <li>— Municipality of ROTTOFRENO (PC): North of E70</li> <li>— Municipality of SARMATO (PC): North of E70</li> <li>— Municipality of PIEVE PORTO MORONE (PV): East of SP412, South of SP193</li> <li>— Municipality of BADIA PAVESE (PV): South East of SP193, via Roma</li> </ul>	From 22.9.2017 to 30.9.2017
<ul style="list-style-type: none"> <li>— Municipality of SAN PIETRO DI MORUBIO (VR): East of via Casari, via Borgo, via Farfusola</li> <li>— Municipality of ROVERCHIARA (VR): South of via Molaro, South West of via Anesi, West of via Borcola, South of via Viola, West of via Bussè, South of SP3, South and West of via Casalino</li> <li>— Municipality of CEREIA (VR): North of SP44c, East of via Polesella, North of via Guanti, West of SP45, North of via Cesare Battisti, East of SP2, via Isolella Bassa</li> <li>— Municipality of ANGIARI (VR): North West of SP44c, West of via Lungo Bussè, North and West and South of via Boscarola</li> </ul>	From 21.9.2017 to 29.9.2017
<ul style="list-style-type: none"> <li>— Municipality of SAN PIETRO DI MORUBIO (VR): West of via Casari, via Borgo, via Farfusola</li> <li>— Municipality of ROVERCHIARA (VR): North of via Molaro, North East of via Anesi, East of via Borcola, North of via Viola, East of via Bussè, North of SP3, a North East of via Casalino</li> <li>— Municipality of CEREIA (VR): South and West of SR10, West of via Paride da Cerea, West of SP2, via Isolella Bassa; and North East of Località Muri</li> </ul>	29.9.2017

Area comprising:	Date until applicable in accordance with Article 31 of Directive 2005/94/EC
<ul style="list-style-type: none"> <li>— Municipality of BONAVIDEO (VR): East and North of SP44b</li> <li>— Municipality of LEGNAGO (VR): South East of via Palazzina, SP46c dir, via G.B. Giudici, South of via Corradina, East of via Lungo Bussè, South East of viale Regina Margherita, South of via XXIV Maggio, West of via Passeggio, via Disciplina, South East and East of via degli Alpini, via Padana Inferiore Est, South East of SR10, East of via Custoza, North West of via S. Vito, North of SP44b; and North East of SP46, North of SP46b, via Valverde, West of via Scolo Pisani, North West of via Villabona, East of SS434</li> <li>— Municipality of ALBAREDO D'ADIGE (VR): West of SP18, South of via Caldasette, West of via Palazzetto, via Presina, South West of via Villaraspa, via Carotta, via Pascoloni</li> <li>— Municipality of RONCO ALL'ADIGE (VR): South of SP19, South East and South West of SP21, East of via Valle Tomba, via Paluvecchio</li> <li>— Municipality of PALU' (VR): South West of via Piave, via Belledonne, East and North of SP20</li> <li>— Municipality of OPPEANO (VR): South West and South East of SP21, North and East of via degli Oppi, South and East of via Fornello, via Spin, via 44a, South West and West of SP20, South West of SP44</li> <li>— Municipality of ISOLA RIZZA (VR)</li> <li>— Municipality of BOVOLONE (VR): East of via Dosso, viale del Silenzio, North East of SP2, South and East of via Capitello, South of SP21</li> <li>— Municipality of SALIZZOLE (VR): East of SP48c, South of SP20, East of via Capitello, South East of via Pascoletto</li> <li>— Municipality of CONCAMARISE (VR)</li> <li>— Municipality of NOGARA (VR): East of SP48c, North of SR10</li> <li>— Municipality of SANGUINETTO (VR)</li> <li>— Municipality of CASALEONE (VR): North and West of via Carpania</li> <li>— Municipality of VERONELLA (VR): South East of via Giavone</li> <li>— Municipality of PRESSANA (VR): West of SP500, South of via Braggio, via SP40b</li> <li>— Municipality of MINERBE (VR): South West of via Nuvoletta, South of SR10, West of via Serraglio, via Amedeo di Savoia, South of SP41, West of via Comuni, SP500</li> <li>— Municipality of BOSCHI SANT'ANNA (VR): North of via Scaranella, West of via Olmo, North of via Faro, West of SP42A</li> </ul>	
<ul style="list-style-type: none"> <li>— Municipality of ROTTOFRENO (PC): South of E70</li> <li>— Municipality of SARMATO (PC): South of E70</li> <li>— Municipality of PIEVE PORTO MORONE (PV): West of SP412, North of SP193</li> <li>— Municipality of BADIA PAVESE (PV): North West of SP193, via Roma, via Guglielmo Marconi</li> <li>— Municipality of GRAGNANO TREBBIENSE (PC): North of SP7, SP11</li> <li>— Municipality of BORGONOVO VAL TIDONE (PC): North of SP11, East of SP412R, North and East of via Montanata</li> <li>— Municipality of CASTEL SAN GIOVANI (PC)</li> <li>— Municipality of ARENA PO (PV): East of SP199, North of SP75, North East of SP144</li> <li>— Municipality of SAN ZENONE AL PO (PV): East and South of SP35</li> <li>— Municipality of COSTA DE' NOBILI (PV): East of SP31</li> </ul>	30.9.2017'

Area comprising:	Date until applicable in accordance with Article 31 of Directive 2005/94/EC
<ul style="list-style-type: none"><li>— Municipality of ZERBO (PV)</li><li>— Municipality of SANTA CRISTINA E BISSONE (PV)</li><li>— Municipality of MIRADOLO TERME (PV): South of via Privata dei Colli, West of SP189</li><li>— Municipality of GRAFFIGNANA (LO): South of SP125, East of SP19, South of via Monteleone</li><li>— Municipality of SAN COLOMBANO AL LAMBRO (MI): North of SP19, viale F. Petrarca, East of SP23, North of via S. Giovanni di Dio, East of via Privata Colombana, via del Pilastrello, East of str. comunale per Campagna</li><li>— Municipality of BORGHETTO LODIGIANO (LO): West and South of SP125, South of SP23, South of SP125</li><li>— Municipality of BREMBIO (LO): South of SP168, West of SP141</li><li>— Municipality of LIVRAGA (LO)</li><li>— Municipality of ORIO LITTA (LO)</li><li>— Municipality of OSPEDALETTO LODIGIANO (LO)</li><li>— Municipality of SENNA LODIGIANA (LO)</li><li>— Municipality of CALENDASCO (PC)</li><li>— Municipality of GUARDAMIGLIO (LO): West of Po river</li><li>— Municipality of SAN ROCCO AL PORTO (LO): West of Po river</li><li>— Municipality of SOMAGLIA (LO): West of SP223, SP142</li></ul>	

# RECOMMENDATIONS

## COMMISSION RECOMMENDATION (EU) 2017/1520

of 26 July 2017

**regarding the rule of law in Poland complementary to Recommendations (EU) 2016/1374 and (EU) 2017/146**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 292 thereof,

Whereas:

- (1) On 27 July 2016, the Commission adopted a Recommendation regarding the rule of law in Poland <sup>(1)</sup>, setting out its concerns on the situation of the Constitutional Tribunal and recommending how these should be addressed. On 21 December 2016, the Commission adopted a complementary Recommendation regarding the rule of law in Poland <sup>(2)</sup>.
- (2) The Recommendations of the Commission were adopted under the Rule of Law Framework <sup>(3)</sup>. The Rule of Law Framework sets out how the Commission will react should clear indications of a threat to the rule of law emerge in a Member State of the Union and explains the principles which the rule of law entails. The Rule of Law Framework provides guidance for a dialogue between the Commission and the Member State in order to prevent the emergence of a systemic threat to the rule of law that could develop into a 'clear risk of a serious breach' which would potentially trigger the use of the 'Article 7 TEU Procedure'. Where there are clear indications of a systemic threat to the rule of law in a Member State, the Commission can initiate a dialogue with that Member State under the Rule of Law Framework.
- (3) The European Union is founded on a common set of values enshrined in Article 2 of the Treaty on European Union ('TEU'), which include the respect for the rule of law. The Commission, beyond its task to ensure the respect of EU law, is also responsible, together with the European Parliament, the Member States and the Council, for guaranteeing the common values of the Union.
- (4) Case law of the Court of Justice of the European Union and of the European Court of Human Rights, as well as documents drawn up by the Council of Europe, building notably on the expertise of the European Commission for Democracy through Law ('Venice Commission'), provides a non-exhaustive list of these principles and hence defines the core meaning of the rule of law as a common value of the Union in accordance with Article 2 TEU. Those principles include legality, which implies a transparent, accountable, democratic and pluralistic process for enacting laws; legal certainty; prohibition of arbitrariness of the executive powers; independent and impartial courts; effective judicial review including respect for fundamental rights; and equality before the law <sup>(4)</sup>. In addition to upholding those principles and values, State institutions also have the duty of loyal cooperation.
- (5) In its Recommendation of 27 July 2016, the Commission explained the circumstances in which it decided, on 13 January 2016, to examine the situation under the Rule of Law Framework and in which it adopted, on 1 June 2016, an Opinion concerning the rule of law in Poland. The Recommendation also explained that the exchanges between the Commission and the Polish Government were not able to resolve the concerns of the Commission.
- (6) In its Recommendation, the Commission found that there was a systemic threat to the rule of law in Poland and recommended that the Polish authorities take appropriate action to address this threat as a matter of urgency.

<sup>(1)</sup> Commission Recommendation (EU) 2016/1374 of 27 July 2016 regarding the rule of law in Poland (OJ L 217, 12.8.2016, p. 53).

<sup>(2)</sup> Commission Recommendation (EU) 2017/146 of 21 December 2016 regarding the rule of law in Poland complementary to Recommendation (EU) 2016/1374 (OJ L 22, 27.1.2017, p. 65).

<sup>(3)</sup> Communication 'A new EU Framework to Strengthen the Rule of Law', COM(2014) 158 final.

<sup>(4)</sup> See COM(2014) 158 final, Section 2, Annex I.

- (7) In its Recommendation of 21 December 2016, the Commission took into account the latest developments in Poland that had occurred since the Commission's Recommendation of 27 July 2016. The Commission found that whereas some of the issues raised in its last Recommendation had been addressed, important issues remained unresolved, and new concerns had arisen in the meantime. The Commission also found that the procedure which had led to the appointment of a new President of the Tribunal raised serious concerns as regards the rule of law. The Commission concluded that there continued to be a systemic threat to the rule of law in Poland. The Commission invited the Polish Government to solve the problems identified as a matter of urgency, within 2 months, and to inform the Commission of the steps taken to that effect. The Commission noted that it remained ready to pursue a constructive dialogue with the Polish Government on the basis of the Recommendation.
- (8) On 20 February 2017, within the time limit of 2 months, the Polish Government replied to the Commission's complementary Recommendation. The reply disagrees with all the issues raised in the Recommendation and does not announce any new action to address the concerns identified by the Commission. The reply emphasises that the appointment of the new President of the Tribunal on 21 December 2016 as well as the entry into force of provisions of the law on Organisation and Proceedings before the Constitutional Tribunal, the law on the Status of Judges of the Constitutional Tribunal and the law Implementing the law on Organisation and Proceedings and the law on the Status of Judges have created the proper conditions for the functioning of the Tribunal after a period of paralysis caused by political quarrels of politicians of the opposition in which the former President of the Tribunal was also engaged.
- (9) On 21 December 2016, Mr Mariusz Muszyński, who was nominated by the 8th term of the Sejm without a valid legal basis and was admitted to take up the function of judge in the Constitutional Tribunal on 20 December 2016 by the then acting President of the Tribunal, was appointed to substitute the new President of the Tribunal in case of her absence.
- (10) On 10 January 2017, the Vice-President of the Constitutional Tribunal was obliged by the newly appointed President of the Tribunal to use his remaining leave. On 24 March 2017, the President of the Tribunal prolonged the leave of absence of the Vice-President of the Tribunal until the end of June, despite the request of the Vice-President to resume his work as judge in the Tribunal as of 1 April 2017.
- (11) On 12 January 2017, the Minister of Justice launched a procedure before the Constitutional Tribunal to review the constitutionality of the election, in 2010, of three judges of the Tribunal. Following this procedure, cases have no longer been assigned to these three judges.
- (12) On 16 January 2017, the President of the Venice Commission issued a statement expressing his concerns about the worsening situation within the Tribunal.
- (13) On 20 January 2017, the Government announced a comprehensive reform of the judiciary. The Minister of Justice presented a draft law on the National Council for the Judiciary.
- (14) On 25 January 2017, the Minister of Justice presented a draft law on the National School of Judiciary and Public Prosecution.
- (15) On 10 February 2017, the Court of Appeals in Warsaw referred a question of law to the Supreme Court which relates to the assessment of the legality of the appointment of judge Julia Przyłębska to the office of President of the Constitutional Tribunal. The Supreme Court has not yet rendered a judgement.
- (16) On 24 February 2017, the Sejm appointed a new judge in replacement to a judge who resigned from his position in the Constitutional Tribunal to become a judge in the Polish Supreme Court.
- (17) On 1 March 2017, a group of 50 members of the Sejm asked the Constitutional Tribunal to establish the unconstitutionality of the provisions of the law on the Supreme Court on the basis of which the First President of the Supreme Court had been elected.
- (18) On 13 March 2017, the National Council for the Judiciary withdrew four motions lodged with the Constitutional Tribunal due to the changes introduced to the composition of the relevant hearing panels following a decision by the President of the Tribunal.

- (19) On 12 April 2017, a group of 50 members of the Sejm presented a draft law amending the law on Common Courts Organisation.
- (20) On 11 May 2017, the Sejm adopted the law amending the law on the National School of Judiciary and Public Prosecution, the law on Ordinary Courts Organisation and certain other laws ('law on the National School of Judiciary'). The law was published on 13 June 2017.
- (21) On 16 May 2017, the Commission informed the General Affairs Council on the situation of the rule of law in Poland. There was broad agreement around the table that the rule of law is a common interest and a common responsibility of EU institutions and Member States. A very broad majority of Member States supported the Commission's role and efforts to address this issue. Member States called upon the Polish government to resume the dialogue with the Commission with a view to resolving the pending issues and looked forward to being updated as appropriate in the General Affairs Council.
- (22) On 23 June 2017, the European Council generally endorsed the country-specific recommendations addressed to the Member States in the context of the 2017 European Semester. The recommendation addressed to Poland contains a recital underlining that 'Legal certainty and trust in the quality and predictability of regulatory, tax and other policies and institutions are important factors that could allow an increase in the investment rate. The rule of law and an independent judiciary are also essential in this context. Addressing serious concerns related to the rule of law will help improve legal certainty'. On 11 July 2017, the country-specific recommendations were adopted by the Economic and Financial Affairs Council <sup>(1)</sup>.
- (23) On 5 July 2017, following the end of the mandate of the previous Vice-President of the Constitutional Tribunal, the President of the Republic appointed a new Vice-President of the Tribunal, Mr Mariusz Muszyński, despite the fact that he was one of the three judges in the Tribunal appointed unlawfully.
- (24) On 5 July 2017, a group of members of the Sejm asked the Constitutional Tribunal to establish the unconstitutionality of provisions enabling the Supreme Court to assert the validity of the appointment of the President of the Tribunal by the President of the Republic.
- (25) On 12 July 2017, a group of members of the Sejm submitted a draft law on the Supreme Court which stipulated, inter alia, the dismissal and forced retirement of all Supreme Court judges, save those indicated by the Minister of Justice.
- (26) On 13 July 2017, the Commission wrote to the Polish Government to express its concerns about the recent legislative proposals relating to the judicial system and to the Supreme Court, underlined the importance of refraining from adopting these proposals in order to allow for a meaningful dialogue, and invited the Polish Foreign Minister and Polish Justice Minister to a meeting to that end at their earliest convenience. On 14 July 2017, the Polish Government wrote to the Commission reiterating its previous explanations on the situation of the Constitutional Tribunal.
- (27) On 15 July 2017, the Senate approved the law amending the law on the National Council for the Judiciary and certain other laws ('law on the National Council for the Judiciary') and the law amending the law on the Ordinary Courts Organisation ('law on Ordinary Courts Organisation').
- (28) On 19 July 2017, the Polish Government replied to the Commission's letter of 13 July 2017, referring to the current legislative reforms of the Polish judiciary and asking the Commission to present its concrete concerns relating to the new laws in order to have a further discussion.
- (29) On 22 July 2017, the Senate approved the law on the Supreme Court.
- (30) On 24 July 2017, the President of the Republic delivered a statement about his decision to refer back to the Sejm the law on the Supreme Court and the law on the National Council for the Judiciary.
- (31) On 25 July 2017, the President of the Republic signed the law amending the law on the Ordinary Courts Organisation,

<sup>(1)</sup> Recital 14 of the Council Recommendation of 11 July 2017 on the 2017 National Reform Programme of Poland and delivering a Council opinion on the 2017 Convergence Programme of Poland (OJ C 261, 9.8.2017, p. 88).

HAS ADOPTED THIS RECOMMENDATION:

1. The Republic of Poland should duly take into account the Commission's analysis set out hereafter and take the measures figuring in Section 5 of this Recommendation so that the concerns identified are addressed within the time limit set.

#### **1. SCOPE OF THE RECOMMENDATION**

2. The present Recommendation complements the Recommendations of 27 July 2016 and 21 December 2016. It examines which of the concerns raised in those recommendations have been addressed, sets out the remaining concerns and lists a number of new concerns of the Commission with regard to the rule of law in Poland which have arisen since then. On this basis, it makes recommendations to the Polish authorities on how to address these concerns. The concerns relate to the following issues:
  - (1) the lack of an independent and legitimate constitutional review;
  - (2) the adoption by the Polish Parliament of new legislation relating to the Polish judiciary which raises grave concerns as regards judicial independence and increases significantly the systemic threat to the rule of law in Poland:
    - (a) the law amending the law on the National School of Judiciary and Public Prosecution, the law on Ordinary Courts Organisation and certain other laws ('law on the National School of Judiciary'); published in the Polish Official Journal on 13 June 2017 and which entered into force on 20 June 2017;
    - (b) the law amending the law on the National Council for the Judiciary and certain other laws ('law on the National Council for the Judiciary'); approved by the Senate on 15 July 2017; this law was referred back to the Sejm on 24 July 2017.
    - (c) the law amending the law on the Ordinary Courts Organisation ('law on Ordinary Courts Organisation'); approved by the Senate on 15 July 2017 and signed by the President on 25 July;
    - (d) the law on the Supreme Court; approved by the Senate on 22 July 2017; this law was referred back to the Sejm on 24 July 2017.

#### **2. THE LACK OF AN INDEPENDENT AND LEGITIMATE CONSTITUTIONAL REVIEW**

3. In its Recommendation of 21 December 2016, the Commission recommended that the Polish authorities take the following actions already requested in its Recommendation of 27 July 2016:
  - (a) implement fully the judgments of the Constitutional Tribunal of 3 and 9 December 2015 which requires that the three judges that were lawfully nominated in October 2015 by the previous legislature can take up their function of judge in the Constitutional Tribunal, and that the three judges nominated by the new legislature without a valid legal basis do not take up the post of judge without being validly elected; for this reason, the President of the Republic is required to urgently take the oath of the three judges elected by the previous legislature;
  - (b) publish and implement fully the judgments of the Constitutional Tribunal of 9 March 2016 and the judgment of 11 August 2016 concerning the law of 22 July 2016 on the Constitutional Tribunal and other judgments rendered after that date and future judgments;
  - (c) ensure that any reform of the law on the Constitutional Tribunal respects the judgments of the Constitutional Tribunal, takes the Opinions of the Venice Commission fully into account and ensures that the effectiveness of the Constitutional Tribunal as a guarantor of the Constitution is not undermined;
  - (d) refrain from actions and public statements which could undermine the legitimacy and efficiency of the Constitutional Tribunal.
4. In addition to these actions, the Commission recommended that the Polish authorities:
  - (a) ensure that the Constitutional Tribunal can as a matter of urgency effectively review the constitutionality of the law on the Status of Judges, the law on Organisation and Proceedings and the Implementing law, and that the judgments concerned are published without delay and implemented fully;



- (b) ensure that no appointment of the new President of the Constitutional Tribunal take place as long as the judgments by the Constitutional Tribunal on the constitutionality of the new laws have not been published and implemented fully, and as long as the three judges that were lawfully nominated in October 2015 by the 7th term of the Sejm have not taken up their judicial functions in the Tribunal;
  - (c) ensure that as long as a new President of the Constitutional Tribunal has not been lawfully appointed, he is replaced by the Vice-President of the Tribunal and not by an acting President, or by the person appointed as President of the Tribunal on 21 December 2016.
5. The Commission observes that none of the recommended actions set out by the Commission have been implemented:
- (a) the three judges that were lawfully nominated in October 2015 by the previous legislature have still not been able to take up their function of judge in the Constitutional Tribunal. By contrast, the three judges nominated by the 8th term of the Sejm without a valid legal basis were admitted to take up their function by the acting President of the Tribunal;
  - (b) three important judgements of the Constitutional Tribunal of 9 March 2016, 11 August 2016 and 7 November 2016 have still not been published and have been removed from the register of the Tribunal which is accessible from its website. Other judgements which were not yet published at the time of the adoption of the Recommendation of 21 December 2016 have by contrast been published on 29 December 2016 in the Journal of Laws;
  - (c) the law on the status of judges, the law on Organisation and Proceedings and the Implementing law, have still not been subject, as a matter of urgency, to the effective review of their constitutionality by the Constitutional Tribunal and the appointment of the new President of the Constitutional Tribunal took place before such review can occur;
  - (d) after the end of the mandate of the former President of the Constitutional Tribunal, a new President has still not been lawfully appointed. The former President was not replaced by the Vice-President of the Tribunal but by an acting President and, subsequently, by the person appointed as President of the Tribunal on 21 December 2016.
6. As explained in its Recommendation of 21 December 2016 <sup>(1)</sup>, the Commission considers that the procedure which led to the appointment of a new President of the Tribunal is fundamentally flawed as regards the rule of law. The procedure was initiated by an acting President whose appointment raised serious concerns as regards the principles of the separation of powers and the independence of the judiciary as protected by the Polish Constitution. Furthermore, the fact that the procedure allowed the three 'December judges' unlawfully nominated by the new legislature of the Sejm to participate in the process rendered the entire selection process unconstitutional. Similarly, the fact that the lawfully elected 'October judges' could not participate in the process equally had an impact on the outcome, and therefore vitiated the process. Moreover, the very short notice for the convocation of the General Assembly and the refusal to postpone the meeting raised serious concerns. Finally, the election of candidates by six judges only was incompatible with the judgment of the Tribunal of 7 November 2016 according to which Article 194(2) of the Constitution must be understood as providing that the President of the Tribunal shall be appointed by the President of the Republic from amongst candidates which have obtained a majority vote in the General Assembly of the Tribunal.
7. The Commission also notes that following the appointment of the President of the Constitutional Tribunal a number of developments have further undermined the legitimacy of the Tribunal. In particular: the Vice-President of the Tribunal, whose position is recognised in the Constitution, was obliged by the newly appointed President of the Tribunal to use his remaining leave until the end of his mandate; as a consequence of an action brought by the Prosecutor General to challenge the validity of the election in 2010 of three judges of the Constitutional Tribunal, these judges were subsequently excluded from the judicial activities of the Tribunal; the new President of the Tribunal changed the composition of benches hearing cases and cases were reassigned to panels consisting in part of unlawfully appointed judges; requests, in particular from the Ombudsman, aiming at removing judges unlawfully appointed from panels adjudicating cases were dismissed; an important number of judgements was delivered by benches which included unlawfully appointed judges; finally, after the end of the mandate of the Vice-President, an unlawfully appointed judge was appointed as the new Vice-President of the Tribunal.
8. These developments have de facto led to a complete recomposition of the Constitutional Tribunal outside the normal constitutional process for the appointments of judges.

<sup>(1)</sup> See Sections 5.3 and 5.4 of the Recommendation.

9. The reply of the Polish authorities received on 20 February 2017 to the Commission's complementary Recommendation does not alleviate the concerns of the Commission, and does not announce any concrete measures to address the issues raised by the Commission. The reply argues that the new laws on the Constitutional Tribunal and the appointment of the new President of the Constitutional Tribunal have created the proper conditions for its functioning after a period of paralysis caused by political quarrels of politicians of the opposition. As regards the composition of the Tribunal the reply, like the previous reply to the Recommendation of 27 July 2016, denies any effect to the judgments of the Constitutional Tribunal of 3 and 9 December 2015. Concerning the selection procedure for the President of the Constitutional Tribunal, the reply ignores the judgment of 7 November 2016 according to which the Constitution requires that the President of the Tribunal shall be appointed from amongst candidates which have obtained a majority vote in the General Assembly of the Tribunal. As to the role of the Vice-President of the Tribunal, the reply disregards the fact that the Constitution explicitly recognises the position of Vice-President which is subject to the same appointment procedure as the President of the Tribunal. Regarding the appointment of an acting President of the Constitutional Tribunal, the reply fails to identify any legal basis in the Constitution, and considers that it was an exceptional adjustment mechanism dictated by extraordinary circumstances.
10. In conclusion, the Commission considers that the independence and legitimacy of the Constitutional Tribunal are seriously undermined and, consequently, the constitutionality of Polish laws can no longer be effectively guaranteed <sup>(1)</sup>. This situation is particularly worrying for the respect of the rule of law since, as explained in the previous Recommendations, a number of particularly sensitive new legislative acts have been adopted by the Polish Parliament, such as a new Civil Service Act <sup>(2)</sup>, a law amending the law on the Police and certain other laws <sup>(3)</sup> and laws on the Public Prosecution Office <sup>(4)</sup>, a law on the Ombudsman and amending certain other laws <sup>(5)</sup>, a law on the National Council of Media <sup>(6)</sup> and an anti-terrorism law <sup>(7)</sup>.
11. Moreover, the adverse impact on the rule of law of the lack of an independent and legitimate constitutional review in Poland is now seriously aggravated by the fact that the constitutionality of the new laws relating to the Polish judicial system mentioned above in paragraph 2(2) and analysed further below in Section 3 can no longer be verified and guaranteed by an independent constitutional tribunal.

### 3. THE THREATS TO JUDICIAL INDEPENDENCE

12. The law on the National School of Judiciary, the law on the National Council for the Judiciary, the law on the Ordinary Courts Organisation and the law on the Supreme Court contain a number of provisions which raise grave concerns as regards the principles of judicial independence and separation of powers.
13. The Commission notes that a number of statements or opinions, including from the Supreme Court, the Ombudsman and the National Council for the Judiciary, have expressed concerns as regards the compatibility of the new laws with the Constitution.

#### 3.1. The assistant judges

14. Under Articles 2(1) and 2(36) of the law amending the law on the National School of Judiciary and Public Prosecution, the law on Ordinary Courts Organisation and certain other laws, assistant judges are entrusted with the tasks of judge in district courts for a period of 4 years. In particular, assistant judges will be allowed to act as single judges in district courts.

<sup>(1)</sup> According to Article 188 of the Constitution, the Constitutional Tribunal is to rule on the conformity of statutes and international agreements to the Constitution, on the conformity of a statute to ratified international agreements whose ratification required prior consent granted by statute, on the conformity of legal provisions issued by central State organs to the Constitution, ratified international agreements and statutes, on the conformity to the constitution of the purposes or activities of political parties, and on complaints concerning constitutional infringements. According to Article 189 of the Constitution, the Constitutional Tribunal shall also settle disputes over authority between central constitutional organs of the State.

<sup>(2)</sup> Law of 30 December 2015 amending the law on Civil Service and certain other acts, published in Official Journal on 8 January 2016, item 34.

<sup>(3)</sup> Law of 15 January 2016 amending the law on Police and other laws, published in Official Journal on 4 February 2016, item 147.

<sup>(4)</sup> Law of 28 January 2016 on the Prosecutor's Office, published in Official Journal on 15 February 2016, item 177; law of 28 January 2016 — Regulations implementing the Act — law on the Prosecutor's Office, published in Official Journal on 15 February 2016, item 178.

<sup>(5)</sup> Law of 18 March 2016 on the Ombudsman and amending certain other laws. The law was signed by the President of the Republic on 4 May 2016.

<sup>(6)</sup> Law of 22 June 2016 on the National Council of Media. The law was signed by the President of the Republic on 27 June 2016.

<sup>(7)</sup> Law of 10 June 2016 on anti-terrorism. The law was signed by the President of the Republic on 22 June 2016.

15. However, under the Polish legal system, assistant judges do not have the same status as judges <sup>(1)</sup>. Assistant judges are appointed for the limited term of 4 years and after 36 months they can start applying for new proceedings to become judges. Assistant judges are not subject to the same guarantees for protecting judicial independence as those applicable to judges — for example as regards the appointment, which is not subject to the same procedure as for judges. Unlike the position of judges, the position of assistant judges performing judicial functions is not envisaged in the Constitution. This implies that their status, as well as the guarantees for their independence, can be modified by ordinary law, and do not require any change of the Constitution <sup>(2)</sup>.
16. During the legislative process of the law on the National School of Judiciary concerns have been expressed by the Supreme Court and the National Council for the Judiciary as to whether the guarantees for independence of assistant judges comply with the Constitution and are sufficient to meet the requirements of a fair trial enshrined in Article 6(1) ECHR <sup>(3)</sup>. The European Court of Human Rights has held that the previous regime regarding assistant judges in Poland did not meet these criteria <sup>(4)</sup>.
17. Given their short mandate, the status of assistant judges makes them particularly vulnerable to external influence, notably from the Minister of Justice. The Minister of Justice has a significant influence on the career of assistant judges as is also involved in the subsequent process of the selection and appointment as judge. Assistant judges who would like to become a judge have to undergo an entirely new selection and appointment procedure. The assistant judges must first make an application to be appointed judge to the National Council for the Judiciary which will proceed to a full assessment of the candidate and decide whether or not to propose the candidate for the post of judge to the president of the Republic. It is the President of the Republic who appoints the candidate to the post of judge. The legitimate desire of assistant judges to become a judge, in connection with the lack of sufficient guarantees for protecting their personal independence during this period, exposes assistant judges to pressure from the Minister of Justice and may affect their personal independence when they adjudicate cases.

### 3.2. The court presidents

18. In the Polish legal system, court presidents have a dual role: they do not only have a responsibility as court managers, but they also perform judicial functions. The new law on Ordinary Courts Organisation raises concerns with regard to the personal independence of court presidents when exercising their judicial function, but also as regards their influence over other judges.
19. Articles 1(6), 17(1) and 18(1) of the new law on Ordinary Courts Organisation provide rules on the dismissal and appointment of court presidents. During a 6-month period, the Minister of Justice would be granted the power to appoint and dismiss presidents of courts without being bound by concrete criteria, with no obligation to state reasons, and with no possibility for the judiciary (neither for the National Council for the Judiciary, nor for the board of judges of a concerned court) to block these decisions. In addition, no judicial review is available against a dismissal decision of the Minister of Justice. After the 6-month period, the Minister of Justice would be able to appoint presidents of courts at his discretion; only in case of dismissal of a court president, the National Council for the Judiciary would be able, with a qualified majority of two thirds of all members of the Council, to block the decision of the Minister of Justice <sup>(5)</sup>.
20. The power of the Minister of Justice to arbitrarily dismiss court presidents would allow the Minister of Justice to retain influence over court presidents which may affect their personal independence when they adjudicate cases. For example, a court president who is called upon to deliver a judgment in a sensitive case against the State may feel the pressure from the Minister of Justice to follow the position of the State in order to avoid being dismissed as a court president.

<sup>(1)</sup> The assistant judges, even though they are entrusted with the duties of a judge, are appointed by the Minister of Justice directly with a minimal involvement of the National Council for the Judiciary as it can only raise an objection within 30 days.

<sup>(2)</sup> The independence of the judge should be enshrined in the constitution with more specific rules provided at the legislative level (Recommendation CM/Rec(2010)12 of the Committee of Ministers of the Council of Europe on judges: independence, efficiency and responsibilities, adopted on 17 November 2010 ('the 2010 CoE Recommendation'), paragraph 7). It should also be noted that the Supreme Court and the National Council for the Judiciary in their opinions raised questions of constitutionality of this law.

<sup>(3)</sup> Opinion of the Supreme Court of 3 February 2017; Opinion of the National Council for the Judiciary of 10 February 2017.

<sup>(4)</sup> ECtHR Case *Henryk Urban and Ryszard Urban v Poland*, 23614/08, 28 February 2011; ECtHR Case *Miroslaw Garlicki v Poland*, 36921/07, 14 September 2011; ECtHR Case *Pohoska v Poland*, 33530/06, 10 April 2012.

<sup>(5)</sup> Article 1(7) of the law on the Ordinary Courts Organisation.

21. Also judges who are not court presidents, but would like to become court presidents may be inclined not to go against a position of the Minister of Justice, in order not to reduce their chances of being appointed court presidents. Their personal independence would as a result be equally affected when adjudicating cases.
22. It should also be noted that court presidents, in their capacity as court managers, have important powers over other judges and may therefore also interfere with the personal independence of these judges. For example, court presidents have the power to replace judges in their function of heads of division or heads of section of courts, power to issue written notification to these heads of division and section involving pecuniary sanctions in case of deficiencies, and the power to transfer judges without their consent within the relevant judicial district.
23. Finally, these provisions raise constitutionality concerns as pointed out notably by the opinions of the Supreme Court, the National Council for the Judiciary and the Ombudsman. In particular, allowing for such possibility of dismissal of court presidents by the Minister of Justice disregards the principles of judicial independence and separation of powers.

### 3.3. The appointment and career of judges

24. According to the Polish Constitution the independence of judges is safeguarded by the National Council for the Judiciary <sup>(1)</sup>. The role of the National Council for the Judiciary has a direct impact on the independence of judges in particular as regards their promotion, transfer, disciplinary proceedings, dismissal and early retirement. For example, the promotion of a judge (e.g. from district court to regional court) requires the President of the Republic to once again appoint the judge, and therefore the procedure for judicial assessment and nomination involving the National Council for the Judiciary will have to be followed again.
25. For this reason, in Member States where a Council for the Judiciary has been established, its independence is particularly important for avoiding undue influence from the Government or the Parliament on the independence of judges. For example, in the context of disciplinary proceedings against judges conducted by a Council, the European Court of Human Rights has questioned the level of influence of the legislative or executive authorities given that the Council was composed by a majority of members appointed directly by these authorities <sup>(2)</sup>. For the same reason, well established European standards, in particular the 2010 Recommendation of the Committee of Ministers of the Council of Europe, stipulate that 'not less than half the members of [Councils for the Judiciary] should be judges chosen by their peers from all levels of the judiciary and with respect for pluralism inside the judiciary' <sup>(3)</sup>. It is up to the Member States to organise their justice systems, including whether or not to establish a Council for the Judiciary. However, where such a Council has been established, as it is the case in Poland, its independence must be guaranteed in line with European standards.
26. Until now, the Polish system was fully in line with these standards since the National Council for the Judiciary was composed of a majority of judges chosen by judges. Articles 1(1) and 7 of the law amending the law on the National Council for the Judiciary would radically change this regime by providing that the 15 judges-members of the National Council for the Judiciary will be appointed, and can be re-appointed, by the Sejm <sup>(4)</sup> as well as by establishing a new structure within the Council. The new rules on appointment of judges-members of the National Council for the Judiciary significantly increase the influence of the Parliament over the Council and adversely affect its independence in contradiction with the European standards. The fact that the judges-members will be appointed by the Sejm with a 3/5 majority does not alleviate this concern.
27. The fact that according to Article 5(1) of the law amending the law on the National Council for the Judiciary the mandates of all the current judges-members of the National Council for the Judiciary would be terminated prematurely further aggravates these concerns given that the Parliament will immediately gain a decisive influence on the composition of the Council to the detriment of the influence of judges themselves.

<sup>(1)</sup> Article 186(1) of the Polish Constitution: 'The National Council of the Judiciary shall safeguard the independence of the courts and judges'.

<sup>(2)</sup> ECtHR Case *Ramos Nunes de Carvalho e Sá v Portugal*, 55391/13, 57728/13 and 74041/13, 21 June 2016, paragraph 77.

<sup>(3)</sup> Paragraph 27; see also Council of Europe Plan of Action on Strengthening Judicial Independence and Impartiality adopted on 13 April 2016, (CM(2016)36 final) at C item (ii). CCJE Opinion No 10 on the Council for the Judiciary in the service of society, at 27; various opinions of the Venice Commission and ENCJ standards in 'Councils for the Judiciary' Report 2010-11 at 2.3.

<sup>(4)</sup> The Constitution stipulates that the National Council for the Judiciary is composed of *ex officio* members (the First President of the Supreme Court, the Minister of Justice, the President of the Supreme Administrative Court and a presidential appointee) and elected members. The elected members consist of four deputies 'chosen by the Sejm', two senators 'chosen by the Senate' and 15 judges ('chosen from amongst' the common, administrative and military courts and the Supreme Court).

28. The politicisation of the National Council for the Judiciary is also aggravated by the new internal structure. According to Article 1(7) of the law amending the law on the National Council for the Judiciary, the Council would be composed of two assemblies: the first with a majority of Members of Parliament, the second with judges appointed by the Parliament. Formally, the Council would remain composed by a majority of judges, but in reality the new 'political' assembly could render more difficult the decision making process of the National Council for the Judiciary. If the two assemblies diverged in their assessment of a candidate, the assembly that has a positive opinion could request a re-assessment by the Council in its full composition with a two-third majority of all members of the Council. Such a threshold would be very difficult to meet, also in view of the increased influence of the legislative power on the composition of the Council. This new regime would have a direct impact on the appointment and career of judges in Poland since the judges-members of the Council which are in the second assembly may under certain circumstances no longer have a final say on matters concerning the assessment of candidates for the post of judges <sup>(1)</sup>.
29. This situation raises concerns from the point of view of the independence of the judiciary. For example, a district court judge who has to deliver a judgment in a politically sensitive case, while the judge is at the same time applying for a promotion to become a regional court judge, may be inclined to follow the position favoured by the political majority in order not to put his/her chances to obtain the promotion into jeopardy. Even if this risk does not materialise, the new regime does not provide for sufficient guarantees to secure the appearance of independence which is crucial to maintain the confidence which tribunals in a democratic society must inspire in the public <sup>(2)</sup>.
30. The Commission notes that in their opinions concerning the bill, the Supreme Court and the National Council for the Judiciary raised a number of concerns as regards the constitutionality of the new regime. In particular, it was noted that the new rules would render the National Council for the Judiciary dependent on the political decisions of the parliamentary majority. The opinions also underlined that the National Judicial Council is a unitary body that cannot be subdivided in two organs unknown to the Constitution and the bill would change the constitutional order by providing the Sejm with a dominating position over the judiciary. Furthermore, the premature termination of the mandate of the judges-members of the Council, and of the functioning of a constitutional organ, would violate the principle of a democratic state governed by the rule of law and the principle of legality. As explained above, the Commission recalls that an effective constitutional review of these provisions is currently not possible.

### 3.4. The retirement age and the power to prolong the mandate of judges

31. Articles 1(26)b-c and 13(1) of the law amending the law on Ordinary Courts Organisation stipulate that the retirement regime applicable to ordinary judges will be reduced from 67 to 60 for female judges and from 67 to 65 for male judges and the Minister of Justice will be granted the power to decide on the prolongation of judicial mandates (until the age of 70) on the basis of vague criteria. Pending this decision the judges concerned remain in office.
32. The new retirement regime would adversely impacts on the independence of judges <sup>(3)</sup>. The new rules create an additional tool through which the Minister of Justice can exert influence on individual judges. In particular, the vague criteria for prolongation of the mandates allow for undue discretion, undermining the principle of irremovability of judges <sup>(4)</sup>. While decreasing the retirement age, the law allows judges to have their mandate extended by the Minister of Justice for up to 10 years for female judges and 5 years for male judges. Also, there is no time-frame for the Minister of Justice to make a decision on the extension of the mandate, which allows the Minister of Justice to retain influence over the judges concerned for the remaining time of their judicial mandate. Even before the retirement age is reached, the mere prospect of having to request the Minister of Justice for such a prolongation could exert pressure on the judges concerned.
33. By decreasing the retirement age of judges while making prolongation of the judicial mandate conditional upon the decision of the Minister of Justice, the new rules undermine the principle of irremovability of judges which is a key

<sup>(1)</sup> This is contrary to Council of Europe standards: 2010 CoE Recommendation (paragraph 26); Council of Europe Plan of Action on Strengthening Judicial Independence and Impartiality adopted on 13 April 2016 (CM(2016)36 final), under C.

<sup>(2)</sup> ECtHR Cases *Morice v France*, 29369/10, 23 April 2015, paragraph 78; *Cyprus v Turkey*, 25781/94, 10 May 2001, paragraph 233.

<sup>(3)</sup> 2010 Council of Europe Recommendation, paragraph 49.

<sup>(4)</sup> According to the law, the Minister of Justice decides on whether or not to prolong mandate of a judge, 'taking under consideration rational use of common court personnel and the needs resulting from the workload of particular courts' (cf. Article 1(26)(b) of the law).

element of the independence of judges according to the case law of the Court of Justice and of the European Court of Human Rights. Among the requirements of an independent court, the Court of Justice stated that judges should enjoy personal and operational independence in the exercise of their duties and should also be protected against dismissal through the existence of effective safeguards against undue intervention or pressure from the executive <sup>(1)</sup>. The provisions concerned are also not in line with the European standards according to which judges should have guaranteed tenure until a mandatory retirement age, where such retirement age exists.

34. The Commission notes that the new rules also raise constitutionality concerns. According to the opinion of the Supreme Court <sup>(2)</sup>, allowing the Minister of Justice to decide on the prolongation of a judge's mandate, in combination with lowering the retirement age of judges, violates the principle of irremovability of judges (Article 180(1) of the Constitution). As explained above, the Commission recalls that an effective constitutional review of these provisions is currently not possible.

### 3.5. The Supreme Court

#### 3.5.1. Dismissal, forced retirement and re-appointment of Supreme Court judges

35. According to Article 87 of the new law on the Supreme Court, on the day following the entry into force of the law, all judges of the Supreme Court would be dismissed and retired <sup>(3)</sup>.
36. According to Article 88 of the same law, only the judges indicated by the Minister of Justice would remain initially active for an interim period until the President of the Republic has made a final selection of the judges who will be allowed to stay in office following a special verification procedure. This procedure would require the President of the Republic to choose judges who will remain in office from those Supreme Court judges that are pre-selected by the Minister of Justice and assessed by the National Council for the Judiciary. The law includes vague and undetermined criteria according to which the choice of judges that will remain in office should be made. Any resolutions of the National Council for the Judiciary in this respect would not be binding on the President of the Republic <sup>(4)</sup>. According to Article 91 of the law on the Supreme Court, if the judge holding the office of the First President of the Supreme Court is dismissed and retired, the President of the Republic chooses an interim First President of the Supreme Court.
37. The dismissal and forced retirement of all judges of the Supreme Court, considered in connection with the rules allowing for their possible reappointment, would violate the judicial independence of Supreme Court judges. Judges should be protected against dismissal through the existence of effective safeguards against undue intervention or pressure from other state powers <sup>(5)</sup>. According to the case law on the Court of Justice and the European Court of Human Rights and European standards, judicial independence requires guarantees sufficient to protect the person of those who have the task of adjudicating in a dispute <sup>(6)</sup>. The irremovability of judges by the executive during their term of office is a consequence of their independence and thus included in the guarantees of Article 6(1) ECHR <sup>(7)</sup>. As a consequence, judges must only be dismissed individually, if this is justified on the basis of a disciplinary procedure concerning their individual activity and presenting all guarantees for the defence in a democratic society. Judges cannot be dismissed as a group; judges cannot be dismissed for general reasons not related to individual behaviour.

<sup>(1)</sup> Case C-53/03 *Syfait and Others*, 31 May 2005, paragraph 31; Case C-103/97 *Köllensperger and Atzwanger*, 4 February 1999, paragraph 20.

<sup>(2)</sup> Opinion of the Supreme Court of 28 April 2017.

<sup>(3)</sup> According to Article 89(1) judges who are dismissed and retired are entitled to an emolument in the amount equal to remuneration the judge received at the most recent post held in the Supreme Court — until they attain 65 years of age. Article 89(2) of the law on the Supreme Court provides that judges who are dismissed from the Supreme Court retain the right to apply within 14 days from their retirement to the Minister of Justice for a transfer to a judicial post in an ordinary, military or administrative court. The Minister of Justice has the right to turn down that request.

<sup>(4)</sup> Subsequently, according to Article 95 of the law on the Supreme Court, the Minister of Justice announces vacancies in particular chambers of the Supreme Court, and then proposes one candidate of his own choosing for each announced vacancy to the National Council for the Judiciary. The National Council for the Judiciary assesses each candidacy and makes a proposal to the President of the Republic for the appointment to a post of a Supreme Court judge. In certain cases the National Council for the Judiciary will be able make such a proposal through only one of its Assemblies, thus potentially excluding the Assembly composed of judges-members. The Minister of Justice can make an additional announcement about the remaining vacancies. Then, candidates can lodge their candidacies in a regular procedure with the National Council for the Judiciary assessing them and submitting an application to the President of the Republic for their appointment to posts of Supreme Court judges.

<sup>(5)</sup> Case C-53/03 *Syfait and Others*, 31 May 2005, paragraph 31; Case C-103/97 *Köllensperger and Atzwanger*, 4 February 1999, paragraph 20.

<sup>(6)</sup> Case C-222/13 *TDC*, 9 October 2014, paragraphs 29-32; Case C-506/04 *Wilson*, 19 September 2006, paragraph 53; Case C-103/97 *Köllensperger and Atzwanger*, 4 February 1999, paragraphs 20-23; Case C-54/96 *Dorsch Consult*, 12 September 1997, paragraph 36; Case C-17/00, *De Coster*, 29 November 2001, paragraphs 18-21; ECtHR Case *Baka v Hungary*, 20261/12, 23 June 2016, paragraph 121.

<sup>(7)</sup> ECtHR Case *Campbell and Fell v The United Kingdom*, A80 (1984), 28 June 1984, paragraph 80.

38. These guarantees and safeguards are lacking in the present case and the provisions concerned would constitute a flagrant violation of the independence of judges of the Supreme Court and of the separation of powers <sup>(1)</sup>, and therefore of the rule of law.

### 3.5.2. *Disciplinary proceedings*

39. The law on the Supreme Court would establish a new disciplinary chamber and new rules for disciplinary proceedings against Supreme Court judges <sup>(2)</sup>.
40. These new rules on disciplinary proceedings would adversely affect judicial independence. In particular, the involvement of the Minister of Justice in disciplinary proceedings against judges of the Supreme Court would constitute a threat to their independence: the fact that the Minister of Justice would have the power to initiate disciplinary proceedings against Supreme Court judges and also to influence the conduct of the investigations, would provide the Minister of Justice with an additional tool to put considerable pressure on judges.
41. Notably, according to Article 56(5) of the law on the Supreme Court, the Minister of Justice could object to the decision of the disciplinary officer of the Supreme Court who conducts an investigation to terminate this investigation due to a lack of grounds; in such a case the disciplinary officer of the Supreme Court would have to continue conducting the disciplinary proceedings and would be bound by the instructions from the Minister of Justice. Additionally, the Minister of Justice could himself appoint a disciplinary officer on a case-by-case basis <sup>(3)</sup>. The appointment of a disciplinary officer by the Minister of Justice would exclude every other disciplinary officer from a given case. Whenever the Minister of Justice has appointed a disciplinary officer, a preliminary investigation must be conducted. According to Article 57(2), the disciplinary officer appointed by the Minister would be bound by the instructions provided by the Minister of Justice in certain cases.
42. The mere threat of disciplinary proceedings being initiated pursuant to the instructions of the Minister of Justice would directly affect the independence of judges of the Supreme Court. The Court of Justice has held that for a court to be independent it should exercise its functions wholly autonomously, without being subordinated to any other body and be thus protected against external interventions or pressure liable to jeopardise the independent judgment of its members as regards proceedings before them <sup>(4)</sup>. These conditions are not fulfilled in the present case. As a consequence, Supreme Court judges may feel pressure to follow the position of the executive power when adjudicating cases.

### 3.5.3. *Legislative process*

43. The Commission notes that the law on the Supreme Court, which is a self-standing new act of more than 110 Articles and which amends six existing laws, would have a serious impact on the independence of the Supreme Court and more generally on the separation of powers and the rule of law in Poland. The Commission regrets that this important law has not been subject to the appropriate preparation and consultations that it should have deserved. On the contrary, the draft was tabled on 12 July 2017 and was adopted on 22 July 2017. The Commission considers that such a fast-track legislative process of the two chambers undermines in itself the trust in the judiciary in Poland and is not in line with the spirit of loyal cooperation between state institutions which should characterise a democratic state governed by the rule of law.

<sup>(1)</sup> The law contradicts with Council of Europe standards. In particular, the new rules contradict the principle of irremovability of judges as a key element of the independence of judges as enshrined in the 2010 Council of Europe Recommendation. Accordingly, Supreme Court judges should have guaranteed tenure, and their mandates should not be prematurely terminated. Also, according to the 2010 Council of Europe Recommendation, decisions concerning the selection and career of judges should be based on objective criteria pre-established by law or by the competent authorities, and where the government or the legislative power take decisions concerning the selection and career of judges, an independent and competent authority drawn in substantial part from the judiciary should be authorised to make recommendations or express opinions which the relevant appointing authority follows in practice. The law violates these standards.

<sup>(2)</sup> Disciplinary procedures against Supreme Court judges concern responsibility for offences against the rules of the service and for compromising the dignity of their office. Article 5 of the law on the Supreme Court stipulates that the disciplinary chamber deals also with disciplinary proceedings against Supreme Court judges, certain disciplinary proceedings against members of legal professions, and with appeals against disciplinary decisions. The law sets a new composition of the Supreme Courts' disciplinary courts: by default, a first instance disciplinary court will be composed of one judge of the disciplinary chamber; a second instance disciplinary court will be composed of three judges. Disciplinary proceedings may be initiated by a motion of a disciplinary officer (Article 56(1): disciplinary officer appointed by the Supreme Court to a three-year term, and Article 54(4): disciplinary officer appointed by the Minister on a case-by-case basis).

<sup>(3)</sup> Article 54(1) of the law on the Supreme Court. The Minister of Justice appoints the disciplinary officers from among prosecutors presented by the State Prosecutor.

<sup>(4)</sup> Case C-503/15 *Margarit Panicello*, 16 February 2017, paragraphs 37-38; Case C-203/14 *Consorti Sanitari del Mareme*, 6 October 2015, paragraph 19; Case C-222/13 *TDC*, 9 October 2014, paragraph 30; Joined Cases C-58/13 and C-59/13 *Torresi*, 17 July 2014, paragraph 22; Case C-506/04 *Wilson*, 19 September 2006, paragraph 51.

### 3.6. Other provisions

44. The four laws contain a number of other sensitive provisions from the point of view of the rule of law and the separation of powers, in particular regarding the premature termination of mandates of disciplinary officers in courts <sup>(1)</sup>, the powers of the Minister of Justice to assess the performance of courts <sup>(2)</sup>, the transfer of judges <sup>(3)</sup>, the structure of the National School for Judiciary <sup>(4)</sup>, the declaration of assets of judges <sup>(5)</sup>, and the staff of the National Council for the Judiciary and of the Supreme Court <sup>(6)</sup>. These issues have been identified in a number of analyses, in particular from the Supreme Court and the National Council for the Judiciary as raising concerns, including questions of compliance with the Constitution <sup>(7)</sup>. However, as explained above an independent and legitimate constitutional review is currently not possible.

## 4. FINDING OF A SYSTEMIC THREAT TO THE RULE OF LAW

45. For the reasons set out above, the Commission considers that the situation of a systemic threat to the rule of law in Poland as presented in its Recommendations of 27 July 2016 and 21 December 2016 has seriously deteriorated. In particular:

- (1) The unlawful appointment of the President of the Constitutional Tribunal, the admission of the three judges nominated by the 8th term of the Sejm without a valid legal basis, the fact that one of these judges has been appointed as Vice-President of the Tribunal, the fact that the three judges that were lawfully nominated in October 2015 by the previous legislature have not been able to take up their function of judge in the Tribunal, as well as the subsequent developments within the Tribunal described above have de facto led to a complete recomposition of the Tribunal outside the normal constitutional process for the appointment of judges. For this reason, the Commission considers that the independence and legitimacy of the Constitutional Tribunal are seriously undermined and, consequently, the constitutionality of Polish laws can no longer be effectively guaranteed. The judgments rendered by the Tribunal under these circumstances can no longer be considered as providing an effective constitutional review.
- (2) The law on the National School of Judiciary already in force, and the law on the National Council for the Judiciary, the law on the Ordinary Courts Organisation and the law on the Supreme Court should they enter into force, structurally undermine the independence of the judiciary in Poland and would have an immediate and concrete impact on the independent functioning of the judiciary as a whole. Given that the independence of the judiciary is a key component of the rule of law, these new laws increase significantly the systemic threat to rule of law as identified in the previous Recommendations.
- (3) In particular, the dismissal of Supreme Court judges, their possible reappointment and other measures contained in the law on the Supreme Court would very seriously aggravate the systemic threat to the rule of law.
- (4) The new laws raise serious concerns as regards their compatibility with the Polish Constitution as underlined by a number of statements, in particular from the Supreme Court, the National Council for the Judiciary, the Polish Ombudsman, the Bar Association and associations of judges and lawyers, and other relevant stakeholders <sup>(8)</sup>. However, as explained above an effective constitutional review of these laws is no longer possible.

<sup>(1)</sup> Article 6 of the law amending the law on the National Council for the Judiciary; Article 100(1) and (2) of the law on the Supreme Court.

<sup>(2)</sup> Article 1(16) of the law amending the law on the Ordinary Courts Organisation.

<sup>(3)</sup> Article 1(5)(b) of the law amending the law on the Ordinary Courts Organisation.

<sup>(4)</sup> Article 1 of the law amending the law on the National School of Judiciary.

<sup>(5)</sup> Article 1(33) of the law amending the law on the Ordinary Courts Organisation and Article 38 of the law on the Supreme Court.

<sup>(6)</sup> Article 10 of the law amending the law on the National Council for the Judiciary; Article 93 and Article 99 of the law of 20 July on the Supreme Court.

<sup>(7)</sup> New provisions on the directors of courts have also been identified as raising concerns (Article 1 of the law of 23 March 2017 amending the law on the Ordinary Courts Organisation).

<sup>(8)</sup> E.g. Supreme Court opinions of 30 January, 3 February, 28 April and 18 July 2017; National Council for the Judiciary opinions of 30 January, 10 February, 7 March, 12 May, 26 May and 18 July 2017; Ombudsman opinions of 1 February, 12 April, 31 May, 28 June and 18 July 2017; opinion of the Director of the National School of Judiciary and Public Prosecution of 10 February 2017; collective opinions of judges from appeal court areas in Lublin of 6 February 2017; in Gdańsk, Cracow, Białystok, Szczecin, Rzeszów of 7 February 2017; in Warsaw and Poznań of 8 February 2017; resolution of the Presidium of the Chief Bar Association of 3 February 2017; opinion of the Association of Judges 'Themis' of 29 January 2017; opinions of the Association of Judges 'Iustitia' of 8 February 2017, opinion of the National Association of Court Referendaires of 6 February 2017; opinion of the Association of Alumni and Applicants of the NSJPP of 7 February 2017; opinion of the National Association of Assistants to Judges of 8 February 2017.



- (5) Finally, actions and public statements against judges and courts in Poland made by the Polish Government and by members of Parliament from the ruling majority have damaged the trust in the justice system as a whole. The Commission underlines the principle of loyal cooperation between state organs which is, as highlighted in the opinions of the Venice Commission, a constitutional precondition in a democratic state governed by the rule of law.
46. The Commission recalls that where a constitutional justice system has been established, its effectiveness is a key component of the rule of law. The Commission also underlines that whatever the model of the justice system chosen, the independence of the judiciary must be safeguarded as a matter of EU law. It is up to the Member States to organise their justice systems, including whether or not to establish a Council for the Judiciary the role of which is to safeguard judicial independence. However, where such a Council has been established by a Member State, as it is the case in Poland where the Polish Constitution has entrusted explicitly the National Council for the Judiciary with the task of safeguarding judicial independence, the independence of such Council must be guaranteed in line with European standards.
47. Notwithstanding the fact that there is a diversity of justice systems in Europe, common European standards have been established on safeguarding judicial independence. It is with great concern that the Commission observes that following the entry into force of the new laws referred to above, the Polish judicial system would no longer be compatible with the European standards in this regard.
48. In that respect, the Commission takes note of the decision of the President of the Republic of 24 July 2017 to refer back to the Sejm the law on the Supreme Court and the law on the National Council for the Judiciary.
49. Respect for the rule of law is not only a prerequisite for the protection of all the fundamental values listed in Article 2 TEU. It is also a prerequisite for upholding all rights and obligations deriving from the Treaties and for establishing mutual trust of citizens, businesses and national authorities in the legal systems of all other Member States. Certain aspects of the new laws also raise concerns as regards their compatibility with EU law and for this reason the Commission has decided, in addition to the present Rule of Law Recommendation, to launch infringement procedures against Poland when the law on the Ordinary Courts Organisation will be published or should the law on the Supreme Court be signed and published.
50. The Commission underlines that the proper functioning of the rule of law is also essential for the seamless operation of the Internal Market because economic operators must know that they will be treated equally under the law. This cannot be assured without an independent judiciary in each Member State. For this reason, the Council underlined the importance for the Polish authorities to address the serious concerns related to the rule of law in its country-specific recommendations addressed to Poland in the context of the 2017 European Semester. The country-specific recommendations have been generally endorsed by the European Council on 23 June 2017 and adopted by the Economic and Financial Affairs Council on 11 July 2017 <sup>(1)</sup>.
51. The Commission notes that a wide range of actors at European and international level have expressed their deep concern about the reform of the Polish justice system: representatives of the judiciary across Europe, including the Network of Presidents of the Supreme Judicial Courts of the European Union and the European Network of Councils for the Judiciary, the Venice Commission, the Commissioner for Human Rights of the Council of Europe, the United Nations Human Rights Committee as well as numerous civil society organisations such as Amnesty International and the Human Rights and Democracy Network. The European Parliament has also expressed its concerns, including in two resolutions supporting the Commission's views.

## 5. RECOMMENDED ACTION

52. The Commission recommends that the Polish authorities take appropriate action to address this systemic threat to the rule of law as a matter of urgency.

<sup>(1)</sup> Recital 14: 'Legal certainty and trust in the quality and predictability of regulatory, tax and other policies and institutions are important factors that could allow an increase in the investment rate. The rule of law and an independent judiciary are also essential in this context. Addressing serious concerns related to the rule of law will help improve legal certainty'. Recommendation on the 2017 National Reform Programme of Poland and delivering a Council opinion on the 2017 Convergence Programme of Poland.

53. In particular the Commission recommends that the Polish authorities take the following actions:
- (a) restore the independence and legitimacy of the Constitutional Tribunal as guarantor of the Polish Constitution by ensuring that its judges, its President and its Vice-President are lawfully elected and appointed and by implementing fully the judgments of the Constitutional Tribunal of 3 and 9 December 2015 which require that the three judges that were lawfully nominated in October 2015 by the previous legislature can take up their function of judge in the Constitutional Tribunal, and that the three judges nominated by the new legislature without a valid legal basis no longer adjudicate without being validly elected <sup>(1)</sup>;
  - (b) publish and implement fully the judgments of the Constitutional Tribunal of 9 March 2016, 11 August 2016 and 7 November 2016;
  - (c) ensure that the law on the National Council for the Judiciary, the law on Ordinary Courts Organisation and the law on the Supreme Court do not enter into force and that the law on the National School of Judiciary is withdrawn or amended in order to ensure its compliance with the Constitution and European standards on judicial independence;
  - (d) refrain from any measure interfering with the tenure of the Supreme Court judges and their function;
  - (e) ensure that any justice reform upholds the rule of law and complies with EU law and the European standards on judicial independence and is prepared in close cooperation with the judiciary and all interested parties;
  - (f) refrain from actions and public statements which could undermine further the legitimacy of the Constitutional Tribunal, the Supreme Courts, the ordinary courts, the judges, individually or collectively, or the judiciary as a whole.
54. The Commission underlines that the loyal cooperation which is required amongst the different state institutions in rule of law related matters is essential in order to find a solution in the present situation. The Commission also encourages the Polish authorities to seek the views of the Venice Commission on the law on the National School of Judiciary, the law on the National Council for the Judiciary, the law on the Ordinary Courts Organisation and the law on the Supreme Court as well as on any new legislative proposal aiming to reform the justice system in Poland.
55. The Commission invites the Polish Government to solve the problems identified in this Recommendation within 1 month of receipt of this Recommendation, and to inform the Commission of the steps taken to that effect.
56. The Commission invites the Polish authorities to use the opportunity of the Polish President's decision to refer back to the Sejm the law on the National Council for the Judiciary and the law on the Supreme Court to ensure that any reforms of the judiciary in Poland take account of the concerns expressed in this Recommendation.
57. The Commission also recalls that Recommendations adopted under the rule of Law Framework do not prevent Article 7 TEU being activated directly, should a sudden deterioration in a Member State require a stronger reaction from the EU <sup>(2)</sup>.
58. The Commission asks in particular the Polish authorities not to take any measure to dismiss or force the retirement of the Supreme Courts judges as these measures will very seriously aggravate the systemic threat to the rule of law. Should the Polish authorities take any measure of this kind, the Commission stands ready to immediately activate Article 7(1) TEU.
59. On the basis of this Recommendation, the Commission continues to be ready to pursue a constructive dialogue with the Polish Government.

Done at Brussels, 26 July 2017.

*For the Commission*  
Frans TIMMERMANS  
*First Vice-President*

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<sup>(1)</sup> See the Recommendation (EU) 2017/146 and the Recommendation (EU) 2016/1374.

<sup>(2)</sup> Section 4.1. of the Communication 'A new EU Framework to Strengthen the Rule of Law', COM(2014) 158 final.



