

Matteo Mecacci

Director of the OSCE Office for Democratic Institutions and Human Rights

Brussels, 6 June 2023

Dear Mr. Mecacci,

We are the presidents of five political groups within the European Parliament contacting you about the upcoming parliamentary elections in Poland. We come from different political groups and from different countries, but we all share the concern that the elections might not be held to the highest democratic standards.

That is why we would invite the OSCE Office for Democratic Institutions and Human Rights **to carry out a full-scale election observation mission** for this year's parliamentary election in Poland.

The final report of ODIHR's Limited Election Observation Mission of Poland's latest parliamentary election in October 2019 raised concerns about "the distinct editorial bias of the media" and "intolerant rhetoric in the campaign" which "adversely impacted the opportunity of voters to make an informed choice". It was further noted that senior state officials were using publicly funded events for campaign messaging and high-ranking officials running as candidates were promising to locally distribute public funds, which was "blurring the line between state and party". Concerns were also raised about the secrecy of the vote which "was not always enforced" and the lack of impartiality of prosecutors and courts in adjudicating election disputes.¹

In the run up to this year's elections, Polish civil society, the Ombudsman and other stakeholders observed further seriously worrying developments:

- While the government claims that the recently adopted Act to amend the Electoral Code and certain other Acts aims at mobilising voters in general, the Polish Ombudsman has expressed concerns about its potential discriminatory effect.² The Act foresees setting up new voting stations only in small towns and villages, areas which usually vote for the current ruling coalition, and introduces an unreasonable, 24 hours time limit for the counting of votes of voters abroad. Such a time limit could even lead to invalidation of votes. It also allows individuals to record the whole election process with their private phone which could jeopardise the secrecy of the vote. In its 2020 opinion on the earlier Draft Act amending the Electoral Code and certain other Acts, which was subsequently signed into law, ODIHR had already criticised that these substantial changes were adopted shortly before the elections, and notes that civil society organisations have criticised it being adopted "in a short

¹ https://www.osce.org/files/f/documents/c/7/446371_1.pdf, pp. 1-2

² <https://bip.brpo.gov.pl/pl/content/rpo-kodeks-wyborczy-zmiany-opinia-senat>

period of time and without the support of opposition parties”.³ Such criticism is equally relevant for the newly adopted Act.

- The Polish ruling party also recently introduced a law to create a Commission with the alleged aim of investigating Russian influence, which was passed in the Parliament on May 26th, following a rejection by the Senate, and formally signed into law on May 29th. There are fears that it will mainly be used to prevent members of the opposition from taking up office if elected as it allows for a ban on individuals to perform public functions related to the distribution of public funds for up to ten years.⁴ It is accompanied by draft amendments to the Criminal Code which seek to criminalise even any form of unintentional communication with ‘foreign intelligence’, while the latter is not properly defined. Such legislation, if adopted, would raise major issues regarding compliance with the right to be elected, freedom of expression and freedom of association. We consider this a cynical example of exploitation of the Russian aggression against Ukraine in order to create a chilling effect on politicians, media, and civil society.

In addition to these legislative changes, we fear that the structural lack of independence of the judiciary and media landscape will further threaten the integrity of the upcoming elections.

- The Extraordinary Review and Public Affairs Chamber of the Polish Supreme Court, which has electoral disputes within its jurisdiction, has by now been completely filled with neo-judges appointed by the politically-captured National Judicial Council.⁵
- In the context of the recent attack on an independent Polish radio station, the International Press Institute has raised concerns about Poland’s politically appointed National Broadcasting Council becoming “an instrument for applying politically-motivated pressure to media critical of the ruling party”.⁶ A study from 2022 also revealed that state-owned companies spend higher amounts of advertising on media that support the government.⁷ It has furthermore been proven that the Polish government has been using the Pegasus spyware to opposition politicians.⁸

The issues mentioned are not at all new. In 2017, the European Commission in its reasoned proposal in accordance with Article 7(1) of the Treaty on European Union invited the Council to declare that there is a clear risk of a serious breach by Poland of the rule of law. In a number of cases the Court of Justice of the European Union came to the conclusion that Poland has failed to fulfil its obligations - in particular, under the provisions regarding the

³ <https://www.osce.org/files/f/documents/8/2/538074.pdf>, p. 2

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<https://notesfrompoland.com/2023/04/15/poland-to-create-commission-investigating-russian-influence-but-opposition-cry-foul/>

⁵ <https://wolnesady.org/files/2500-days-of-lawlessness-2000-days-report-update-EN-.pdf>, p. 49

⁶ <https://ipi.media/poland-tok-fm-fine-sparks-renewed-concerns-about-regulatory-capture/>

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<https://notesfrompoland.com/2022/04/01/polish-state-firms-direct-advertising-cash-to-government-friendly-media-data-show/>

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<https://www.amnesty.org/en/latest/news/2022/01/poland-use-of-pegasus-spyware-to-hack-politicians-highlights-threat-to-civil-society/>

independence of the judiciary and the right to a fair trial.⁹ Moreover, the lack of independence of the Extraordinary Review and Public Affairs Chamber of the Polish Supreme Court has been addressed by both the Court of Justice of the European Union¹⁰ and the European Court of Human Rights.¹¹

Against this background, we think it would be crucial to follow all key aspects of the Polish electoral process through a full-scale mission: the legislative framework, candidate and voter registration, including rights of Poles voting abroad¹², the campaign, the role of the media (including comprehensive media monitoring), the election administration, election dispute resolution, participation of women and national minorities, and the voting, counting and tabulation process on election day, as well as post-election complaints and appeals through a full-scale election observation mission.

We are very much looking forward to your reply and remain at your disposal in case you might wish to receive additional information from us as Members of the European Parliament.

Yours sincerely,

Manfred Weber, EPP

Iratxe GARCÍA-PEREZ, S&D

Stéphane Séjourné, Renew

Terry Reintke and Philippe Lamberts, Greens/EFA

Manon Aubry and Martin Schirdewan, The Left

⁹ Most recently, in the judgment of 5 June 2023, *Commission v Poland (Independence and private life of judges)* (C-204/21, EU:C:2023:442)

¹⁰ Judgment of 6 October 2021, *W.Ż. (Chamber of Extraordinary Control and Public Affairs of the Supreme Court – Appointment)* (C-487/19, EU:C:2021:798)

¹¹ *Dolińska-Ficek and Ozimek v. Poland*, nos. 49868/19 and 57511/19, 8 November 2021

¹²<https://notesfrompoland.com/2023/04/19/new-deadlines-for-counting-overseas-votes-not-constitutional-warns-polands-human-rights-commissioner/>