

To: Mariana Vieira da Silva, Minister of State for the Presidency,
Ana Paula Zacarias, State Secretary for European Affairs,
Rosa Monteiro, Secretary of State for Citizenship and Equality,
Ana Mendes Godinho, Minister for Labor, Solidarity and Social Security,
Ambassador Nuno Brito, Permanent Representative of Portugal to the European Union,

19 April 2021,

Re: Request to the Portuguese Presidency to take action on the deteriorating situation in Poland

Dear Ministers,

As EU Ministers prepare to discuss rule of law issues at their 20 April and 11 May 2021 General Affairs Council meetings, according to the work programme of the Portuguese Presidency of the Council, we the undersigned representatives of Portuguese, Polish, European and international civil society organisations call upon your leadership to ensure that the Council addresses the deterioration of the rule of law and fundamental rights in Poland by holding a hearing under Article 7(1) of the Treaty on the European Union (TEU).

In the two and a half years that have passed since the Council's previous hearing on the rule of law in Poland, the Polish government has persisted in its attempts to undermine EU values and principles. It has ignored the recommendations and decisions issued in this regard by the European Commission, the European Parliament and the Court of Justice of the European Union (CJEU) since 2016. Urgent action by the Council has also been requested by the European Parliament in its September 2020 resolution. **It is now vital that the Council moves forward with the procedure laid down in Article 7(1) TEU by urgently holding a hearing with the Polish government** to examine both the issues raised by the European Commission in its December 2017 Reasoned Opinion as well as other developments that have since occurred and that further threaten the rule of law and fundamental rights in Poland.

We call on Portugal to ensure that the Council urgently addresses specific recommendations to the government of Poland in order to safeguard all the principles enshrined in Article 2 TEU and, based on the information provided, to support the need to determine that there is a clear risk of a serious breach of the values referred to in Article 2 TEU in Poland. We are gravely concerned that the lack of action by the Council has empowered the Polish government to continue pursuing policies that seriously undermine the rule of law and affect the fundamental rights of people in Poland. The dismantling of the independence and effectiveness of the country's judiciary is not only having unprecedented consequences on the activities of legal professionals in Poland but also now on the lives of all citizens in Poland who can no longer count on having access to independent justice when their rights - including under EU law - are violated. Prompt and effective action by the Council is urgently needed to curb this trajectory.

Erosion of Judicial Independence

As you are aware, judges in Poland have faced arbitrary disciplinary proceedings for criticizing problematic judicial reforms and referring cases for preliminary rulings to the Court of Justice of the European Union (CJEU). Poland failed to fully comply with the June 2019 and November 2019 rulings by the CJEU regarding the laws on the Supreme Court and on ordinary courts. It also failed to respect interim measures issued by the Court in April 2020 which ordered the government to suspend the

powers of the Disciplinary Chamber of the Supreme Court pending a decision on the case regarding it. The Polish government has also failed, so far, to satisfy the European Commission that the law adopted in February 2020 (also known as ‘the Muzzle Law’) is compatible with EU law. This warranted the Commission’s decision to refer Poland to the CJEU and to ask the Court to order interim measures pending a final judgment in the case.

Since the beginning of Portugal’s Presidency of the Council, the National Prosecutor’s Office requested the [lifting of the immunity of judges](#) of the Criminal Chamber of the Supreme Court perceived as critical of the ruling party’s policies and requested to [take over files](#) of cases heard by judges from the Criminal Chamber to transfer them to the Disciplinary Chamber, deemed illegal by the CJEU.

Violation of Women’s Rights, notably through the Compromised Constitutional Tribunal

Again, during Portugal’s Presidency, on 27 January 2021, the Polish government published the October 2020 ruling of the politically-compromised Constitutional Tribunal, invalidating the constitutionality of access to abortion on the ground of “severe and irreversible foetal defect or incurable illness that threatens the foetus’ life.” The implementation of the decision of a Tribunal whose legitimacy has, according to the European Commission’s own assessment, been compromised, risks severely damaging women’s rights and access to sexual and reproductive health and rights. It leads to violations of rights protected under international and European human rights law, including the rights to freedom from torture or cruel, inhuman or degrading treatment or punishment, to the highest attainable standards of health, to privacy, and to non-discrimination and undermines adherence to the EU values of the rule of law, equality, human rights and dignity enshrined in Article 2 TEU. More recently, in March 2021 [a new bill criminalizing abortion](#) was presented by citizens’ initiative. If adopted, the bill would afford full legal protection to the fetus from the moment of conception and limit the grounds for legal care by banning abortion in cases where pregnancy results from sexual assault or if the health of a pregnant person is at risk, as provided for in the Family Planning Act currently in force. Abortion would be treated as homicide punishable with up to 25 years of imprisonment, although the court would have discretion to issue a more lenient punishment or waive the punishment altogether. Moreover, 16 Polish MPs aligned with the conservative ruling coalition have presented another [draft bill](#), which, under the pretext of providing care to pregnant women whose fetuses have a “suspected or diagnosed lethal defect,” would require them to be referred to antenatal hospices where their pregnancies would be monitored and their decisions about pregnancy influenced. The Constitutional Tribunal’s decision and similar initiatives are the result of systematic attempts over the past several years by the Polish government, and by ultra-conservative forces close to power, to roll back women’s rights, including by limiting their access to sexual and reproductive health and rights and promoting policies that reinforce traditional gender roles, thus undermining gender equality, within Polish society.

We are also concerned that the same politically-compromised court that invalidated the constitutionality of access to abortion could decide on Poland’s withdrawal from the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (Istanbul Convention) [following Prime Minister Mateusz Morawiecki’s referral of the Convention for review](#) due to its definition of “gender.” In parallel, the Parliament is debating Poland’s withdrawal from the Convention on the basis of a [citizens’ initiative bill](#) entitled “Yes to family, no to gender,” which had its first debate in Parliament on 17 March 2021 and, as a result of a first reading held on 30 March 2021, has been forwarded to the expert Parliamentary Commissions for further proceedings. The renewed attack on Polish women’s fundamental right to be protected from violence represents yet another attempt to roll back on women’s rights, and another example of the use by the Polish government of the Court system it has severely compromised since 2015 as a tool to implement a regressive and anti-democratic agenda. We take note of the [statement](#) of the Polish Representative at the EU High-Level Group on Non-Discrimination, Equality and Diversity, read during the Portuguese

Presidency Conference on the Istanbul Convention on 6 April 2021. The Polish government must now follow through, and commit not to withdraw from the Convention and to fully implement it.

Violation of the Right to Peaceful Protest and Targeting of Women's Rights Organizations

Equally worrying is the Polish government's continued [targeting of women's rights](#) organizations and women human rights defenders, whose right to peaceful protest without fear of violence or reprisal has been violated through smear campaigns, systematic denial of funding, and government-backed police brutality. Threats to activists' safety have escalated: at least five human rights organizations and women's rights groups said they reported bomb threats between 8 March and 20 March to police, who checked the premises and found no evidence of explosive devices. However, some activists have noted that the police minimized the security risks of these and other death threats and indicated it was unlikely that a full investigation would follow. In addition, [a recent ordinance](#) (25 March 2021) amends previous ordinances on the establishment of certain restrictions, orders and prohibitions in connection with the outbreak of an epidemic. The new provisions prohibit - in addition to organising assemblies - participation in them, which may cause further persecution of protestors. The ban is contrary to the Polish Constitution, because in accordance with Article 233(3) of the Polish Constitution, even in a state of natural disaster - that is a constitutional state of emergency - it would not be possible to restrict the freedom to organise and participate in assemblies.

These alarming developments require an urgent and serious response from the Council. We are deeply disappointed that the Council has not held any hearing under Article 7(1) TEU on the rule of law in Poland since September 2018 and are concerned that continued failure to examine this problem will lead to the further erosion of fundamental rights, such as those mentioned above.

We welcome [your calls](#) at the European Parliament's plenary debate on Poland on 9 February, for the protection of Polish women's fundamental rights and for guaranteeing access of Polish women's rights NGOs to EU funding, such as the European Social Fund, the new Citizens, Equality, Rights and Values Programme, and other instruments. We ask that you demonstrate your government's support to Polish women's rights organisations by continuing to call for their legitimate access to these programmes, and by pressing for genuine actions by the Council to curb the severe consequences and significant implications of the rule-of-law backslide implemented by the Polish government.

Citizens and non-governmental organizations working on rule of law and fundamental rights throughout the EU expect their governments to stand up and show that respect for human rights and the rule of law remains at the core of European Union values, and that attacks on these principles will not go unaddressed. Failure to do so jeopardises the EU's ability to effectively safeguard adherence to the core values on which the Union is founded, and undermines the Union's credibility towards non-EU countries.

We stand ready to assist with any further information you may require on these issues.

Yours Sincerely,