

POLAND: Implications of the Constitutional Tribunal ruling

- The deepening rule of law dispute between Warsaw and Brussels heightens the risk of further restrictions on Poland's access to EU funds.
- Reduced EU funding and rising concerns about Poland's future membership in the EU could erode voter support for the ruling Law and Justice party in the medium term.
- The Polesit scenario remains unlikely for the foreseeable future.

On 7 October, the Constitutional Tribunal (TK) – upon request by Prime Minister Mateusz Morawiecki – issued a verdict stating that certain provisions of the Treaty of the EU are incompatible with the Polish constitution and claiming that national law takes precedence over EU law in cases when there is a conflict between the two. The latest verdict is consistent with the TK's ruling of 14 July, which said that interim orders of the Court of Justice of the European Union (CJEU) in the area of the judiciary contradicted the Polish basic law.

For the verdict to come into force, it must be published by the Prime Minister's office in the official Journal of Laws "immediately" as per constitution. However, the Law and Justice (PiS) government has in the past delayed the publication of some controversial court rulings for months. It cannot be ruled out that the publication of this verdict will be postponed (or even withheld) too, which could be then used as a bargaining chip in talks with the EU.

Risk of financial penalties rising

The deepening of the longstanding rule of law dispute between Warsaw and Brussels could have significant financial implications for Poland. First, the CJEU is already considering a request by the European Commission (EC) to impose daily fines on Poland for its failure to comply with the 14 July European Court of Justice (ECJ) ruling stating that the disciplinary regime for judges was not compatible with the EU law. The latest TK's verdict will likely result in another infringement procedure against Poland, potentially leading to additional fines.

Second, the heightened tensions could push the approval of Poland's EUR 36bn national recovery and resilience plan (NRRP) by the EC into 2022. Even if approved, disbursements might be linked to Poland's compliance of the earlier CJEU rulings. The NRRP would also need to be approved by a qualified majority vote in the European Council, where member states could demand for further clarifications and assurances on the rule of law.

Third, there are strengthening calls in Brussels to deploy the new regime of conditionality aimed at protecting the bloc's budget when the rule of law is breached in a member state. The mechanism – which is still under review by the CJEU – could lead to the suspension of payments to Poland from the bloc's 2021-2027 budget by a qualified majority decision in the European Council. However, the scope and functioning of such a mechanism remains unclear, given a rather general and ambiguous [compromise](#) struck between EU member states back in December 2020.

PiS options at home

The PiS's reluctance to rollback its controversial reform of the judiciary – even at risk of losing access to vast EU funds – could backfire domestically. The government's nationalist rhetoric focused on the protection of the country's sovereignty might mobilize their core electorate for now, but the reduced EU funding would inevitably weaken the government's ability to advance its generous socio-economic policies – such as the [Polish Deal](#) – which are essential for maintaining voter support in the longer-term.

As a result, the PiS has a few options: it could seek compromises with Brussels to keep EU funds flowing, although this would be more difficult after the latest TK ruling and could result in tensions with the nationalist coalition partner United Poland; or it could stoke the dispute with Brussels and seek snap general elections sometime in 2022 in order to secure a new/strengthened four-year mandate before the consequences of the reduced EU funding are felt by the electorate. The latter scenario would become more likely if the ruling party's approval rating rises at least to the level reached in the 2019 parliamentary elections (43-44%) or if the Morawiecki government is unable to advance its policy agenda due to insufficient support in parliament. Currently, the PiS polls at around 39%, which in case of early elections would not translate into a higher number of mandates than currently held by the government.

It is noteworthy that the primary aim of the controversial TK verdict was to provide Polish authorities with a legal pretext to ignore the CJEU rulings in the area of the judiciary – and not to undermine foundational principles of the EU or lead the country out of the bloc. Nonetheless, the ruling incited an emotionally charged Polesxit debate. While Poland's departure from the EU remains very unlikely for the foreseeable future, rising public concerns about the country's future membership in the bloc – which holds an overwhelming public support – might prompt more moderate PiS voters to reassess their political preferences.

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