European Journal of Law and Public Administration
ISSN: 2360-6754 | e-ISSN: 2559-7671
Covered in: Erih Plus; HeinOnline; CEEOL; RePEc; CrossRef; Google Scholar; KVK; WorldCat; ICI Journals Master List - Index Copernicus; EBSCO

2021, Volume 8, Issue 1, pages: 29-38 | https://doi.org/10.18662/eljpa/8.1/146

Polexit – Is the Exit of Poland from the EU a Viable Option?

Dumitrița FLOREA[1], **Narcisa GALEŞ**[2]

[1] Lecturer Phd "Stefan cel Mare" University of Suceava, Romania, dumitrita.florea@fdsa.usv.ro

[2] Lecturer Phd "Stefan cel Mare" University of Suceava, Romania narcisa.gales@fdsa.usv.ro

Abstract: States must respect the interests of the international community since they must exercise their powers in a manner consistent with the general rules of international law; the territorial competence of the State is in this case limited, not only to foreigners, but also to their own residents, this means that the role of the state is to protect its own citizens, but also foreign citizens. The State must also exercise its competence in a manner that maintains the freedom of international communications.
From the outset, the European Communities have sought to achieve forceful cooperation between Member States than that resulting from co-oping organizations. To this end, the states put themselves in a more similar perspective to the federal aspirations, which were, conceived at the Hague Congress in May 1948, and were then struck by the conceptions of proponents of institutionalized cooperation. Initially, in the West, the European construction took the form of co-operation organizations conceived in the late 40 years, some of which were due to American-inspired initiatives. After years of sustained efforts to recover and rebuild Europe, it faces the creation of a actually broader Community than that of industrialized countries, made up of multiple organizations operating on a solidarity basis and finding a balance in their development. The cooperation organizations set up in the West come to add new, restricted organizations in the early 50 years, not other than the European Communities, which contribute to a new federal vision.

Keywords: *Polexit, Poland, European Union, Europe*

How to cite: Florea, D. & Galeş, N. (2021). Polexit – Is the Exit of Poland from the EU a Viable Option?. *European Journal of Law and Public Administration*, *8*(1), 29-38. https://doi.org/10.18662/eljpa/8.1/146

1. Introduction

Intergovernmental negotiations, supported by favorable political trends, led to the signature in *Rome on 25 March 1957* of two new treaties instituting the European Economic Community (EEC) and the European Atomic Energy Community (EURATOM or EAEC) (cvce.eu). The drafting of two separate treaties also reduces the possibility of non-ratification. The Treaties entered into force on 1 January 1958. All the treaties aimed to create an international market economy based on the principle of economic liberalism through three fundamental mechanisms: Customs union, the common market or a unified economic area, and economic union through a common (Nemtoi & Ungureanu, 2015, p. 87) economic policy. Neither Jean Monnet nor Robert Schuman conceived a Community limited to only a number of States. They have addressed France and Federal Germany, but they have stated that the participation is open to all States that want to join. The new adhesives were not only possible, but even desirable. The conditions were certain, however: Democratic regimes, respect for human rights and fundamental freedoms, the unreserved acceptance of the principles of the common market, in other words the Treaties and their political, economic and social aims.

The term „acquis communautaire" is basic to the enlargement process because, as members of EU, *the candidate States accept without reservation the Treaties and their political goals, decisions of any kind made after the entry into force of* the treaties *and the options taken in the field of community consolidation*. The Community acquis also means recognizing *the priority nature of Community law over national provisions which would otherwise apply to it, and accepting the existence of procedures to ensure uniformity in the interpretation of Community law* Community membership „implies recognition of the restrictive nature" of Community law rules, because it is „indispensable to guarantee its effectiveness and unity" (Pascariu, 2015).

2. Withdrawal from the EU in the light of the Treaty of Lisbon

Until the Treaty of Lisbon, no European union Treaty provided for the possibility of a Member State withdrawing from the EU. The Treaty of Lisbon, recorded at the draft stage as the Reform Treaty, is a Treaty

intended to substitute the European Constitutional treaty, which was an abandoneted proiect by the Netherlands and France by referendum. „The Treaty of Lisbon amended the Treaty on European Union and the Treaty of institute the European Community. The Treaty was signed on 13 December 2007 and ratified by Romania in 2008 by Law No 13/2008 (Romanian Parliament, 2008), which is the fourth Member State of the European Union to complete the parliamentary ratification procedure after completion of this process in Hungary, Slovenia and Malta" (Florea, 2021). After the ratification of the other Member States, as a result of the common will and concerted action of the political actors, the treaty entered into force on 01 December 2009. The Treaty of Lisbon „does not transfer additional exclusive competences to the Union. However, it is changing the way in which the Union exercises its competences and some new (shared) powers by increasing the participation and protection of citizens, creating a new institutional configuration and changing decision-making processes for greater efficiency and transparency. A higher level of parliamentary control and democratic responsability is therefore achieved" (Ungureanu, 2016).

Unlike the Constitutional Treaty, the Treaty of Lisbon „does not contain any Article which formally consacrating the primacy of Union law over national law, but a statement to that effect (Declaration No 17) concerning an advice of the Council's legal Service has been attached to the Treaty, which reiterates the Court's established case law" (European Parliament Committee on Constitutional Affairs, 2019).

The Treaty of Lisbon clarifies for the first time the competences of the Union. It make the distinction between three types of competences: exclusive competence, where the Union can legislate on its own and Member States only implement; shared competence, where Member States can legislate and adopt legally measures if the Union has not done so; And to support competence if the EU takes measures to support or complete Member States' policies. The Lisbon Treaty offer the EU full juridical personality. The Union therefore gain the capacity to sign international treaties in the areas of competence assigned to it or to accede an international organization. Member States may only sign international agreements that are consistent with EU law.

The Treaty provides a formal „procedure to be followed by Member States wishing to withdraw from the European Union in accordance with their constitutional requirements", namely Article 50 of the Treaty on European Union (TEU) (European Parliament, 2007) .

Almost a decade after the signing of the Lisbon Treaty, Parliament acknowledged that some of its provisions were not being fully exploited. In response, on 16 February 2017, it adopted a resolution on improving the functioning of the European Union by harnessing the potential of the Lisbon Treaty, which sets out a number of recommendations on how to unlock this potential to strengthen the Union's capacity to address global actual challenges (Viorescu, 2015).

The EU has recently faced a number of crises relating in particular to Brexit, „the rule of law, the multiannual financial framework and COVID-19". The management of these crises has revealed „shortcomings in the current system of governance, and the lack of effective decision-making has contributed to the decrease of public support for the European project. In response to these challenges, the EU institutions decided to set up a Conference on the future of Europe to renew the EU and restart integration". As underlined by the European Parliament's Constitutional Affairs Committee, the Conference can be an „innovative process leading to proposals for concrete institutional and constitutional reforms to make the European Union stronger, more democratic, more efficient, more transparent, more transparent, more transparent, more efficient and more transparent, more efficient and effective, with greater capacity to act and serve the general interest" (European Parliament Committee on Constitutional Affairs, 2019).

3**. Is a Polexit possible in the near future?**

The answer to this question seems to be affirmative all the more so since we see the recent withdrawal of a state from the European Union, as was the case with Britain. We recall that the disorganization of Britain and the European Union has already generated economic, social, political and legal effects throughout the union. Brexit was possible under „the Treaty of Lisbon, which, according to Article 50, allows a Member to leave the Union

Despite the Community treaties, we believe that not all possibilities, scenarios and not all the costs associated with the phenomenon were taken into account at the time the Brexit was launched. Even though the Treaty of Lisbon has apparently provided an unprecedented degree of stability in the development of the Community, financial analysts still believe that Britain's departure will cost Britain a lot and the conditions for an inflationary wave are increasingly appearing" (Florea & Gales, 2017).

As for Poland's exit from the European Union, political analysts sounded a wake-up call as early as 2017, following the European Commission's decision to apply sanctions for Poland's „controversial judicial reforms". At the time, Brussels was of the opinion that the reforms „allowed the Polish Government to intervene in the justice system and put at risk the fundamental values of the European Union". Even the pro-government social media in Poland feared the deal would end in a difficult situation for Poland, saying there could be some damaging consequences for the nation. So were newspapers throughout the continent holding similar views, talking about „nuclear options" and „big cannons", as if this were the first to save a battle.

Polish newspapers were concerned about the defiant and inflexible approach of governments to foreign criticism. The triggering of Article 7 of the Union Treaty against Warsaw is „the first stone that could trigger important consequences" for Poland. Other Pro-opposition media referred to the Polish-EU dispute as „day of trial", accusing the government of „lack any sense of shame ... trample on the will of the people". But the government will not fear much of the sanctions imposed by the European Commission, Gazeta Wyborcza reported. The ruling party saw the dispute with Brussels as an „opportunity to spread dissatisfaction with the EU among Poles„ and „invokes the cacalma of the European Commission" (BBC Monitoring, 2017).

The line marks „a minimum" in Warsaw's relations with the EU and is full of unpredictable consequences, according to German media. After Brexit, the EU could soon experience the next great tragedy", the paper said, adding that „the country is likely to be as divided as the British before the Brexit decision" (BBC Monitoring, 2021).

Brussels unleashes its protests against Poland, according to Isabelle Ory, France's center-right correspondent Le Figaro. Ms Ory believes that the EU will try to overcome the „impasse of Article 7" by linking Structural Funds payments – the „real evil hand for Poland" – with respect for the values of the European Union (LENA, 2021).

There is also a tought language in the Spanish press. „Brussels is beginning a dispute with Poland over an attack on the rule of law", says the ABC newspaper.

Hungary, for its part, says „it will vote any EU action that risks losing Poland's right to vote in Brussels. Hungarian officials pointed out that Hungary rejected the EU's way of using legal procedures for exercising political pressure" (BBC Monitoring, 2017).

It is certain that, in the light of recent controversial legal reforms, Poland has two options: To face the consequences or to exit. Poland could soon follow Britain out of the European Union. The premise for a possible Polexit came after the nation received sanctions from the European Commission (the main EU administrative entity) due to recent controversial judicial reforms in the country. The European Commission said the legislative reforms proposed by the right government would introduce a „clear risk of serious violation of the rule of law". Frans Timmermans, Vice-President of the European Commission, also expressed concerns about Poland's legal path. Timmermans said that the 13 laws adopted by the legal system in the last two years have made the Polish Government „able to politically systematically interfere with the composition, powers, administration and functioning" of the judiciary. Despite European Commission sanctions, Polish newspaper Gazeta Wyborcza claims that the ruling party sees these transactions as „a chance to spread dissatisfaction with the EU among Poles" and "invokes the cacalma of the European Commission". The Polish leadership is allowed to have their opinion, however, many say that a Poexit would be catastrophic for the nation. As a result of Poland's actions, the country could face Article 7 of the EU Treaty, an Article which would impose a serious political consequence: Poland would effectively be deprived of its voting rights (Easton, 2021) . However, the question remains: Will the Polish Government face the consequences it

has brought on it? Or will pressure from the European Union soon provoke a Polexit? For now, the world would have to wait to see. However, one thing is certain: The possibility of a Polexit is becoming increasingly a reality per second.

Recently, on 7 October 2021, the Constitutional Tribunal of Poland „ruled that the key articles of one of the EU's primary treaties are incompatible with Polish law, in fact rejecting the principle that EU law takes precedence over national law" in certain judicial areas (Easton, 2021).

Some Polish leaders are determined not to want a „Polexit", but others fuel anti-EU sentiments. Of course, there is a split and there are voices saying that the UK has demonstrated that the „Brussels bureaucracy dictatorship" can be defeated by leaving. Those who insist that Poland wants to stay in the EU believe that „drastic solutions should be sought if the dispute is not resolved. Maybe the ruling party is ready for a possible exit", once Poland has to pay more money to the EU budget than it takes.

Poland, like Britain, is a strong independant country, but appearring „much weaker". The main PIS believed that Poland had to defend its sovereignty and should not be treated as a second-class Member, he said. He sees Brussels as an aggressor, surpassing its powers and inventing new instruments to force Poland to cancel reforms. „In his opinion, Brussels has spread a trap to Poland. „Poland may be pushed outside the EU because we can already see that we are being expelled" (Easton, 2021).

The Polish Constitutional Court amplificated additional „tensions on 7 October when it ruled that some articles of the EU Treaties are incompatible with the Polish constitution. Warsaw welcomed the ruling as opening the way to bring more Brussels powers back to the Polish people -- largely of the decision of the German Constitutional Court in May 2021 that the European Central Bank's bond purchase program violated the German constitution. For Brussels, the Polish court's decision was an attack on EU operations and order based on rules enjoyed by all its Member States" (France 24, 2021).

The challenges in Warsaw with regard to some EU decisions make the danger of a "Polexit" real for Donald Tusk, because „many disasters have happened in history not because someone planned them, but because

someone acted irresponsible, stupid, risky. And today the PIS policy, in relation to international issues, is characterized by a constant and unnecessary risk", he said about the ruling party. Tusk was confident that "he persuaded those decision-making people and institutions (in the EU) to make a clear distinction between what is a bad government and what Poland is and that, finally". Not to impose economic sanctions that the European Commission recently requested to fine the Polish Government for maintaining the most conflicting points of its judicial reform.

"I think I have heard my argument that punishing Poland as a state as a whole will not make much sense", said the leader of the Civic Platform, although „the last thing my interlocutors considered was to do something to push Poland outside the European Union". "I will not pretend to be aware of the government's specific plans in this matter, but disasters such as Brexit or the possible exit of Poland from the EU arise not because someone planned it, but because someone did not know how to propose alternatives to those plans", Tusk concluded. The politician presiding over the European Council stressed that „there is still time to avoid this disgrace" and „the sanctions related to the Commission's complaint to the Court for the functioning of the Disciplinary Chamber are onerous and completely useless, but we are also talking about something more expensive: The threat of retaining aid from the European Reconstruction Fund". The EU has recently asked the EU Court of Justice to impose a fine on Poland until it guarantees judicial independence and dissolves the Disciplinary Chamber, which it considers „incompatible with European law". Poland maintains a number of disagreements with the EU due, among other reasons, to its controversial judicial reform, the question of the preeminence of Polish law on European law, a controversial reform of the media law, the restriction of the right to abortion and the attacks against the LGBTI Community (Baias, 2021).

4.Conclusions

Right-wing populist governments in Poland and Hungary have been in dispute with the European Commission for years on issues such as media freedom, migration, LGBT rights and the independence of justice. Despite the Warsaw government's disputes with Brussels, support for EU

membership is very high in Poland, The largest former communist country in the bloc and one of the major beneficiaries of EU aid to poorer countries to reduce the development gap from richer countries.

Poland has been engaged in a tough confrontation with the EU since 2017 on a series of controversial judicial reforms. Brussels considers these reforms to be in breach of democratic freedoms, but the Polish populist and nationalist government defends them and believes they are necessary to eradicate corruption among judges.

The Polish Constitutional Tribunal established in early October that parts of European law are incompatible with the Polish Constitution, a ruling which fuels fears that Poland may leave the EU (Polexit).

This conflict overshadowed the European leaders' summit in Brussels at the end of October 2021. Several EU leaders at the summit insisted that Brussels should not release funds aimed at the post-colde economic recovery of Poland worth EUR 36 billion, as long as this conflict is not resolved. The dispute concerns a new Chamber of Judges, which the CJEU considers illegal. Warsaw has promised to give up this room, but has not yet done so.

References

Baias, I. (2021, September 13). *Polonia ar putea părăsi Uniunea Europeană "mai repede decât se crede"*[Poland could leave EU "sooner than expected"]. HotNews.ro. https://www.hotnews.ro/stiri-international-25034771-polonia-putea-parasi-uniunea-europeana-mai-repede-decat-crede.htm

BBC Monitoring (2017, December 21). *Press fears 'Poexit' over Poland-Europe row*. BBC News. https://www.bbc.com/news/uk-politics-42439906

Easton, A. (2021, October 9). *Poland stokes fears of leaving EU in 'Polexit'*. BBC News. https://www.bbc.com/news/world-europe-58840076

European Parliament Committee on Constitutional Affairs (2019). *Opinion on the Conference on the Future of Europe, recital G. Europarl.europa.eu.* https://www.europarl.europa.eu/cmsdata/194307/Adopted%20opinion%20CoFoE_10122019-original.pdf

European Parliament. (2007). *The Treaty of Lisbon*. Europarl.europa.eu. https://www.europarl.europa.eu/factsheets/en/sheet/5/the-treaty-of-lisbon

Florea, D., & Gales, N. (2017). The Brexit phenomenon. *European Journal of Law and Public Administration*, *4*(1), 12-24. https://doi.org/10.18662/eljpa/02

Florea D. (2021). *Particularitățile creării și aplicării de către state a normelor dreptului international* [Peculiarities of the creation and application by states of the norms of international law]. Lumen.

France 24. (2021, October 22). *After Brexit, Polexit? Cartoonist depicts possible result of EU-Poland legal row*. France 24. https://www.france24.com/en/europe/20211022-after-brexit-polexit-cartoonist-depicts-possible-result-of-eu-poland-legal-row

LENA. (2021, October 9). *Polexit: «Bas les pattes de la Pologne! Nous, on reste en Europe!»* [Polexit: "Put Poland down! We are staying in Europe! "]. Lefigaro.fr. https://www.lefigaro.fr/international/polexit-bas-les-pattes-de-la-pologne-nous-on-reste-en-europe-20211008

Nemtoi, G., & Ungureanu, C. (2015). Democratic freedoms exercised by NGOS. *European Journal of Law and Public Administration*, *2*(3), 85-92. https://doi.org/10.18662/eljpa/2015.0203.08

Pascariu, L. T. (2015). An Analysis Of The Effects The Directive Produce To Internal Jurisprudence. *European Journal of Law and Public Administration*, *2*(2), 39-44. https://doi.org/10.18662/eljpa/2015.0202.04

Romanian Parliament. (2008). *Legea nr. 13 din 7 februarie 2008 pentru ratificarea Tratatului de la Lisabona de modificare a Tratatului privind Uniunea Europeană și a Tratatului de instituire a Comunității Europene, semnat la Lisabona la 13 decembrie 2007* [Law no. 13 of 7 February 2008 for the ratification of the Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, signed in Lisbon on 13 December 2007]. Monitorul Oficial, 107, din 12 februarie 2008 [Official Gazette of Romania, 107 of February 12, 2008]. http://legislatie.just.ro/Public/DetaliiDocumentAfis/89536

Ungureanu, G. C. (2016). Political accountability of the government and it's members – theoretical aspects. *European Journal of Law and Public Administration*, *3*(2), 53-57. https://doi.org/10.18662/eljpa/2016.0302.06

Viorescu, R. (2015). The EU strategy for the effective implementation of the Charter of Fundamental Rights. *European Journal of Law and Public Administration*, *2*(2), 59-68. https://doi.org/10.18662/eljpa/2015.0202.07

Welt. (n.d.). Politics. Welt.de. https://www.welt.de/politik/deutschland/