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Brussels, *No. 05.2023*  
Ares(2023)3932232

Dear Honourable Member,

Thank you for your letter of 23 March regarding the issues of LGBT-free zones and the rule of law situation in Poland as well as the concerns you have regarding their impact on cohesion funding.

The values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities constitute the cornerstone of the European Union, as laid down in Article 2 of the Treaty on European Union. All Member States must also respect the Charter of Fundamental Rights of the European Union ("the Charter") when they implement EU programmes. The principles of equality and non-discrimination are reiterated in the EU regulations for the cohesion policy for the previous and the current programming periods. Member States and the Commission shall ensure that they are respected during the preparation and implementation of programmes.

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As you rightly recall, from 2019, five Polish regions and over 190 municipalities adopted resolutions on the creation of so-called 'LGBT-ideology free zones'. The Commission was concerned that these declarations made by the institutions that are at the same time the managing authorities for the regional programmes, may violate EU law regarding non-discrimination on the grounds of sexual orientation.

As a result of the Commission's intervention, four regions (Świętokrzyskie, Lubelskie, Małopolskie and Podkarpackie) revoked their resolutions, while the Łódzkie region modified its resolution.

In July 2021, the Commission started an infringement procedure because Poland failed to respond appropriately to the Commission's inquiry about the nature and impact of the so-called "LGBT ideology free zones". The Polish authorities have since provided the information requested and the Commission decided to close the infringement on 26 January 2023. The Commission will continue to monitor the developments on the ground.

In addition, on the Commission's insistence, Poland agreed to introduce a specific anti-discrimination clause in its Partnership Agreement and programmes for the 2021-2027 period which reads:

*Cohesion policy support will only be provided to projects and beneficiaries that comply with the anti-discrimination provisions referred to in Article 9(3) EP and Council Regulation No 2021/1060 [the Common Provisions Regulation]. Where the beneficiary is a self-government unit (or an entity controlled by or dependent on it) which has taken any discriminatory action contrary to the principles referred to in Article 9(3) of Regulation No 2021/1060, support under cohesion policy cannot be granted.*

This clause concerns municipalities, counties and regions. The Commission will continue to monitor the developments on the ground and expects Poland to apply the clause rigorously.

As regards your second question, we would like to recall that the Recovery and Resilience Facility (RRF), the cohesion policy and the general regime of conditionality follow their own legal framework and procedures, as defined by the co-legislators.

The cohesion policy rules require that the necessary arrangements and procedures are set in place by the Member States in order to ensure that all relevant principles of the Charter of Fundamental Rights are complied with at all stages of programming and implementation. For example, there should be a clear identification of the bodies with expertise in charge of ensuring compliance with the Charter in the programmes and there should be arrangements for reporting to the Monitoring Committees. Informal dialogue between the Commission and Poland is on-going on this process.

It is for Poland to put in place these arrangements and, subsequently, to inform the Commission and provide a justification of the fulfilment of the horizontal enabling condition on the Charter. The Commission will then assess the information submitted and inform the Member State whether it agrees no later than 3 months after the receipt of the information.

As regards Poland's recovery and resilience plan, before any disbursement under the RRF can be made, Poland needs to deliver on its commitments related to important aspects of the independence of the judiciary. These commitments, translated into milestones included in the plan, must be fulfilled before any payment to Poland can be made.

Once the Commission has received the payment request from Poland, it will have up to two months to assess the request and provide its preliminary assessment to the Council's Economic and Financial Committee, which in turn should provide its opinion within one month. A comitology procedure towards a formal Commission decision then follows.

The full implementation of the milestones will lead to solving important issues related to the disciplinary regime as identified by the European Court of Justice, but it does not mean the discussion on the rule of law in Poland is over. The fulfilment of the milestones does not impact the ongoing legal proceedings before the European Court of Justice, which will continue.

Finally, on the general regime of conditionality, it is not a tool to correct any rule of law issue in a Member State per se, but its objective is to protect the EU budget. Therefore, the Conditionality Regulation covers only those breaches of the principles of the rule of law that affect or seriously risk affecting the EU budget or the financial interests of the Union in a sufficiently direct way.

Moreover, for its application, the Commission must ensure that no other procedures set out in Union legislation for the protection of the Union budget would allow it to protect the Union budget more effectively. Such other procedures include those set out by the Financial Regulation and the applicable sector-specific rules, including the RRF Regulation and the Common Provisions Regulation.

For example, following audits under sectoral legislation, the Commission may impose interruption or suspension of payments, and shall impose financial corrections on the Member States if they do not comply with applicable law and do not protect the financial interests of the Union when they implement the Union budget under shared management.

We conclude by emphasising our appreciation of your support and active engagement regarding these important matters which are at the heart of the European values.

Yours sincerely,



Elisa Ferreira



Nicolas Schmit