

**Poland's 16<sup>th</sup> year in  
the EU. An unsuccessful  
thaw before the  
coronavirus storm**

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1<sup>st</sup> May 2020



*Warsaw did not take advantage of the opportunity for a “thaw” offered by Brussels last year. As a result, disputes over the rule of law remain a major burden for Poland. However, the rest of the EU knows how to (and still wants to) separate them from other subjects when working with the Poles.*

Poland’s sixteenth year in the EU featured changes in the top jobs in Brussels (partly linked to the European Parliament’s electoral cycle) and the Polish parliamentary elections, which the Law and Justice (PiS) party won again. This formed the basis for attempts at a “new opening” in relations between the European Commission and Warsaw, which have flared up with Brussels’ successive decisions to launch disciplinary proceedings concerning PiS’ judicial changes. From the start of her career in Brussels, Ursula von der Leyden, Jean-Claude Juncker’s successor as president of the Commission, opted for a kind of “normalisation” in relations with PiS, asking the party’s MEPs to back her candidacy during the summer of 2019. Without their support in the Parliament, it would have been more difficult for her to be chosen and, while no binding promises were made in negotiations with PiS, there were plenty of signals of a thaw in her contact with Prime Minister Mateusz Morawiecki.

## **Not just the courts?**

When the parliamentary elections confirmed that PiS would remain in power in Poland for another four years, Brussels and key EU capitals decided, fairly universally, to attempt to build relatively normal relations with Warsaw, which would definitely be better than during the Commission's previous term. Loud reassurances that "there can be no compromise when it comes to the rule of law" were accompanied by a readiness to wait until matters in Poland "normalise" themselves and – who knows? – PiS even starts to retreat. A line was drawn under Poland's Constitutional Tribunal and officials sought to delegate the defence of judicial independence to the Court of Justice of Justice (CJEU) for good (ideally in its direct contact with Polish courts asking prejudicial questions), so that the Commission and the Council of the EU could push this heated "sectoral problem" (as the rule of law is sometimes referred to) into the background. At the very end of Juncker's term, a complaint against Poland concerning the disciplinary system for judges was sent to the CJEU, after maturing for months. At the top level of the new Commission wanted to show that de-escalation is approaching.

Looking back, it is difficult to tell whether the Polish authorities viewed Brussels' attempts at a thaw as a sign of weakness and a signal that defence of the rule of law was being abandoned, or whether Brussels' attitude simply did not play a more significant role in Polish politics. In any case, the judicial changes did not slow down, forcing the new Commission to take further steps. In January, it asked the CJEU to suspend the Supreme Court's Disciplinary Chamber (the request was considered in April) and regularly warned that it would not agree to the new "muzzle law", which threatens judges' impartiality. Recently, the struggle against the coronavirus has eclipsed questions of the rule of law in Brussels. However, even if von der Leyden wants to extend the pause in handling problems unrelated to the epidemic, "democracy by decree" in Hungary and events in Poland are unlikely to allow other EU countries to drop or radically water down

the principle of “funds in return for the rule of law” in the EU budget negotiations.

Over the past year, problems with the rule of law have also hampered Poland's ability to form coalitions in the EU. Without them, Warsaw might have achieved a bit better outcome in the reform of the rules on posted workers in the international transport sector (which was strongly criticised by Polish carriers), among other things. Nevertheless, the rest of the EU was able to and, more importantly, still wanted to keep key subjects in relations with Poland separate from disputes over the judiciary. Other member states appreciated the Polish government's involvement in initiatives such as the coalition in favour of opening EU membership negotiations with Northern Macedonia and Albania, and appeals – first trilateral (Germany, France and POLAND) and then quadrilateral (with Spain joining them) – to reform EU competition policy in the context of the digital economy and China's actions. The advisability of these reforms is a separate issue, but, at the political level, these appeals illustrate Paris and Berlin's attempts to involve Warsaw beyond the politically “toxic” subjects of migration policy or the rule of law.

### **Temptation to join the Green Deal**

The main challenges for Poland identified in in.europa's analysis on 15 years of Poland in the EU last year included negotiations on EU climate policy and the budget for 2021-2027. Both are still far from over, but there have been no extraordinary failures so far. Negotiations on EU funds began with the Commission's draft in 2018, which foresaw major cuts for Poland. However, during the negotiations at the EU summit in February, which were not finalised, Warsaw was offered a very slight improvement compared to the 2018 draft, even though cuts tend to be increased at these kinds of summits. Moreover, Poland is too big (and emits too much CO<sub>2</sub>) for the EU to seriously plan to achieve climate neutrality in 2050 without loyal cooperation from Warsaw. For this reason, the balance of the talks on the

Green Deal, which have sometimes been stormy, is not black and white. The carrot approach has prevailed, rather than the stick: when it comes to Poland's climate commitments, the EU opted for ambiguous provisions at its summit in December (this is the standard method in Brussels for putting off problems in a non-confrontational way). In later talks on money for the “just climate transition”, the country was initially offered amounts that were publicly praised by the Polish government.

The snag is that Poland's 16th year in the EU is ending with a major test. The coronavirus crisis will ruthlessly verify Poland's position in Brussels in coming months. Talks on common EU funds are restarting due to the crisis. Even the subject of a “Eurozone budget”, which the Polish government has been warding off for almost a decade, has resurfaced – though under a different name and in a different form – in debates on plans to rebuild the economy. There is a sizeable risk that the EU will increasingly focus on its “core”, the currency union, which does not include Poland – especially if Warsaw escalates its conflicts with Brussels over democracy and the courts, rather than clinging to the EU mainstream.

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