

European policy of Law and Justice government: change or continuity?

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This paper aims at formulating informed expectations as to the European policy of the new Polish government that was formed after 25 October 2015 parliamentary elections. My argument is based on the analysis of three areas of European integration that are of particular importance to Law and Justice: 1) changing power relations within the EU and the future of European integration project; 2) dealing with the refugees (migration) crisis; 3) EU climate policy. On the one hand, I argue that more continuity than change is to be expected with regard to migration and climate policies and it is rather external than internal factors that account for change. On the other hand, Polish government is to become a more (rhetorically) assertive, contesting and less constructive partner, especially for Germany. Domestically, national interest and sovereignty discourse is expected to play a far greater role, while fueling euroscepticism.

Recent electoral choices and public opinion polls

The analysis of continuity and change in Polish European policy post-October elections cannot be carried out without at least a brief look at domestic political dynamics and changing attitudes of the public opinion. It is the first time in Polish post-1989 history that the winner was able to form one party government (the majority is 231 votes). It is also the first time that no left-wing party has entered parliament and the role of the parliamentary 'left' is now assumed by the liberal centre-right Civic Platform. Had the United Left stood as a single party and not as a coalition (in the latter case a threshold of 8% instead of 5% applied), the left would have been represented in the Sejm and Law and Justice would not have had the majority of seats. Also, the two leftist entities (United Left and Razem) scored over 11% together: these votes were 'wasted' and largely 'went' to the winning party when it came to seats' distribution. Another important issue is that for the first time since 2005 far right has gained parliamentary representation (some deputies of Kukiz'15 invited Jobbik members to visit the Sejm on the Polish Independence Day on 11 November).

Political party (committee)	% of votes on 25 October	Number of seats in the Sejm
Law and Justice	37.58	235
Civic Platform	24.09	138
Kukiz'15	8.81	42
Nowoczesna (Modern)	7.60	28
Polish Peasants' Party	5.13	16
United Left	7.55	-
KORWIN	4.76	-
Razem (Together)	3.62	-

25 October 2015 parliamentary elections results and seats' distribution in the Sejm¹

According to CBOS opinion polls the percentage of Poles, who are against accepting any refugees from countries with military conflict, has been growing dramatically: from 21% in May to 43% in October 2015. Attitudes towards refugees from Ukraine were more positive than towards refugees from Africa and Middle East: whereas 34% of respondents were against accepting the former, 51% were against accepting the latter (October 2015). Interestingly, it was the youngest Poles who were mostly against acceptance of refugees: among those aged 18-24 76% are against refugees from Africa and Middle East (52% among 35-44) and 46% against refugees from Ukraine (29% among 35-44)². This was fully in line with recent electoral choices: among those aged 18-29 the far right - Kukiz'15 and KORWIN - received highest scores, respectively 20.6 and 16.8%.

On the other hand, Poles do not question the threat of climate change and EU climate policy to a similar extent. Whereas 45% of respondents agreed that EU 2014 climate decisions were beneficial for Poland, 34% claimed they were disadvantageous. 71% considered that climate change is direct consequence of human actions. However, 51% also claimed in 2014 (45% in 2009) that "global warming" was mostly about business and powerful interest groups making huge profit on people's fear and sense of guilt. Whereas 18% regarded climate change as major civilization threat, 57% thought that it was a surely important but only one of many threats³.

According to Spring 2015 Eurobarometer survey, Poland was one of the 6 EU countries where distrust towards the Union and its institutions has grown in comparison with Autumn 2014 (by 4 percentage points; bigger growth was only registered in Austria - by 10 percentage points). Those who did not trust the EU were rather men than women, youngest and oldest by age categories, with smallest number of years in education, especially those unemployed, manual workers, but also self-employed. This is again consistent with voting patterns for right and far right parties, which are traditionally more eurosceptic. Between Autumn 2014 and Spring 2015 Poland has also registered the biggest fall among all Member States when it comes to the number of people who tend to see EU positively (by 8 percentage points: from 62 to 53%)⁴.

Change and continuity: refugee (migration) crisis

On 11 November 2015 Konrad Szymański, designated minister for European Affairs stated in an interview that "... there is no legal basis allowing for withdrawal from commitments made by [Civic Platform] Ewa Kopacz. But we will not treat [agreed relocation] as a pilot project for a permanent mechanism. This is a bad solution for Europe. We need humanitarian policy and border protection. Poland will not support hasty arrangements that only reinforce the

¹ Państwowa Komisja Wyborcza, Obwieszczenie Państwowej Komisji Wyborczej z dnia 27.10.2015 o wynikach wyborów do Sejmu Rzeczypospolitej Polskiej przeprowadzonych w dniu 25.10.2015, http://parlament2015.pkw.gov.pl/pliki/1446212096_obwieszczenie_Sejm.pdf; Sejm RP, Dane o posłach wg stanu na dzień wyborów, http://www.sejm.gov.pl/Sejm8.nsf/page.xsp/poslowie_poczatek_kad [17.11.2015].

² Centrum Badania Opinii Społecznej (CBOS), *Polacy o uchodźcach: w internecie i w 'realu'*, Komunikat z badań nr 149/2015, Warszawa, 11.2015, <http://www.cbos.pl> [17.11.2015].

³ Centrum Badania Opinii Społecznej (CBOS), *Polacy o stanie środowiska i zmianach klimatu*, Komunikat z badań nr 171/2014, Warszawa, 12.2014, <http://www.cbos.pl> [17.11.2015].

⁴ European Commission, Standard Eurobarometer 83 Spring 2015, *Public opinion in the European Union*, Fieldwork: May 2015 [20.11.2015].

problem. The decision [to take 11 000 people] has to be implemented. But it has to be done in a way that guarantees maximum security for Poland"⁵. However, three days later (14 November), while taking advantage of the Paris terrorist attacks, he claimed that "... implementation of the decision to relocate refugees is not politically possible for Poland. [Under the circumstances] Poland has to retain full control of its borders, asylum and migration policies"⁶. Later that day he added that relocation "... could be done provided that proper security guarantees are in place, but after attacks in Paris these are called into question".

The new government of Prime Minister Beata Szydło was approved by the Parliament on 18 November. In her opening speech before the Sejm, she specifically though implicitly linked the refugee crisis with Poland's security, while attempting to 'de-europeanize' the problem and to reinterpret the principle of European solidarity. At the very beginning of her speech she underlined - while referring to terrorist attacks in Paris - that 'Poland will cooperate, in the spirit of solidarity, with other European states in the fight against terrorism. However, the absolute priority is to guarantee security for citizens of Poland'. In fact, solidarity means 'sharing what is good and being ready to help in cases of emergency or dangerous events such as natural disasters, terrorist or military threats'. But solidarity is not about 'attempts to export problems that were caused by some states, without participation of other states that are now expected to carry the burden'⁷. The last sentence was clearly aimed at Germany and its initially welcoming position when it comes to accepting Syrian refugees. Polish government linked continuing migration inflow to Germany's unilateral action and thus considered that others EU countries should not pay the bill for decisions they had no influence on.

Does the new government's position provide for a radical change in comparison with the Civic Platform approach? The response is negative. Civic Platform has been extremely sceptical about relocation and although it agreed to accept ca. 11 000 refugees over two years, it vigorously opposed establishment of a permanent relocation mechanism, while advocating a voluntary approach coupled with stronger protection of external borders and stepping up humanitarian assistance to refugees in Syria's neighbouring countries. It is unrealistic to think that a Civic Platform government would act differently in the aftermath of the Paris attacks when faced with increasingly radicalizing public opinion (see Denmark refusing to accept quota refugees in the aftermath of the attacks). Simply, its objections would have been expressed in a more diplomatic way and without finger pointing at Angela Merkel. In this context it is worth underlining that Szymański's 14 November statement first appeared on a right-wing news portal and was thus aimed at domestic public opinion. The explicit link made between terrorist attacks and refugees' inflows might have been condemned by many in Europe, but it derives from widespread and long standing public conviction in Poland. Again, it is mostly the youngest respondents that consider refugees a threat to Poland's security (52%

⁵ Interview with Konrad Szymański, wpolityce.pl, 11.11.2015, <http://wpolityce.pl/polityka/271409-nasz-wywiad-konrad-szymanski-nowy-minister-ds-europejskich-o-imigrantach-roli-berlina-pakiecie-klimatycznym-nord-stream-2-tusku-i-wyjasnieniu-1004-polecamy> [17.11.2015].

⁶ Konrad Szymański, *Wobec tragicznych wydarzeń w Paryżu Polska nie widzi politycznych możliwości wykonania decyzji o relokacji uchodźców*, wpolityce.pl, 14.11.2015, <http://wpolityce.pl/swiat/271757-polska-musi-zachowac-pelna-kontrole-nad-swoimi-granicami-nad-polityka-azylowa-i-migracyjna> [17.11.2015].

⁷ Sejm Rzeczypospolitej Polskiej, Sprawozdanie stenograficzne z 1 posiedzenia Sejmu Rzeczypospolitej Polskiej VIII Kadencji w dniu 18 listopada (4 dzień obrad), Warszawa 2015, http://orka2.sejm.gov.pl/StenoInter8.nsf/0/ACC7A0E8310D1F55C1257F01004844EA/%24File/01_d_ksiazka.pdf [23.11.2015].

among 18-34 and 31% among 35-54⁸). The new ruling party is aware of the fact that it has far right competition (within and outside the Parliament), which could easily thrive on government's lack of decisiveness with regard to migration crisis, currently the most divisive and hottest issue on the political agenda.

It is also worth stressing that Polish government has not been voicing its concerns in a vacuum. The language used in official documents by EU institutions has changed, in particular since the terrorist attacks in Paris. In October 2015, President of the European Commission reported that the Commission was dedicating more money to the 'refugee crisis'⁹. On 9 November the Council adopted conclusions on 'measures to handle the refugee and migration crisis'. However, in its conclusions on counter-terrorism from 20 November the Council no longer mentioned 'refugee crisis', but only 'migration crisis'. It also referred to 'third country nationals illegally entering the Schengen area' as both 'migrants and applicants for international protection'¹⁰. In general, whereas EU-level discussion was initially centered on openness and relocation, it later moved towards 'regaining' control of EU external borders.

Change and continuity: climate policy

The climate policy as such was not mentioned in the parliamentary speech of prime minister Szydło on 18 November. This is not surprising as Law and Justice always considered key elements of EU climate policy detrimental to Polish economy and energy security. Similarly to the case of refugee (migration) policy, we can observe growing securitization of the energy and climate discourse in Poland. Notably, Ms Szydło stated that energy security for Poland means not only securing (in any political situation) reliable oil and gas supplies, but also maintaining exploitation of Poland's own carbon resources¹¹.

Some more light was shed by minister Konrad Szymański. In his opinion, costs of EU climate policy (especially when it comes to the reform of the emission trading scheme) are greater for Poland than for any other EU Member State. The main problem is that a single policy was applied to economies at different stages of development and societies whose affluence and capacity to pay for energy transformation was highly differentiated. Since broad agreement on the future of the policy was reached in 2014, the new government intends to focus on negotiation of compensation mechanisms that would reduce costs for Polish economy. However, additional proposals complementing the compromise already reached on the climate policy were not excluded. Szymański confirmed that the climate policy was on the top of the government's European agenda¹².

⁸ Centrum Badania Opinii Społecznej (CBOS), *O uchodźcach w przededniu unijnego szczytu poświęconego kryzysowi imigracyjnemu*, Komunikat z badań nr 133/ 2015, Warszawa, 10.2015, <http://www.cbos.pl> [17.11.2015].

⁹ European Commission, Refugee Crisis: European Commission reports on progress in implementation of priority actions, Press Release IP/15/5839, Brussels, 14 October 2015, http://europa.eu/rapid/press-release_IP-15-5839_en.htm [23.11.2015].

¹⁰ Council of the EU, *Conclusions of the Council of the EU and of the Member States meeting within the Council on Counter-Terrorism*, Press Release 848/15, 20.11.2015, http://www.consilium.europa.eu/press-releases-pdf/2015/11/40802205351_en_63583643520000000.pdf [23.11.2015].

¹¹ Sejm Rzeczypospolitej Polskiej, Sprawozdanie stenograficzne..., op. cit.

¹² Interview with Konrad Szymański, op. cit.

It is only natural for a new government to criticize its predecessor for insufficient determination in international negotiations and lack of coherent approach. However, Civic Platform environment minister and then special envoy for climate negotiations Marcin Korolec has been widely viewed by majority of EU Member States and environmental organizations as the 'bad cop' and leader of the Central European coalition against climate policy¹³. During Council discussions on the future of the emission trading scheme the previous government was consistently voicing concerns as to the growing gap between EU environmental standards and realistic possibilities for a number of industry sectors to come up with technological solutions in order to comply with those standards¹⁴. Arguments that are currently voiced by Law and Justice representatives have been also used in negotiations by the previous government. In fact, what the new government has so far promised is to go in the same direction but to be more assertive and effective in securing a final deal that would allow keeping carbon as one of major energy resources and avoiding significant growth in energy (especially electricity prices).

Change and continuity: power relations and the future of the European Union

Continuity in Polish European policy is to be expected in key EU policies such as single market, digital agenda, cohesion and agriculture policies. We can also expect continuous emphasis on the importance of the European Commission as guardian of the treaties and so-called community method, as long as it serves Polish interests in counter-balancing the power of biggest Member States (expectations as to the role of the Commission in handling Nord Stream 2 are a case in point). Opposition towards current arrangements within climate and migration policies has been inherited from the predecessors but the stance is promised to be more assertive. More importantly however, climate policy and EU-level solutions to the migration crisis have been shaping wider understanding of the European Union as acting against basic Polish interests (both in economic and security realm) and dominated by Germany that is pursuing its own interests without due or any consideration of those of its partners.

Civic Platform government has been opposing both the EU climate policy and permanent mechanism of immigrants' relocation, although it was prepared to give in, in exchange for some concessions. This strategy was guided by a strong desire to remain within the European mainstream and to maintain the best possible relations with Germany. Outright opposition was considered counter-productive and dangerous: Civic Platform elites were deeply convinced that Poland - in the current geopolitical situation as embodied by Russian aggression in Ukraine - cannot allow itself to become an awkward partner. Moreover, with EU facing various disintegration pressures and further euro zone consolidation looming ahead (including proposals of separate euro zone institutions and budget), Poland would be far better off if it worked smoothly and constructively with the European core (in particular Germany) and maintained a reputation of pro-integration champion.

This strategy was clearly visible in statements of foreign affairs minister Radek Sikorski and other Civic Platform politicians. In a 2013 speech before the Sejm Sikorski underlined that a new European construction was emerging, fuelled by cooperation in banking and finance and

¹³ A. Neslen, *Polish 'bad COP' feared after ministerial sacking*, "EurActiv", 21.11.2013, <http://www.euractiv.com/climate-environment/polish-climate-minister-sacking-news-531850> [23.11.2015].

¹⁴ M. Korolec, *Rada UE ds. środowiska o systemie handlu uprawnieniami do emisji i tzw. dieselgate*, "Biznes Alert", 27.10.2015, <http://biznesalert.pl/40318-2> [23.11.2015].

concentrated around the euro zone. Differentiation into integration circles became a reality, according to the minister. Thus it was in Polish strategic interest to accede to the euro zone integration centre as soon as possible in order to avoid marginalization. This was not only economic decision but also far-reaching geopolitical decision¹⁵. The Ukrainian-Russian conflict in 2014 was further used by the Civic Platform government to advocate in favor of ‘more integrated, political union’ and strong leadership¹⁶: international situation made it clear that more economic interdependence between Poland and the EU was vital to Polish interests. Thus joining the euro zone was not only about economy, but also about security. Poland’s goal must be to strengthen Europe and not to withdraw from the EU like Great Britain¹⁷. Accordingly, there was no alternative to the alliance with Germany: Great Britain could not be considered an alternative as it had different preferences and its actions led to its effective marginalization in Europe. Also, Civic Platform pointed out that CEE alliance was an illusion: no country asked Poland for regional leadership. In fact, the greater influence of Poland on German position, the more impact it would have in the region.

This position was strongly opposed by Law and Justice when it was in opposition. After 25 October elections the Law and Justice government promised to adopt a more assertive stance towards EU partners than its predecessor. This is partly explained by domestic politics and changing attitudes of public opinion, but also by a wholly different assessment of the functioning of the European Union and understanding of Poland’s position and role within the evolving EU.

Already in 2011 Law and Justice contested Civic Platform government’s European strategy as founded on wrong assumptions, namely that the EU had only one centre and that the centre had its internal hierarchy based on economic potential. In this vision, the hegemon – the state that was most powerful economically, i.e. Germany – was entitled to discipline other members. The entire construction was to be supported by ‘pseudo-democratic arrangements’ (including politicization of the Commission or pan-European electoral lists) and pursued an economic model based on ‘monetarism and ratings’. All this resulted in political inequality and democratic deficit that went against the ideas of Europe’s founding fathers. An alternative vision advocated by Law and Justice meant more freedom and solidarity (instead of more integration and centralization), a polycentric Union (instead of division into centre and periphery) and a Union of equal states and equal rules for all members (instead of hierarchy and discipline). The idea was about solidarity (EU develops as fast as the least developed state), democracy (democratic legitimacy can be provided by national parliaments only) and openness (enlargement)¹⁸. This vision excluded federalization or political union and favoured

¹⁵ Informacja Ministra Spraw Zagranicznych o zadaniach polskiej polityki zagranicznej w 2013 r. (Information of Minister of Foreign Affairs on Tasks of the Polish Foreign Policy in 2013), 20.03.2013, http://www.msz.gov.pl/pl/aktualnosci/wiadomosci/informacja_ministra_spraw_zagranicznych_o_zadaniach_polskiej_polityki_zagranicznej_w_2013_roku [13.08.2014].

¹⁶ Informacja Ministra Spraw Zagranicznych o zadaniach polskiej polityki zagranicznej w 2014 roku (Information of Minister of Foreign Affairs on Tasks of the Polish Foreign Policy in 2014), 08.05.2014, http://www.msz.gov.pl/p/msz_pl/polityka_zagraniczna/priorytety_polityki_zagr_2012_2016/expose2/expose_2014 (last visited 13.08.2014).

¹⁷ Sejm Rzeczypospolitej Polskiej, *Sprawozdanie stenograficzne z 36 posiedzenia Sejmu RP VII Kadencji*, 20.03.2013 (pierwszy dzień obrad, Warszawa 2013), [http://orka2.sejm.gov.pl/StenoInter7.nsf/0/48239696DF9135D8C1257B350004E792/\\$File/36_a_ksiazka.pdf](http://orka2.sejm.gov.pl/StenoInter7.nsf/0/48239696DF9135D8C1257B350004E792/$File/36_a_ksiazka.pdf) [13.08.2014].

¹⁸ Sejm Rzeczypospolitej Polskiej, *Sprawozdanie stenograficzne z 3 posiedzenia Sejmu RP VII Kadencji*, 15.12.2011 (drugi dzień obrad, Warszawa 2011),

loose forms of intergovernmental cooperation. Evidently, closer links to British Tories within the ECR political group in the European Parliament served as source of inspiration for building contestation narrative of Civic Platform European policy.

Relations with Germany were a crucial point of Law and Justice European policy. The party criticized former government for privileging alliance with Germany: while aspiring to the ‘big guys club’, Poland neglected its regional partners and neglected the role of trusted representative of CEE interests. The party also opposed inclusion of Poland into the ‘core’ – if the latter was to be managed and controlled by Germany. Instead, Poland should aim not at a federation governed by the most powerful but at a community of equal states, freedoms of the single market and European solidarity understood as an alternative to the ‘egoism of the euro core’. It could instead concentrate on building a ‘sub-regional centre from Gdańsk to Istanbul’¹⁹ that would be able to counter-balance the Berlin – Paris – Brussels triangle. The community of interests with Germany was illusionary: despite that ‘alliance’ Poland was not part of the decision-making centre. It was Witold Waszczykowski (current minister of foreign affairs) who stated in 2013 that euro adoption would not give Poland more decision powers, while non-euro status did not prevent Great Britain from playing a major role²⁰.

In her opening speech before the Sejm on 18 November 2015 prime minister Szydło stated that Poland would oppose internal divisions within the European Union, but it would also openly voice its concerns and aim at strengthening the role of the [Central European] region in Europe²¹. The above-mentioned reference to Germany - as a country that imposes on others costly solutions to problems of its own creation - marks a shift in Poland's alliance-building strategy.

Conclusions

Expectations about the course of European policy of the new Law and Justice government can only be based on initial statements made by government representatives shortly before and after they formally took power, as well as positions taken when the party was in opposition. It is worth remembering that a party in opposition usually takes more radical views - in order to criticize the government and distinguish itself from it - than a party that takes full responsibility for the government. It thus remains to be seen to what extent Law and Justice would further its climate and energy plans or to what extent it would in reality distance itself from the German government. Political realities of EU-level institutional dynamics and the nature of package deals could make it difficult for the new government to go far beyond the assertive rhetoric.

However, it is also worth remembering that the state of the European Union is radically different when compared with the years 2005-2007 - when Law and Justice was previously ruling Poland. Back then the Union was certainly struggling with the constitutional crisis, but

http://orka2.sejm.gov.pl/StenoInter7.nsf/0/B5BC8CC970FA8E58C125796800473F23/%24File/3_b_ksiazka.pdf [13.08.2014].

¹⁹ Sejm Rzeczypospolitej Polskiej, *Sprawozdanie stenograficzne z 67 posiedzenia Sejmu RP VII Kadencji*, 08.05.2014 (drugi dzień obrad, Warszawa 2014), http://orka2.sejm.gov.pl/StenoInter7.nsf/0/757955B50A87A1BDC1257CD3000B2502/%24File/67_b_ksiazka.pdf [13.08.2014].

²⁰ Sejm Rzeczypospolitej Polskiej, *Sprawozdanie stenograficzne z 36 posiedzenia Sejmu...*, op. cit.

²¹ Sejm Rzeczypospolitej Polskiej, *Sprawozdanie stenograficzne z 1 posiedzenia Sejmu...*, op. cit.

internal divisions were relatively limited and external environment rather enabling. Thus it was not particularly difficult to contain and isolate Poland as an 'awkward partner'. Currently, the Union is heavily divided as a result of the economic and migration crises. Nationalism and euroscepticism have been on the rise for some time now. Contestation of individual EU policies and the entire system of EU governance (as dominated by Germany) is coming from different corners of Europe. European Union is also facing serious security threats and these are already being instrumentalized by political forces that are critical of various aspects of European integration process. Thus systemic contestation, that has until now appeared marginal, is progressively entering mainstream European politics.

With regard to many European policies, including climate and migration, more continuity than change is expected. An even more assertive stance on relocation of refugees would not have been possible without the external factor in the form of Paris terrorist attacks. Moreover, many EU governments have expressed doubts as to the viability of decisions previously taken in light of the new security threats. Thus it is hard to believe that the Civic Platform government would have behaved differently, especially in light of the radicalizing public opinion in Poland.

EU politics and its external environment have become highly unstable. Tensions resulting from economic, migration and Russian-Ukrainian crises, as well as terrorist threat would most probably further exacerbate divisions among the Member States. Moreover, British in-or-out referendum, as well as elections in Germany and France - all due within less than 2 years - might completely change power constellations within the European Union. For instance, leadership of Angela Merkel is increasingly being contested not only in other EU states (as it was the case with the euro crisis), but also in Germany and in her own party (mainly with regard to the migration crisis). The new Law and Justice government would thus operate in a different political and security environment than Civic Platform government did over the last years. It thus remains to be seen whether the new government would be willing and able to actively shape integration or disintegration processes in Europe or whether it would remain a marginal player or passive observer focused on aggressive rhetoric aimed at domestic public opinion, but with little practical impact.

Finally, not only will the future European policy of the Law and Justice government depend on the dynamically changing external environment, but also on internal political developments. Public opinion in Poland is moving to the right or even far right and the trend will be sustained or reinforced by the growing feeling of insecurity. This is also linked to disillusionment with the European Union - widely perceived as weak, divided and ineffective, especially in its dealings with the migration crisis. Inevitably, Law and Justice will at some point find itself criticized from far right positions for not being tough enough and giving in to 'Brussels' or 'Berlin'. Additional public disillusionment might come from great expectations for socio-economic change not being realized. Finally, the government is bound to attract international criticism for its assaults on principles of liberal democracy (independence of the judiciary, media freedom, etc.). All these factors combined might result in the ruling party fuelling euroscepticism to survive domestically, with potentially serious consequences for both Poland and the European Union.