

EU at a Crossroads

In recent weeks, Poland has become the EU's biggest challenge after its constitutional court ruled that EU laws do not have primacy over Poland's national laws. While the EU and Poland have had several points of contention since the Law and Justice party came to power in 2015, this particular conflict has had grave consequences for both entities involved; for example, the EU's top court has now fined Poland one million Euros a day, and the European Commission has threatened the country's access to Covid relief funds [1].

To understand why both Poland and the EU (which rarely resorts to such concrete actions against its members) have taken such a confrontational stance, it is crucial to look at the context of their recent relationship. Since 2015, the EU has been concerned over what it sees as the democratic backsliding of Poland. In particular, legal reforms such as the introduction of the disciplinary court, which has the power and discretion to punish judges and pressurise them to rule in favour of governing authorities [2]. As a result, the judicial system is no longer seen as independent. Other concerns include legislation curtailing LGBTQ and abortion rights, actions continuously called into question by the EU on various occasions but lead to no significant outcome.

The actual legality of the matter is ambiguous since the treaties (Article 5 in particular) do not enshrine absolute supremacy of EU law, but several EU court judgments have indicated otherwise [3]. Germany's top court also had recently disagreed with the European Court of Justice regarding the mandate of the ECB during the eurozone crisis, but the EU did not come out all guns blazing. So what makes this case different? This time it is the core principle of the primacy of EU law that the Law and Justice party has brought to the fore, probably in an attempt to circumvent direct EU intervention in domestic policies. The EU perceives this conflict as an existential threat to human rights in Poland and, more importantly, its legitimacy as an institution.

The EU cannot be seen as letting Poland stay out of the legal order framework of the union but benefitting from its funding at the same time. Hungary and other countries will be keeping an eye on the dispute as their relationship with the EU are on a similar plane, making this much more significant for the EU as it could have a domino effect it would like to avoid. Therefore, it is not too farfetched to imagine the EU escalating the conflict further, even to the point of 'Polexit' given the stakes. These drastic measures have been made more likely by Angela Merkel soon stepped out of the picture and the less diplomatic Olaf Scholz seen as her likely successor. The Franco-German power axis will be less hesitant in pursuing harsher policies. The European Commission has sent a letter to Poland asking for information regarding the independence of the judiciary as an informal trigger to its rule of law mechanism, which would allow the commission to cut funding to Poland [4].

So, given both sides' dramatic speeches and rhetoric, is 'Polexit' a likely outcome? Not really. Poles overwhelmingly support staying in the EU. Therefore, the prospect of 'Polexit' and losing out on the bloc's financial advantages will not be popular at home. For example, the party won more than 70% of farmers' votes, but the sector also depends on the EU's farm subsidies [5] [6]. Elections approaching in 2023 and Donald Tusk, former Prime Minister of Poland, back on the national political scene means that the party cannot risk losing the support of its rural base. The country is politically polarised, and it is reasonable to expect the Law and Justice party to eventually come to a compromise as it needs all the political support it can get. The border dispute with Belarus, America being less collaborative (with the AUKUS

deal, for example), Brexit, and the overall geopolitical climate with China, Russia and Afghanistan will push the EU to work closely together. Ultimately, the EU is a composition of its member states, and a 'Polexit' will benefit neither.

Suraj Rajesh | 24rd November 2021

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[2] The Economist Newspaper. (n.d.). Poland's ruling party should stop nobbling judges. The Economist. Retrieved November 22, 2021, from <https://www.economist.com/leaders/2020/01/25/polands-ruling-party-should-stop-nobbling-judges>

[3] Glossary of summaries. EUR. (n.d.). Retrieved November 22, 2021, from https://eur-lex.europa.eu/summary/glossary/primacy_of_eu_law.html

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