

How will the EU's 'rule of law' investigation affect Polish politics?

 blogs.lse.ac.uk/europpblog/2016/02/06/how-will-the-eus-rule-of-law-investigation-affect-polish-politics/

2/6/2016

The European Commission is currently conducting an inquiry into judicial and media reforms introduced by the Law and Justice government in Poland. [Aleks Szczerbiak](#) analyses the way in which this investigation is going to affect the political dynamics within the country, and argues that the offensive against the ruling party's policies may well prove to be a double-edged sword for the Polish opposition.



Poland's right-wing government found itself on the defensive last month following the European Commission's unprecedented decision to initiate an investigation under the EU's 'rule of law' mechanism. An ongoing row with the Commission will be debilitating for the government which will have to spend valuable time and political capital defending its reputation in the European arena. However, the ruling party has shown that it can fight its corner and the Commission's intervention could prove a double-edged sword for Poland's opposition.

Law and Justice on the back-foot

The Polish government – led, since last October's parliamentary election, by the right-wing Law and Justice (PiS) party – found itself on the back-foot last month following the European Commission's surprising decision to initiate a preliminary investigation of the country under the EU's so-called 'rule of law' monitoring mechanism.

In 2014, the Union adopted the instrument, intended to address 'systemic' breaches of the rule of law and EU principles in any member state. It was meant to complement the so-called 'nuclear option' provision in Article 7 of the EU treaties that allows the European Council to impose sanctions on countries found to be in serious and persistent breach of fundamental EU values; in the worst-case scenario, suspending their voting rights. So far the Commission has agreed to the first step under the framework which involves undertaking a preliminary investigation of whether or not there are clear indications of a 'systemic threat to the rule of law' and initiating a dialogue with the member state concerned.

This unprecedented move came in response to concerns about recent actions by the Law and Justice government in relation to the membership and functioning of Poland's constitutional tribunal, a powerful body that rules on the constitutionality of laws, and a new media law passed by the Polish parliament in January.

The government's critics accuse it of undermining the fundamentals of Polish democracy and the rule of law by: ignoring the tribunal's rulings on the constitutionality of a law determining the body's membership and trying to curb its power to place checks on the government, as well as placing public broadcasting under direct government control. These actions, they argue, represent attempts to interfere in the independence of the judiciary and put Law and Justice party loyalists in charge of state TV and radio.

Beata Szydło's counter-offensive

Law and Justice tried to regain the initiative by undertaking a (somewhat belated) [public relations offensive](#) aimed at improving Poland's image within the EU institutions; re-assuring European leaders of the government's broadly pro-EU attitude and that it was committed to upholding the rule of law and European values.

The government's supporters defended its actions as necessary measures to restore pluralism and balance to state institutions that they say had been colonised by supporters of, and milieu associated with, the centrist Civic Platform

(PO) grouping, the previous governing party. More broadly, they argued that many Polish institutions have been expropriated by an extremely well-entrenched, and often deeply corrupt, post-communist elite and claimed that opposition to the government was being orchestrated by political forces unable to come to terms with their electoral defeat and vested interests hostile to its plans to radically reconstruct the state and introduce sweeping socio-economic reforms.

The centrepiece of Law and Justice's counter-offensive was (what even the government's critics admitted was) an effective intervention by prime minister Beata Szydło in a European Parliament plenary debate on the political situation in Poland held in the week after the Commission's decision was announced.

Although Mrs Szydło's critics accused her of being evasive and misleading in responding to the Commission's concerns, in a calm and conciliatory performance she tried to de-escalate the dispute: insisting that the Polish government was open to dialogue and would co-operate to patiently answer all of the criticisms. However, Mrs Szydło did not make any substantial concessions arguing that the constitutional tribunal dispute was an internal matter of a political rather than legal nature for Poland to solve on its own, and that the government's changes to public broadcasting conformed to European standards.

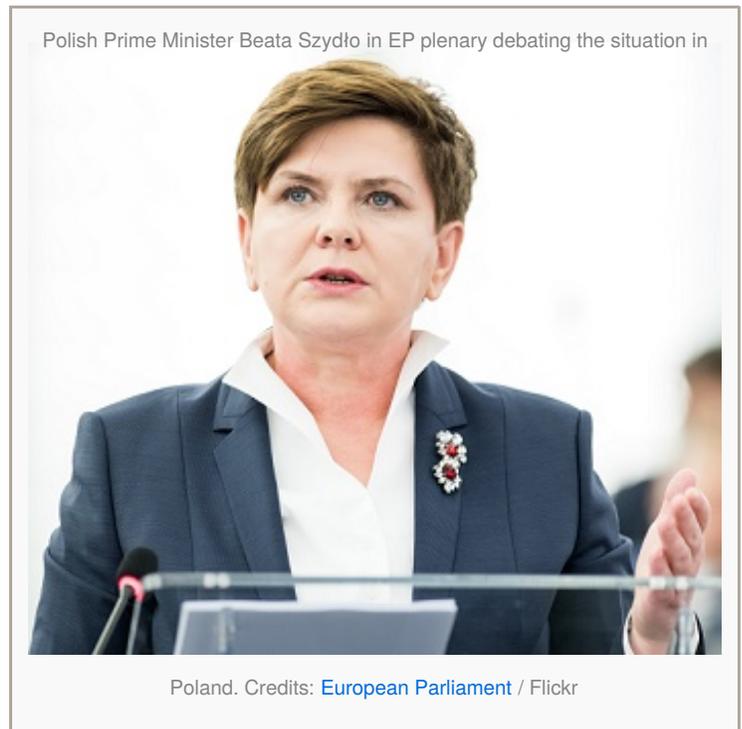
Earlier, she tried to undercut the Commission's arguments by organising consultations with opposition leaders, for the first time since the new government took office last November, to find a compromise solution to the constitutional tribunal deadlock (unsuccessfully, as it turned out). The EP debate was also preceded by a visit to Brussels by Law and Justice-backed President Andrzej Duda who tried to lower the emotional temperature of the debate by meeting, and holding a (generally good natured) joint press conference, with EU Council President and former Civic Platform prime minister Donald Tusk.

Law and Justice was helped greatly by the weak performance in the EP debate of Civic Platform, now the main opposition grouping. The Polish opposition enjoys close links with the EU political establishment and Western opinion forming media, many of whom share their dislike of Law and Justice, so it was assumed that the EP debate would be favourable territory for the party. Indeed, during party leadership election hustings with local activists, Civic Platform's new leader Grzegorz Schetyna (who was elected unopposed at the end of January) identified utilising the European arena as a key element of the opposition's anti-government strategy.

However, the party was divided over which tactics to pursue in the EP debate: anxious to capitalise on the government's difficulties, but fearful of leaving itself open to criticism that it was weakening the country's international standing by using a European forum to air domestic political grievances. In the event, except for one brief intervention from a Civic Platform MEP, the party effectively sat out the debate and ended up with the worst of both worlds: apparently supporting the Commission intervention but only half-heartedly.

The EU intervention could drag on

In fact, the Commission has no powers to impose sanctions on Poland as the 'rule of law' framework only constitutes a political dialogue without any legally binding recommendations. These can only arise if the Commission proposes them to the EU Council under Article 7 where they require unanimity in one of the three stages of voting; and the Hungarian government has already made it clear that it will veto any attempt to introduce such measures.



But Mrs Szydło's effective EP performance – and, more broadly, Law and Justice's public relations counter-offensive – have not ended the conflict between the Commission and Poland. While the government is keen to move political debate back on to 'normal' socio-economic issues, where Law and Justice feels it is more in tune with public opinion than its liberal and centrist opponents, the Commission's 'rule of law' investigation process could be a lengthy one, potentially forcing the Polish ruling party to spend valuable time and political capital responding to criticisms and defending its position in the European and international arena.

The Commission has said that it will return to the issue in March after the Venice Commission, an advisory body of the Council of Europe (a non-EU organisation which aims to uphold democracy and the rule of law), issues an opinion on Poland's constitutional tribunal reforms. If the matter is not resolved by then, the Commission can issue a 'rule of law recommendation' giving Poland a specific time period to address the problems it has identified. If it still considers that the problem has not been dealt with to its satisfaction, the Commission can then recommend the invocation of Article 7.

At the same time, the constitutional tribunal crisis looks set to rumble on with most of Poland's opposition parties rejecting a government proposal to resolve the crisis by replacing the tribunal's membership with eight judges nominated by the opposition and seven by the ruling party. It could also re-surface as a major issue of contention this month when the tribunal expects to rule on the constitutionality of amendments to the law determining its functioning passed by the Polish parliament at the end of December; which the government argues has already come into force and the tribunal has no power to review.

How will Poles react?

At this stage, it is difficult to tell how Poles will react to any further EU interventions. On the one hand, many of them are quite sensitive to international opinion, and understandably wary of anything that might lead to the country losing influence which could make it more difficult for Poland to promote its interests within the EU.

Not only do Poles still support their country's EU membership overwhelmingly, but one of Law and Justice's opponents' most effective criticisms of the previous 2005-7 party-led administration was that it had isolated Poland within EU institutions by alienating the main European powers, particularly Germany, and created the perception of the country as an unreliable and unstable EU member. This charge was strongly rejected by Law and Justice supporters who, for their part, argued that it was the previous Civic Platform-led government that failed to advance Poland's interests effectively within the EU in spite of locating the country squarely within the so-called 'European mainstream' and enjoying extremely close relations with Berlin.

Moreover, notwithstanding the potential threat that isolation within the EU might pose to Poland's tangible, material interests, at a more abstract level many Poles may feel particularly uneasy about the charge that the Law and Justice government is undermining so-called European values. This is because one of the key motivations for Poles voting overwhelmingly to join the EU in a 2003 accession referendum, and main reasons why levels of popular support for the country's EU membership have remained so high, was the idea that joining the Union represented a historical and civilisational choice: a symbolic re-uniting of Poland with a Western international community of shared values that they had always considered themselves to be part of culturally and spiritually.

And yet, although most Poles remain broadly pro-EU, they also value their national independence and are likely to react instinctively against the idea of foreign interference in their domestic affairs. Moreover, as last month's events have shown, Law and Justice will fight its corner in the European arena, so a heavy-handed EU intervention could simply allow the party to present itself as the defender of Polish sovereignty against unwarranted meddling by arrogant Brussels officials.

Moreover, the idea of Polish EU membership as representing a 'civilisational choice' has been undermined in recent years by an increasing sense of cultural distinctiveness that many Poles feel towards Western Europe. This has been particularly evident in the sphere of moral-cultural values where Polish attachment to traditional morality and

national identity stands in stark contrast to the socially liberal, cosmopolitan consensus that predominates among West European political and cultural elites.

This issue has surfaced recently in the contrasting reactions of Poles (and other Central Europeans) and West European political elites (although not necessarily their publics) to the European migration crisis. Poles are keen to avoid the kind of cultural and security problems that many of them feel West European countries have experienced through admitting large numbers of Muslim migrants who are seen as difficult to assimilate and embedding violent extremists within their communities.

Indeed, one Law and Justice response to the Commission's 'rule of law' investigation was that the EU should be concerning itself more with addressing the fall-out from the migration crisis than the political situation in Poland. In other words, it not as obvious as it once was – and, arguably, becoming less so – that the 'civilizational choices' that are being made by political and cultural elites in other parts of the continent are the same ones that Poles want to make. The 'European card' is, therefore, one that the government's opponents need to play with great caution and could easily backfire on them.

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Note: A version of this article appears at Aleks Szczerbiak's [personal blog](#). The article gives the views of the author, and not the position of EUROPP – European Politics and Policy, nor of the London School of Economics.

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