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Brussels, 19 July 2017

Ref: 114-JPB-hb

Your Excellency,

**Re: adopted amendments to the Polish Act on the National Council of the Judiciary and the Act – Law on Common Courts Organisation**

I am writing to you on behalf of the "Ordre des Barreaux Francophones et Germanophone de Belgique" (OBFG), which represents 9.000 French and German speaking lawyers in Belgium.

The Act on the National Council of the Judiciary and the Act amending the Law on Common Courts Organisation, as passed by the Polish Sejm and the Senate, as well as the draft Act on the Supreme Court, referred for further works by the Sejm, cause serious concerns among lawyers across Europe.

The amendment to the Act of the National Council of the Judiciary provides, among others, for the termination of the mandate of the Polish Judges' Council's members. Their successors will be appointed by the Sejm. Today, they are appointed by the judges. The new Act authorizes one house of the Parliament to appoint members of the National Council of the Judiciary. In conjunction with the establishment of two assemblies within the Polish Judges' Council (the first one formed by the 15 judges appointed by Parliament and the second one including six members from the Polish Parliament, the Minister of Justice, a representative of the Head of State, the President of the



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Supreme Court and the President of the High Administrative Court), and with a requirement that any resolution by the Judges' Council has to be adopted by both assemblies sitting separately, this gives a substantial role to politicians in the selection and appointment of judges. It contravenes the constitutional principle of independence of the judiciary (Article 179.1 of the Polish Constitution).

On the other hand, the Act amending the Law on the Common Courts Organization changes the rules of appointing and recalling presidents of courts by increasing the authority of the minister of justice. Article 17.1 of the adopted amendment enables the Minister of Justice to arbitrarily recall all the presidents of courts in Poland during their term of office. The provision was passed despite the fact that the Legislation Office of the Polish Sejm declared it unconstitutional.

Finally, on top of the adopted amendments to the said two Acts, the Polish Parliament also received a draft of a new Act on the Supreme Court. This draft reads that all judges of the Supreme Court (save for those designated by the Minister of Justice) will retire immediately upon when the said Act enters into force.

In the definition of the political system, the Constitution of the Republic of Poland reads that Poland is a democratic state ruled by law. This means that the political system is based on separation and equilibrium of the legislative, executive and judicial powers.

The already passed acts concerning the judiciary, and notably the draft Act on the Supreme Court, not only dilute the independence of the judicial power, but also eliminate its institutional guarantees and subordinate it to the decisions taken by politicians. This will threaten seriously the independence of judges.

The requirement to abide by the standards guaranteeing the autonomy of courts and independence of the judiciary is provided for by the United Nations General Assembly Resolution of 1985, Article 14.1 of the International Covenant on Civil and Political Rights and Article 6.1 of the Convention for the Protection of Human Rights and Fundamental Freedoms which Poland is a party to and which provisions find confirmation in the Constitution of the Republic of Poland.

Only by complying with these standards, protection of individual rights of citizens and stable functioning of the States can be ensured. As it is beyond any doubts that law-making and practical application of law by a democratic state ruled by law should warrant autonomy and freedom of the judicial power and inviolability of independence of the judiciary. Only when the judiciary functions in that manner, it can guarantee that the individual rights of citizens are protected and that trust in the State is built.

Violating or threatening the autonomy and independence of courts is not only an internal problem of Poland. It has consequences for international legal community as well and affects directly the application of European Union law. The right of access to an independent court is one of the primary elements underpinning legal systems of states. It is guaranteed by article 47 of the Charter of Fundamental Rights of the European Union. When doubts arise as to whether in the Polish system

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judgements are passed by such an independent "court", the situation may arise where the rulings of Polish courts will not be recognized in European and international jurisdictions.

On behalf of the Belgian lawyers I am representing, I would like to appeal to You to avail yourself of the right of veto and refuse to sign the Act of 12 July 2017 amending the Act on the National Council of the Judiciary and certain other acts, and also the Act of 12 July 2017 amending the Act – Law on the Common Courts Organisation and certain other acts.

Faithfully yours,



Jean-Pierre Buyle

President of the O.B.F.G.