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# National Recovery and Resilience Plan: Poland

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**Abstract**

Given Poland's failure to respect the rule of law, the adoption and implementation of the RRP has been more challenging than for countries that respect the principles of a democratic state. The pre-approved Polish RRP focuses on the hitherto completely marginalised green transition and the still insufficiently implemented digital transformation. The disbursement of funds for implementing the relevant objectives, however, is subject to meeting conditions related to reform of the judicial system.

**Keywords**: Poland, Rule of law, Green transition, Digital transformation.

## 1. General framework.

The Polish government has declared that the solutions proposed under the Recovery and Resilience Plan (RRP – in Polish: *Krajowy Plan Odbudowy* or KPO) will complement the ad hoc anti-recession measures it has taken so far, along with local governments, to try to help businesses and particular sectors. In the medium term, the proposed measures are intended to support the further transformation of the Polish economy. The overall aim, according to the Strategy for Responsible Development until 2020 (looking forward to 2030), is to create conditions for increasing the incomes of the Polish population, while enhancing social, economic, environmental and territorial cohesion.

A central aim of the Polish government's negotiations in 2020 was to prevent the adoption of an EU regulation on the rule of law. As is widely known, the situation with the justice

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system in Poland has raised concerns in, among others, the European Commission.[1] Polish criticisms of the Conditionality Regulation have focused on arguments to the effect that it deprives Poland of its sovereignty, it is an unacceptable intervention in internal affairs (the exclusive competence of the Member States), and that the provisions of the regulation are unclear and unspecific. The conditionality mechanism finally introduced in December 2020 (the "money for the rule of law" principle) allows the European Union to withhold EU funds, not just from the so-called NextGenerationEU plan, but also all money due under the EU budget for 2021–2027.[2] After its adoption, however, the European Commission made a "gentleman's agreement" with the governments of Poland and Hungary that the rule of law principle would not be applied until the Court of Justice of the EU, at the request of these two countries, confirms that the EU Treaties give the EU institutions grounds to apply the rules and procedures referred to in the regulation. By judgments of 16 February 2022, however, the actions brought by Hungary and Poland were dismissed in their entirety.[3]

It should be noted that the procedure provided for in the Conditionality Regulation may be initiated only if there are reasonable grounds for considering not only that there have been breaches of the rule of law in the Member State concerned, but above all that those breaches have a sufficiently direct impact or create a serious risk of impact on the sound financial management of the Union budget or on the protection of its financial interests. It is therefore not sufficient to simply state, for example, that the independence of the courts is at stake in order to suspend disbursements. This point is often overlooked in discussions. Detailed explanations of how the Commission will apply the Conditionality Regulation are provided in dedicated guidelines.[4]

## 2. The Polish RRP: focus on energy and transport.

### 2.1. Amount requested – grants and loans.

Poland is one of the biggest beneficiaries of the EU budget for 2021–2027 and the Recovery and Resilience Facility. From all sources, Poland is expected to benefit from around 136.4 billion euros (€) in grants and around €34.2 billion in loans. From the Recovery and Resilience Facility, Poland can request over €23.9 billion in grants and over €34.2 billion in loans. It is indicated that Poland's wider use of EU loan instruments may be challenged by rapidly growing public debt and the need to comply with a rule on stabilising expenditure. In fact, if Poland uses the money granted it under the RRF, it will result in an increase in public

[1] CGUE - C-791/19, *European Commission v. Poland*, 15 July 2021, ECLI:EU:C:2021:596.
[2] Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget, OJ L 433I, 22 December 2020, 1-10.
[3] CGUE, C-156/21, *Hungary v. Parliament and Council*, ECLI:EU:C:2022:97; and CGUE, C-157/21, *Poland v. Parliament and Council*, ECLI:EU:C:2022:98
[4]https://ec.europa.eu/info/sites/default/files/about_the_european_commission/eu_budget/c_2022_1382_3_en_act_part1_v7.pdf.

debt, as around one-third of the planned funds are loans. Fiscal policy in Poland is conducted within a fiscal framework that consists of national and EU regulations. The suspension or abolition of fiscal rules would undermine the credibility of Polish public finances. Poland will also be challenged to adapt to the EU's climate policy – it is estimated that Poland's energy transition alone will cost about €356 billion in 2021–2040.[5]

To date, Poland has applied for a total of €23.9 billion in grants under the RRF and €12.1 billion in loans. The projects included in the plan cover the entire duration of the RRF until 2026. The resources from the lending part are planned primarily for additional financing of projects related to climate transformation and digitalisation. Up to 31.2 per cent of the total funds will go to the private sector, 37.5 per cent to the national government and 31.2 per cent to local government.[6]

### 2.2. Main reforms and investments

| | **Component** | **Allocated funds – grants** | **Allocated funds – loans** | **Share of total funding** |
|---|---|---|---|---|
| A | Resilience and competitiveness of the economy | €4.5 billion | €245 million | 13.1% |
| B | Green energy and reduction of energy consumption | €5.7 billion | €8.6 billion | 39.8% |
| C | Digital transformation | €2.797 billion | €2.1 billion | 13.6% |
| D | Efficacy, availability and quality of the health system | €4.1 billion | €450 million | 12.6% |
| E | Green, smart mobility | €6.8 billion | €0.7 billion | 20.9% |

Source: Ministerstwo Funduszy i Polityki Regionalnej, Krajowy Plan Odbudowy i Zwiększania Odporności (projekt), Warszawa kwiecień 2021, s. 29: https://www.gov.pl/web/planodbudowy/czym-jest-kpo2

The Polish plan is structured around five components that constitute areas for reform and investment. Each component contains interventions to enhance territorial coherence, addressed to rural areas, cities or areas particularly affected by the pandemic where there is an accumulation of socio-economic problems. The largest amount of RRP funds is allocated

[5] http://orka.sejm.gov.pl/WydBAS.nsf/0/1267C1611F851FECC125875F00332850/$file/Infos_289.pdf.
[6] Bieliszczuk B., *The Polish Recovery Plan: a careful step toward energy transition*, 87, 25 October 2021, Elcano Royal Institute, https://www.realinstitutoelcano.org/en/analyses/the-polish-recovery-plan-a-careful-step-toward-energy-transition/.

to the 'Green energy and reduction of energy consumption' component and the 'Green, smart mobility' component. This represents 39.8 and 20.9 per cent, respectively, of the total funds planned to be spent. It was indicated that activities (reforms and investments) related to digitalisation are not only in the dedicated Component C, but also under the components supporting green mobility, the health sector and economic competitiveness. It is estimated that digitalisation spending will reach 21.5 per cent (20.6 per cent from the grant part, 23.2 per cent from the loan part of the RRP) and climate spending will reach 48.3 per cent (18.2 per cent from the grant part of the RRP, 68.3 per cent from the loan part), thus meeting the EU requirements of digital and climate spending (20 and 37 per cent, respectively).

The priorities of the Recovery Plan, as can be seen from the above, are the energy sector and transport. The most significant reform of the 'Green energy and reduction of energy consumption' component is the 'Clean Air' reform, associated with investments in heat (cooling) sources in district heating systems, heat source replacement and energy efficiency in residential buildings, thermomodernisation of schools and investments in energy efficiency and renewable energy source (RES) installations in large enterprises. The energy transformation planned in Poland is aimed at replacing coal in the energy balance of the country by launching other energy sources, in particular nuclear energy and the increasing use of renewables, especially offshore and onshore wind energy.[7] The development of onshore wind energy depends on the liberalisation of current regulations, the so-called distance law, introduced in 2016 due to controversies among local communities. The legislation sets the minimum distance of wind farms from homes or protected areas at no less than ten times the height of the turbine. This rule blocked the possibility of building new wind farms on land. Estimates indicate that up to 99.7 per cent of Poland's land area was thus excluded. The amendments will give local authorities the flexibility to decide the distance of wind farms from homes.[8] Currently the share of renewable energy in total primary energy is 21.59 per cent. The structure of energy obtained from renewable sources in Poland results mainly from geographical conditions and the resources that can be developed. Energy obtained from renewable sources in 2020 comes mainly from solid biofuels (71.61 per cent), wind energy (10.85 per cent) and liquid biofuels (7.79 per cent).[9]

In the area of transport, the most important reforms are the increase in the use of environmentally friendly transport (such as investments in electric cars and charging points, construction of a photovoltaic factory, investments in the replacement or provision of new low- and zero-emission bus rolling stock), and improving the competitiveness of the railway sector (through modernisation of railway lines and rolling stock). Poland has significant potential in the electric vehicle market. It is currently the largest exporter of electric buses in the EU, with a 46 per cent market share, and in 2025 will most likely have the third largest

[7] Ministerstwo Funduszy i Polityki Regionalnej, *Krajowy Plan Odbudowy i Zwiększania Odporności (projekt)*, Warszawa kwiecień 2021, 31, https://www.gov.pl/web/planodbudowy/czym-jest-kpo2.
[8] Bieliszczuk B., nt. (9).
[9] Główny Urząd Statystyczny, *Energia ze źródeł odnawialnych w 2020 r.*, Warsaw, 2021, 13: https://stat.gov.pl/obszary-tematyczne/srodowisko-energia/energia/energia-ze-zrodel-odnawialnych-w-2020-roku,3,15.html.

fleet of such buses in Europe. Poland also wants to develop its own brand of electric vehicles, Izera, and is the largest producer of batteries for electric vehicles in Europe.[10] Rail transport in Poland is important in terms of moving people and cargo. Overall, rail comes behind road transport in terms of volume transported. Regional disproportions in the railway network are noticeable, however: while in Śląskie voivodship there are 1964 km of lines, in Podlaskie voivodship the figure is only 654 km.[11] Railway passenger transport in the case of the majority of connections is not, however, an attractive alternative to private cars because of the low frequency of travel, insufficient comfort and traffic disturbances caused by prolonged line renovation.

### 2.3. Impact of the reforms on labour and social affairs.

Reforms related to the transition from a coal-based economy will have a significant impact on the labour market. It is assumed that the gradual phasing out of hard coal mines will take place by 2049, which will enable Poland to implement the provisions of the European Green Deal. The coal mining sector accounts for 78,900 employees (as of May 2021) and strongly influences other sectors. In terms of the employment structure in mining, it is a strongly male-oriented industry: in 2019, men accounted for around 90 per cent of all employees in the Upper Silesian Basin. Among labourers, the share of men was 95 per cent, in technical supervision 89 per cent, only in administration was it significantly lower, at 20 per cent. As for employees' levels of education, in 2019, 3 per cent of mining workers had only a primary education, 29 per cent a vocational education, and nearly half (48 per cent) had a secondary education. In 2019, the average age of a pit worker was 36 years, while that of a surface worker was 48 years.[12]

The decarbonisation process will be particularly important for the labour market in the Silesia voivodeship, which has the largest number of mining workers in the European Union. It is estimated that the labour surplus in the mining sector will be between 14,000 and 36,000 people by 2030, depending on the rate of decarbonisation.[13] The specifics and timetable of mine closures and decommissioning indicate that underground workers tend to be the first to leave, while technical and administrative staff remain in employment for longer. This is related to securing the pits and limiting secondary mining damage on the surface, and then selling mine property.[14]

According to the literature, four instruments may be used to reduce labour market mismatches during the transition process: (i) a freeze on hiring new workers in mining; (ii) relocations to other mines in line with mine closure schedules and plans to maintain coking

[10] Bieliszczuk B., nt. (9).
[11] Zielińska E., *Analiza rynku usług kolejowych w Polsce*, in *Czasopismo Autobusy,* 12, 2017, 673–674.
[12] Frankowski J., Mazurkiewicz J., Sokołowski J., Lewandowski P., *Zatrudnienie w górnictwie węgla kamiennego w Zagłębiu Górnośląskim*, IBS Research Report, 01, 2020, 8–25.
[13] Sokołowski J., Frankowski J., Mazurkiewicz J., Antosiewicz M., Lewandowski P., *Dekarbonizacja i zatrudnienie w górnictwie węgla kamiennego w Polsce*, IBS Research Report, 01, 2021, 2–4.
[14] Frankowski J., Mazurkiewicz J., Sokołowski J., Lewandowski P., nt. (15).

coal production; (iii) retraining for younger workers; and (iv) monitoring of competencies and key positions to serve the transition between positions within companies.[15] On 28 May 2021, after nine months of negotiations, the government and trade union representatives signed a social agreement on the transformation of the hard coal mining sector. The document sets deadlines for the end of coal mining at individual mines by the end of 2049.

Social protection for employees from the mines being closed and an allocation system are provided for. The social agreement also provides for a training programme, with the aim of awarding new qualifications that enable people to work outside the mining sector.[16] In general the social contract corresponds to the instruments indicated above for reducing labour market mismatches during the transformation process. However, acceptance of the agreement does not end the work on the transformation of the industry, it is only the first step in a coherent scheme for mining transformation. The RRP plans measures in this area focused on improving the fit between skills and qualifications and labour market requirements. They are intended to serve the better orientation of vocational education, more effective cooperation because schools, universities, employers, research and development centres and other institutions in the economic environment, and support for lifelong learning.

Other initiatives related to the labour market foreseen in the Polish RRP include:

- investment in the infrastructure of childcare places for children under 3 years of age, facilitating women's return to the labour market;
- improvement of effectiveness, accessibility and quality of health services, translating into improvement of the health of the Polish population, which should reduce the risk of early withdrawal from the labour market because of health problems;
- support for the development of modern vocational education, higher education and lifelong learning;
- improvement of cooperation between vocational education, business and science.

## 3. The social and labour dimensions in the RRP

### 3.1. Evaluations by the Commission and the Council.

Poland continues to face allegations of non-compliance with EU rule of law, which has long ruled out approval of the RRP. Poland (as well as Hungary) is currently subject to the procedure under Article 7(1) TEU, which ruled out the possibility of approving the RRP. For many commentators there was no doubt that as long as the deficiencies were not remedied, the funds should not be unblocked.[17] According to the announcement of 1 June

[15] Sokołowski J., Frankowski J., Mazurkiewicz J., Antosiewicz M., Lewandowski P.,. nt (16), 20.
[16] https://www.gov.pl/web/aktywa-panstwowe/umowa-spoleczna.
[17] Alemanno A., Morijn J., Pech L., Sarmiento D., *6 reasons why the EU should use the approval of National Recovery and Resilience Plans to enforce the rule of law in Hungary and Poland*, 30 August 2021, available at: https://webcache.googleusercontent.com/search?q=cache:YD4TYWzyGAwJ:https://www.thegoodlobby.eu

2022, the European Commission has made a positive assessment of the Polish Recovery and Resilience Plan,[18] which is an important step towards the disbursement of €23.9 billion in grants and €11.5 billion in loans by the European Union under the Recovery and Resilience Instrument.

Poland's plan includes milestones related to important aspects of the independence of the judiciary, which are of particular importance to improving the investment climate and putting in place the conditions for effective implementation of the Recovery and Resilience Plan. Poland needs to demonstrate that these milestones have been fulfilled before any disbursement under the RRF can be made.

In the opinion of the Commission, Poland's RRP includes an extensive set of mutually reinforcing reforms and investments that would help effectively to address all or a significant subset of the economic and social challenges outlined in the country-specific recommendations addressed to Poland and it contains several reforms to enhance the investment climate. Such improvements include a comprehensive reform of the disciplinary regime applicable to Polish judges, which is expected to strengthen important aspects of judicial independence and constitute an important step towards repairing the rule of law.

Effective judicial protection is essential. Accordingly, the Polish RRP milestones sets out *reforms strengthening the independence and impartiality of courts,* based on the requirements of the European Commission. Such reforms supposed to remedy the situation of judges affected by the decisions of the Disciplinary Chamber of the Supreme Court[19] in disciplinary and judicial immunity cases. The purpose of the reforms is to reinstate judges unlawfully removed from office. This should be followed by positive review proceedings carried out by the new Chamber. The reforms mentioned above should be conducted without delay, ensuring effective audit and control of the RRP, including protection of EU financial interests.

Such reforms will need to meet the following commitments:

- in contrast to the current Disciplinary Chamber, all disciplinary cases against judges will be adjudicated by a court that complies with EU legal requirements in line with CJEU case law and is thus independent, impartial and established by law;
- judges cannot be subject to disciplinary liability for submitting a request for a preliminary ruling to the CJEU, for the content of their judicial decisions, or for verifying whether another court is independent, impartial and established by law;
- procedural rights of parties in disciplinary proceedings are strengthened;

/2021/08/30/6-reasons-why-eu-should-use-the-approval-of-national-recovery-and-resilience-plans-to-enforce-the-rule-of-law-in-hungary-and-poland/+&cd=1&hl=pl&ct=clnk&gl=pl&client=firefox-b-d.

[18] Proposal for a Council Implementing Decision on the approval of the assessment of the recovery and resilience plan for Poland, COM(2022) 268 final 2022/0181(NLE).

[19] The irregularities concerning the operation of the Disciplinary Chamber mainly include the unconstitutional manner in which it was set up, as well as the lack of independence and impartiality of the judges adjudicating therein. The CJEU, in ruling on the Disciplinary Chamber, in particular denied its independence and condemned its ability to hold judges liable for disciplinary action for decisions made, including asking a preliminary question. It also condemned the competence of the President of the Disciplinary Chamber to appoint those hearing a disciplinary case. The CJEU also took a dim view of the procedural guarantees available to judges accused of disciplinary misconduct. CJEU ruling of 15.07.2021, ECLI:EU:C:2021:596.

- all judges affected by past Disciplinary Chamber rulings will have the right to have these rulings reviewed without delay by a court that complies with EU requirements and is thus independent, impartial and established by law.

The first steps towards implementing the reform have already been taken.[20]

### 3.2. Implementation of the European Pillar of Social Rights and the Social Scoreboard.

It is extremely difficult to refer to the Polish RRP's implementation of principles stemming from the European Pillar of Social Rights, because the document makes no direct reference to them. It merely states that:

- The implementation of the RRP serves to promote economic, social and territorial cohesion by enhancing resilience, crisis preparedness, adaptability and growth potential, mitigating the social and economic effects of the crisis, in particular on women (thus implementing the objectives of the European Pillar of Social Rights) (p. 3);
- the adopted architecture of objectives, directions and components of the RRP implements the priorities of the European Semester and the thematic pillars as defined in Article 3 of the RRF Regulation and the European Flagship Initiatives [The plan – I.F]. It also makes reference to the UN Sustainable Development Goals (SDGs) and the principles of the European Pillar of Social Rights (p. 92).

This seems to hold out hope for direct references to the principles of the European Pillar of Social Rights, which the RRP would implement. Unfortunately, the RRP contains no such references. It concentrates on only one principle stemming from the Pillar, gender equality and ensuring equal opportunities for all. One page[21] is devoted to a description of the activities undertaken to achieve the goal of gender equality.

As indicated by the RRP, the principle of gender equality (Principle 2 of the European Pillar of Social Rights) will be implemented through actions aimed at ensuring equal labour market access for women and men. The objective is to provide both women and men with conditions enabling their personal and professional development and to encourage them to make life choices based on their personal needs, aspirations or talents. The planned interventions will help to improve the labour market situation of disadvantaged women and those experiencing greater difficulties in finding or maintaining employment. Specific solutions will be introduced to accelerate the process of change in favour of equal opportunities, such as regulations on flexible forms of employment and remote working, and improved access to childcare institutions by ensuring greater accessibility of various forms of childcare for children up to the age of 3.

[20] As an example of reforms intended to facilitate the working conditions of foreigners, the provisions of the new law have been published:
https://www.gov.pl/web/premier/projekt-ustawy-o-zatrudnianiu-cudzoziemcow.
[21] Polish Recovery and Resilience Plan, 90.

As regards the abovementioned policy objectives, it should be noted that they are currently at the implementation stage. Advanced legislative work is under way on:

- implementation of the Labour Code regulation on remote working, currently regulated only in the Act of 2 March 2020 on specific solutions related to the prevention, prevention and combating of Covid-19, other infectious diseases and crisis situations caused by them;[22]
- implementation of the Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work–life balance for parents and carers and repealing Council Directive 2010/18/EU),[23] which would include extended leave for carers, a new exemption for family matters and flexible working for parents and carers.

Additional measures to be taken in this context, included in the RRP, are the preparation of a framework for the functioning of a network of sectoral skills centres with the participation of vocational schools, universities, organisations and associations of employers, research and development centres and other institutions of the economic environment. Such a framework is supposed to foster vocational excellence at all levels of vocational training and cooperation between education and the labour market in the field of vocational guidance and counselling.

The principle of equal opportunities for all (Principle 3 of the European Pillar of Social Rights) is to be implemented through measures aimed at improving the labour market participation of people from underrepresented groups (older people 50+, women and people with disabilities). Moreover, the planned reforms and investments will improve the situation of people excluded from the labour market or not fully exploiting their potential because of their lack of qualifications. This also applies to people with disabilities. The plan assumes that conditions are to be created for acquiring and upgrading qualifications corresponding to the needs of a modern economy (including support for the development of modern vocational education, higher education and lifelong learning, and for the development of employees' initiatives).[24]

At present, it is not possible to ascertain the relevant stages of implementation of all these things, with the exception of the law on social economy, which has already been enacted.[25] Regarding the other new regulations, even if the legislative process is under way, it is at the level of work in individual ministries. At this stage the content of the new laws has not been made public, and therefore their progress is unknown.

Further legislative work should focus on the development of a package of new regulations: on the labour market and employment of foreigners;[26] and on the creation of a

[22] That is, Dz. U. of 2021, item 2095, as amended.
[23] OJ L 188, 12.7.2019, pp. 79–93.
[24] Polish Recovery and Resilience Plan, 48.
[25] The new Social Economy Act was adopted on 5 August 2022.
[26] The provisions of a new law on work activities have been published: (https://www.gov.pl/web/premier/projekt-ustawy-o-aktywnosci-zawodowej). As already mentioned (*see* nt. (19)) the provisions of the new law on the employment of foreigners have been published, https://www.gov.pl/web/premier/projekt-ustawy-o-zatrudnianiu-cudzoziemcow.

single, coherent system of support for childcare institutions for children up to 3 years of age, integrating various sources of funding.

**3.3. The 2019–2020 Council recommendations and their implementation in the RRP.**

The Council recommendation on Poland's 2019 national reform programme and delivering a Council opinion on Poland's 2019 convergence programme[27] (usually referred to as "country-specific recommendations"),[28] addresses several issues related to labour law and social matters.

It noted that reducing the statutory retirement age to 60 years for women and 65 years for men, introduced in autumn 2017, will have a serious adverse impact on future pension benefits and will result in significant differences in the level of benefits received by women and men. Existing preferential pension schemes entail budgetary costs and reduce labour mobility between sectors. The Council also recommended reforming the special social security system for farmers, which currently receives subsidies from the state budget of around 0.8 per cent of GDP, inhibits labour mobility and contributes to hidden unemployment in the agricultural sector. Neither of these recommendations have been implemented, however; the different retirement ages for men and women and the preferential insurance system for farmers are still in place. The Council noted that the labour market participation of certain groups, in particular the low-skilled, people with disabilities and their careers, as well as older workers, remains low compared with other Member States. So far, however, no mechanisms have been put in place to improve this situation.

The Recommendation also draws attention to the fact that no further legal changes have been introduced to address the problem of above-average use of fixed-term employment contracts.

There has also been no visible action to date to counteract another undesirable phenomenon identified in the Recommendation, namely the low participation rate of adults in education and training. In Poland's Country-Specific Recommendations 2019 it was pointed out that this participation is well below the EU average and that enterprises do not make sufficient use of vocational training. The RRP addresses the Council's labour market and education recommendations, namely Recommendation 2 of the 2019 CSR and the Council Recommendation on Poland's National Reform Programme for 2020 and delivering a Council Opinion on Poland's Convergence Programme for 2020.[29] The RRP component "Resilience and competitiveness of the economy" corresponds to them. The implementation of reforms and investment projects in this component will help to increase labour market

[27] Recommendation for a Council Recommendation on the 2019 National Reform Programme of Poland and delivering a Council opinion on the 2019 Convergence Programme of Poland COM(2019) 521 final.
[28] Later as: PL-SR-2019.
[29] Recommendation for a Council Recommendation on the 2020 National Reform Programme of Poland and delivering a Council opinion on the 2020 Convergence Programme of Poland. Later as: Poland Country-Specific Recommendations 2020.

participation, in particular by improving access to childcare for children up to three years of age, ensuring high quality education and adjusting skills to current labour market needs.

Poland's Country-Specific Recommendations 2020 focused overwhelmingly on the economic and social impact of the Covid-19 pandemic. The RRP materially supports the implementation of the 2020 Council Recommendations related to counteracting the effects of the pandemic, in particular those on: supporting recovery through investment (Recommendation 3) and mitigating the impact of the crisis on employment (Recommendation 2) (RRP area "Economic resilience and competitiveness"); and improving the accessibility, resilience and efficiency of the health system (Recommendation 1) (RRP area "Efficiency, accessibility and quality of the health system"). The RRP details the ways in which the government intends to meet the Council's recommendations, but it should be borne in mind that we are dealing here largely with declarations rather than real action. In order to implement the recommendations, a draft budgetary reform has been prepared. The envisaged effects of this reform include increased transparency and efficiency of public spending. In terms of supporting investors, a law was adopted that allows companies implementing new investments to exemptions from certain taxes throughout Poland. A programme to support investments of significant importance to the Polish economy for 2011–2030 was introduced, with a budget of almost PLN 2.6 billion. Under the programme, it is possible to subsidise both large strategic investments and medium-sized innovation projects. Preference is given to projects related to the use of modern technologies and research and development activities.

Once again, as previously in Country-Specific Recommendations 2019 and Country-Specific Recommendations 2020, the Council stressed that improving flexible forms of work organisation, including teleworking schemes and flexible working hours – in particular, within permanent forms of employment – could help in responding to the crisis, as well as providing support for people from groups with lower participation rates to find permanent employment. In the RRP no significant changes have been made to the introduction of flexible forms of work organisation and part-time work. Provisions for remote working have been introduced, although only temporarily and related to the Covid-19 pandemic.

Country-Specific Recommendations 2020 diagnose one of the main problems facing the Polish labour market: the division of working people into those covered by social protection (employees working under the Labour Code) and those whose protection is limited (workers/employed persons working under civil law).

To the extent that the recommendations have been successfully introduced in the RRP, additional attention should be paid to the following. The RRP has highlighted Recommendation No. 3 of Country-Specific Recommendations 2019 and 2020 on appropriately directing investment policy towards green and digital transformation, clean and efficient energy production and use, and sustainable transport, innovation and health care, as well as the recommendation to accelerate the implementation of ready-made public investment projects and to promote private investment in order to support economic recovery. The implementation of these Council recommendations is fostered by all the components included in the RRP.

The RRP announces changes in vocational education aimed at adapting it to the needs of the labour market. Here, too, however, it is difficult to talk about significant effects. There are measures, for example, to increase the availability of childcare places for children up to the age of three, subsidising the creation of crèches.

As regards accessibility to health care, a number of IT solutions were announced, in particular e-prescriptions and e-referrals for selected types of medical services.

Poland has failed to comply with the abovementioned recommendations on the legal system deriving both from Country-Specific Recommendations 2019 and 2020. Nevertheless, in the RRP Poland declares that it is implementing all of the 2019 and 2020 Council Recommendations. This implementation has been carried out to a different extent and using different types of instruments than indicated in the abovementioned documents. At this stage it is not possible to fully assess the degree of implementation of the CSRs, although it seems that it is not the highest. Both experts and some economic indicators bear this out.[30]

## 4. Lessons from the previous crisis.

Poland is the only country besides Hungary that has not yet received NGEU funds. The Polish government submitted the RRP to the European Commission on 3 May 2021, and it was approved by the Commission on 1 June 2022 and by the Council on 17 June 2022. The funds will not be disbursed before the end of 2022, however. This is largely for political reasons and conflicts between the Polish government and EU institutions. The main axis of this conflict is Poland's lack of proper rule of law standards, as exhibited by the actions of the current Polish authorities since 2015. During the previous crisis in Europe, the problems described below did not occur. Throughout the 2009–2011 crisis period, Poland was the only EU country to maintain GDP growth. Compared with other European economies, Poland's situation was assessed very positively. Up to 2015, the rule of law in Poland was not under threat. In particular, the judiciary remained independent of the state. Moreover, Poland was one of the leaders of European integration until 2015. This is evidenced by the fact that Polish Prime Minister Donald Tusk was elected President of the European Council in 2014.

### 4.1 Historical background.

After the "Law and Justice" party (PiS) and its coalition partners came to power in 2015, major legal changes were initiated to concentrate all power in the hands of the government. To this end, an unconstitutional "takeover" of the Constitutional Tribunal was carried out by appointing new judges drawn from party activists, among others. The unconstitutionality ruling was made b the Constitutional Court acting with the old panel of judges, but the

[30] https://oko.press/krajowy-plan-odbudowy-wielka-szansa-ale-brak-strategii-lidera-wizji-ekspert-ujawnia/

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government simply disregarded it. The unconstitutionality of the current Polish government's Constitutional Court reform is also commonly acknowledged by the legal literature and experts.[31] Subsequent reforms have brought about the politicisation of other state institutions, such as the prosecution service and the civil service. The next stage was an attempt to expand political control over the judiciary. To this end, the rules for appointing the National Council of the Judiciary – a constitutional body that plays a key role in the procedure for appointing judges – were changed. The structure of the Supreme Court was then modified by introducing two new chambers: the Extraordinary Control Chamber, which rules on the validity of elections, and the Disciplinary Chamber, which plays a significant role in sanctioning lawyers, prosecutors and judges. The remaining chambers, as well as the lower courts, have appointed judges using unconstitutional procedures, as discussed below. At the same time, a number of disciplinary proceedings have been initiated against judges, including for rulings contrary to government policy and for asking preliminary questions of the CJEU.[32]

These actions were deemed unconstitutional and incompatible with EU law by both the Polish Supreme Court (adjudicating in a panel with lawfully appointed judges)[33] and the CJEU.[34] The CJEU held that Article 47 of the Charter of Fundamental Rights of the European Union (CFR) and Article 9(1) of Council Directive 2000/78/EC of 27.11.2000[35] must be interpreted in such a way as to preclude disputes concerning the application of Union law from falling within the exclusive jurisdiction of a body which does not have the status of an independent and impartial court within the meaning of the Charter.

The Court also found that the Disciplinary Chamber does not provide full guarantees of independence and impartiality and, in particular, is not protected against direct or indirect influence from the Polish legislature and executive. By establishing such a system, Poland has failed to fulfil its obligations under Article 19(1) Art 2 TEU and Article 267 Arts 2 and 3 TFEU. Moreover, in view of the Polish government's failure to implement the ruling, it was ordered to pay the European Commission a periodic penalty payment of €1 million per day until such time as the obligations arising from the rulings are met.[36]

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[31] Sadurski W., *Poland's Constitutional Breakdown*, Oxford, 2019.
[32] The report of the Committee for the Defence of Justice: "A state that punishes. Putting pressure on and repressing Polish judges and prosecutors" November 2021:
https://komitetobronysprawiedliwosci.pl/app/uploads/2021/11/Raport_KOS_2021_internet.pdf.
In addition, other measures have been taken against judges (dismissal, transfer, initiation of unfounded criminal proceedings, tax audits and so on).
[33] Supreme Court judgment of 5.12.2019, III PO 7/18:
http://www.sn.pl/aktualnosci/SiteAssets/Lists/Komunikaty_o_sprawach/AllItems/III-PO-0007_18_English.pdf.
Resolution of the full bench of the Supreme Court of 23.01.2020, BSA I-4110-1/2020, http://www.sn.pl/aktualnosci/SiteAssets/Lists/Wydarzenia/AllItems/BSA%20I-4110-1_20_English.pdf.
[34] CJEU judgment of 19.11.2019, C-585/18, C-624/18, C-625/18, *AK v National Council of the Judiciary*, *CP and DO v Supreme Court*, EU:C:2019:982, and CJEU judgment of 15.07.2021, C-791/19 R, *Commission v Poland*, EU:C:2020:277.
[35] Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ L 303, 02/12/2000 P. 0016 – 0022).
[36] Resulting in a fine of almost €300 million at the time of writing.

### 4.2. A political game.

The Polish government tried to separate its conflict with the European Commission over the rule of law from the issue of obtaining funds under the NGEU. The European Commission has not allowed it to do so. The Commission expects Poland to abolish the Disciplinary Chamber of the Supreme Court, whose legality has been questioned by the EU Court of Justice, and requires changes to the system for disciplining judges and reinstating 'unlawfully removed' judges. The Polish Parliament must adopt the relevant laws to meet these conditions.[37]

The Polish government's dispute with the Commission escalated as a result of a ruling by the Polish Constitutional Tribunal (composed mostly of judges nominated by the current government). This Court, at the Prime Minister's request, in a judgment of 7 October 2021, held that Poland's membership of the EU does not give the CJEU supreme legal authority and does not mean that Poland has transferred its legal sovereignty to the EU.[38] This ruling caused outrage on the EU side. The Commission's position following the ruling made clear the basic principles of the Union's legal order: EU law takes precedence over national law, including constitutional provisions, and all judgments of the CJEU are binding on the authorities of all Member States, including national courts.[39] Both the President of the Commission and other European politicians (including Clement Beaune and Michael Roth) have expressed themselves unequivocally in this spirit.[40]

The Polish President prepared a draft reform of the Supreme Court. According to the authorities' assurances, the bill was supposed to change the structure of the Supreme Court and abolish the Disciplinary Chamber. In reality, however, the bill did not introduce any substantial novelty, as it merely replaced the Disciplinary Chamber with the Chamber of Professional Responsibility, de facto changing only its name and making only minor changes to the grounds of judges' responsibility. This reform is unlikely to change the position of the European Commission.

The war in Ukraine and Russian aggression have clearly disrupted international politics. It has caused a huge humanitarian crisis, the largest in Europe after the Second World War. Out of almost 6.5 million refugees from Ukraine, almost 3.5 million went to Poland.[41] Poland has provided refugees with comprehensive assistance, although it is worth mentioning that most of the aid was provided by private individuals and NGOs, and that the government's

[37] Tamma P., *Von der Leyen lays out path to unlock Polish recovery funds — with conditions*: https://www.politico.eu/article/european-commission-ursula-von-der-leyen-sees-path-compromise-to-unlock-polish-recovery-funds/.
[38] Constitutional Tribunal judgment of 7.10.2021, K 3/21: https://trybunal.gov.pl/en/hearings/judgments/art/11662-ocena-zgodnosci-z-konstytucja-rp-wybranych-przepisow-traktatu-o-unii-europejskiej.
[39] European Commission reaffirms the primacy of EU law: https://ec.europa.eu/commission/presscorner/detail/en/statement_21_5142.
[40] Petrequin S., *EU top official clashes with Polish PM over rule of law*, https://apnews.com/article/europe-poland-ursula-von-der-leyen-european-union-european-commission-e38e083c1b6966c5c674be4cffb59986
[41] UNHCR, The United Nations High Commissioner for Refugees data, as of 22.05.2022: https://data2.unhcr.org/en/situations/ukraine.

assistance was delayed and far from sufficient. It is certain that such a huge number of refugees will have a serious impact on the socio-economic situation in Poland. Therefore, the Polish government has tried to leverage this issue in its negotiations with the European Commission. This has not been well received by the Commission, however, which clearly separates the issues of the humanitarian crisis caused by war from the violations of the rule of law in Poland.

### 4.3. Economic effects.

In 2021 the Polish economy largely recovered from the losses of 2020. According to a preliminary estimate, GDP in 2021 was 5.7 per cent higher in real terms than in 2020, compared with a decline of 2.5 per cent in 2020 (in previous year's prices). However, estimates for GDP growth in 2022 are much more cautious because of, among other things, the Russian aggression against Ukraine. The World Bank estimates Poland's GDP growth at 3.9 per cent in 2022 and around 3.6 per cent in 2023.[42]

Growing public debt may pose a significant threat to the Polish economy. According to official data, as of the end of 2021, public debt amounted to 53.8 per cent of GDP (with the constitutional prudence threshold of 60 per cent). Another problem is the so-called implicit public debt, which is generated by special funds created at Bank Gospodarstwa Krajowego (Polish National Development Bank) and under the financial shield of the Polish Development Fund. The difference between the debt shown in the "official" budget this year may grow to over PLN 350 billion, rising from 10 per cent of GDP in 2021 to 13.7 per cent.[43]

The most worrying economic indicator at present, however, is inflation, which according to the Central Statistical Office stands at 13.9 per cent (data May 2021–May 2022). This is despite the government's introduction of the so-called anti-inflationary shield, as well as significant increases in interest rates by the National Bank of Poland. The reference rate was 1.5 per cent before the pandemic (until 18.03.2020), 0.10 per cent in 2021 (until 6.10.2021), and currently (from 9.06.2022) 6 per cent. A gradual increase even to 8.5 per cent is being discussed.[44]

It is worth noting that all the above macroeconomic data are clearly worse than forecast. According to the European Commission's 2021 forecast, Poland's GDP was expected to grow by 5.5 per cent in 2022 and 4.2 per cent in 2023, while inflation was expected to rise by 4.1 per cent in 2023. According to the European Commission's forecast, Poland's GDP was

[42]https://www.worldbank.org/en/news/press-release/2022/04/08/polish-growth-forecast-revised-down-in-2022-as-the-russian-invasion-weighs-on-europe-s-economy.
[43]https://businessinsider.com.pl/gospodarka/makroekonomia/polski-dlug-publiczny-poza-budzetem-rosnie-jak-na-drozdzach/k3r48z2 .
[44]https://300gospodarka.pl/news/stopy-procentowe-nbp-rpp-w-maju-w-gore-co-to-oznacza-dla-kredytobiorcow.

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to increase by 5.5 per cent in 2022 and by 4.2 per cent in 2023.[45] Inflation and cost increases may mean that some of the investments in the Polish RRP cannot be implemented, as even representatives of the Polish government admit.[46] It is difficult to estimate the negative impact of inflation at present, as it is not known when (or even whether) Poland will receive funds for implementing the RRP.

## 5. Conclusions

Adoption and implementation of the RRP in Poland is difficult to assess at this stage. The country has not yet received funds from the NextGenerationEU. Despite the Commission's approval of the Polish RRP, it is not certain when or if these funds will be released at all. This is primarily because of the conflict between the Polish government and the Commission, mainly the failure of the Polish authorities to ensure adequate standards of rule of law. The reform of the judiciary has been the subject of political criticism and numerous CJEU rulings. What is worse, the Polish government is not fulfilling its obligations properly, for example, by not implementing CJEU rulings on judicial independence. Therefore, the approval of the Polish RRP has been criticised by, among others, the European Parliament.[47] In approving the Polish RRP, the Commission explicitly made potential disbursements conditional on the Polish government meeting milestones regarding the judiciary in Poland. So far, the Polish authorities have failed to comply.

Another significant threat to obtaining NGEU payments is the conflict within Poland's governing coalition. The adoption of certain milestones has been heavily criticised by smaller parties in the government. This is surprising as the decision to accept the RRP commitments was a decision of the entire government. Meanwhile, some ministers oppose the implementation of parts of the RRP. Conflict is now apparent regarding, among other things, some of the solutions for the green transition. It seems that the implementation of some legislative changes (for example, regarding taxation of cars with combustion engines) will be difficult. This may affect the disbursement of NGEU funds. At the same time, the economic crisis is deepening in Poland. The causes of this crisis are the effects of the Covid-19 pandemic, the government's inappropriate economic policies of recent years, and in recent months the war in Ukraine.[48] All these things coming together has led to a serious decline in all macroeconomic indicators and, above all, to high inflation (the highest since the 1990s). Such a serious crisis means that NGEU measures are urgently needed. This puts the Polish

[45] https://ec.europa.eu/info/business-economy-euro/economic-performance-and-forecasts/economic-performance-country/poland/economic-forecast-poland_en
[46] https://businessinsider.com.pl/gospodarka/inflacja-moze-pogrzebac-czesc-inwestycji-z-kpo-minister-grzegorz-puda-ke-powinna/1dhsxwf
[47] European Parliament resolution of 9 June 2022 on the rule of law and the potential approval of the Polish national recovery plan (RRF) (2022/2703(RSP)).
[48] https://notesfrompoland.com/2022/05/12/polish-government-blames-soaring-inflation-on-russias-war-but-thats-only-part-of-the-story/

authorities in a difficult situation, as they are committed to the contested measures that have curtailed judicial independence.