



WiseEuropa

German-Polish European Dialogue

Views and reflections of Polish-German experts illustrate a substantial overlap of interests on specific issues between Poland and Germany and they submit that some of them may be partially resolved or kept “under control” without causing unnecessary damage.

Adam Balcer (ed.)



FOREIGN POLICY AND INTERNATIONAL AFFAIRS

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About WiseEuropa

WiseEuropa Institute is an independent Polish think-tank, undertaking a strategic reflection on European politics, foreign policy and economy. WiseEuropa intends to stimulate and inspire the public debate on the future of Poland and Europe.

The mission of WiseEuropa is to improve the quality of Polish and European policy-making as well as the overall business environment by promoting the use of sound economic and institutional analysis, independent research and evidence-based approach to impact assessment.

We are committed to an active and dedicated role of Poland; to an open, sustainable, democratic and competitive development of Europe; and to constructive transatlantic cooperation on global issues. We are convinced that within a free society all important public decisions must be preceded by a detailed and comprehensive deliberation.

WiseEuropa offers a wide range of analytical, research, consulting and communication services and specializes in such subjects as: *European and global political and economic affairs, National macroeconomic, industrial, energy and institutional policies, Digital economy and innovativeness, Social and labour market policies.*

Adam Balcer

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German-Polish European Dialogue

Into the unknown: German-Polish relationship in the EU context at the beginning of 2018

Adam Balcer, Krzysztof Blusz¹

If one wanted to appreciate the complexity and multidimensionality of the present-day German-Polish relationship one would immediately discover how deeply “the bilateral” entangles with the “the European” in this liaison. It is for this reason, the German-Polish relationship needs to be placed in a wider European context if it is to be scrutinized rigorously. It is not only the relevance of both countries for the EU due to their size and political or economic power, but the importance of their bilateral relationship for Europe that counts. Indeed, Germany is the largest Eurozone country (in terms of size of the economy, its population, etc.) while, in the aftermath of Brexit, Poland is set to acquire a position of the biggest non-Eurozone EU member state. The bilateral trade between Poland and Germany reached the level of approx. 110 billion USD in 2017. Thus, their trade turnover accounts for the fifth largest bilateral trade volume amongst the EU member states. Still, Poland may soon stand a chance to surpass Italy on the list of the top Germany's trade partners. If this happens, and in the absence of the British, Poland may become for Germany the third biggest trade partner in the EU. Similarly, the German direct investment in Poland has raised spectacularly in recent years. It has become one of the biggest FDI stocks between two EU countries ever. Against the EU's backdrop, Poland and Germany are also highly entangled within the social dimension. Almost two million persons of Polish origin live in Germany, a phenomena that accounts for the second biggest diaspora in the EU country. Simultaneously, not less than 15 per cent of the German population originates historically from Poland. When measured in absolute numbers, it also is a unique case in Europe.

When, in June 2017, WiseEuropa Institute with the Heinrich Böll Foundation, initiated a “German-Polish European Blog” we were specifically interested in two key questions:

- What was the vision of Europe in the foreign policies of Poland and Germany?
- What were the major opportunities, barriers and risks to a Polish – German cooperation within and in the EU?

1 Adam Balcer, Project Manager at WiseEuropa, Krzysztof Blusz, Senior Fellow at WiseEuropa

A series of responses to these questions were provided since by the group of German and Polish experts. They have covered six crucially important issues for the future of the EU and the German-Polish relations. In their commentaries, they focused on the Weimar Triangle, the Transatlantic relations, the future of Eurozone, the rule of law and European values within the context of relations with Russia.

What follows is a briefing paper that compiles the experts' views and reflections into a single collection. They illustrate a substantial overlap of interests on specific issues between Poland and Germany and, even though serious bilateral differences between the countries exist, they submit that some of them may be partially resolved or kept "under control" without causing unnecessary damage. At the same time, the authors point out to a remarkable divergence concerned with the way the values and political systems have been conceptualised in political discourses and in political practice in Poland and Germany since 2015. These diverging views contributed to an unprecedented deterioration of a political dimension of the German-Polish relations in 2017. Again, the European perspective is necessary if one wants to understand this process in its entirety.

The rule of law and identity

The deterioration in the German-Polish relations has been strongly correlated within the course of 2016 and 2017 with an aggravating dispute between Warsaw and the EU institutions concerned with the rule of law in Poland. In the opinion of the Freedom House, since 2015, the Polish government of the Law and Justice (PiS) has transformed the political system into illiberal democracy with authoritarian elements by taking over the courts and by refusing to implement the courts' decisions (including the European Court of Justice). These developments have set Poland up on a collision course not only with the EU *en bloc* but also with Germany which shares due to its past particularly strong sensitivities concerning *Rechtsstaat* as a founding principle of any democratic system.

For the ruling Law and Justice (PiS) the spat with the EU and Germany, Poland's biggest neighbour is systemic in its nature and concerned with the core principles of functioning of the EU and the member states as sovereign nations. It reaches to the core of the Law and Justice's (PiS) political philosophy. The party rejects the separation of powers in the name of the nation imagined as a monolith that with its own sovereign will, should not be constrained by the law and its institutions. The vision of nation promoted by the Law and Justice's (PiS) is also ethnically mediated and a conservative interpretation of Roman Catholicism makes up an important part of it. Regrettably, the Law and Justice (PiS) promotes their vision of a nation in a stark juxtaposition to Western Europe which is presented and constructed as the Other in the identity terms. In Jarosław Kaczyński's view a *multi-kulti*, a civic, a secular, an ecological, a pacific and a liberal and pro-European Germany constitutes the essence of Western Europe and the antithesis of Poland.

The consolidation of the Law and Justice's (PiS) control over all branches of power is presented by the Polish government as a precondition to the process of strengthening Poland's position

in the EU. Subsequently, the Law and Justice's (PiS) considers any external criticism aimed at their internal policies as an assault on Poland's national interests in Europe. On the other hand, as Zselyke Csaky of the Freedom House points out: "PiS is essentially saying that it does not care about the rules of the game. This is a tremendous challenge to the EU and, in fact, to all democracies. If a member state can openly flout the legal and democratic norms on which the union is built, the EU cannot survive." Indeed, in a kind of a self-defense impulse the European Commission launched for the first time ever a dialogue with Poland under the Rule of Law Framework. The EC has based its decision on virtually unanimous opinion of the Venice Commission (132 votes to 1) on the situation in Poland. Between 2016-2017 the Venice Commission issued four critical opinions on "reforms" implemented during the time by Warsaw. In the same period, the EC has tried to initiate a dialogue with the Polish government and presented four comprehensive recommendations for Poland. The Polish government refused to comply even with a single sentence. Poland has also run into unprecedented conflict with the European Parliament. In 2016-2017 eight debates took place in the European Parliament concerned with the Law and Justice's (PiS) policy interventions in a domain of a rule of law (including Committee on Civil Liberties, Justice and Home Affairs LIBE). The European Parliament endorsed, with an unquestioned majority of votes (aprox. 65-70 percent for, less than 25 percent against), three resolutions that criticized the way the rule of law was upheld in Poland. Finally, in December 2017 the EC decided to initiate procedure under Article 7 against Poland. For the first time any EU country has become a subject of this kind of an enforced "dialogue". In consequence Poland, already in a dispute with the EC and the EP, has formally "acquired" a new adversary, the European Council (EU member states). The Article 7.1 allows the Council to issue a formal warning to any country accused of violating fundamental rights (the majority of 80 percent is required). If that does not bring desired corrective actions on behalf of the country under procedure, the Article 7.2 allows to impose sanctions and suspend voting rights (unanimity within the council is required, abstentions are not included).

Also, it is worth recalling that the way the rule of law has been upheld in Poland has met a strong international criticism exceeding the European Union. Critical opinions and statements were issued by the Office of the UN High Commissioner for Human Rights, the UN Human Rights Committee, the OSCE, the Council of Europe, the Supreme Courts and the Constitutional Courts of numerous European countries, watch dogs and associations of lawyers. Last but not least, the US Department of State expressed, four times between July and December 2017, their serious concerns regarding the situation in Poland. At the same time, Chancellor Merkel and a majority of leading political figures in Germany remained silent for a long time with their comments on the situation in Poland noticeably aloof. Most likely, they believed that an open and exacting criticism from German political elite could create negative consequences not only in Poland *per se* but, more importantly, for Poland's relations with and within the EU. Yet, the electoral campaign in Germany launched in Spring 2017 encouraged a more outspoken criticism of Poland. It was Martin Schulz, the leader of SPD, who compared Poland to Turkey in an unfair, exaggerated hyperbola.

A perceived lack of flexibility on the side of the Polish Government in its dialogue with the EC resulted in a permanent shift of the German position in Summer 2017. Since then, Angela Merkel has several times expressed an unequivocal support for the EC actions within the dialogue with Warsaw and even endorsed France's criticism of the Polish government despite its undeserved spite when President Macron equated Poland to Russia.

Germany as an (imaginary) threat

Despite a widespread international criticism and the Germany's low-profile and cautious attitude in the first months of the dispute, the Polish government has focused its counteroffensive on "alienated and cosmopolitan Eurocrats" from Brussels and Germany, often portrayed as masters of puppets who pulled the strings behind the curtain and led "illegal EU intervention" against Poland's sovereignty. Such conceptualization of a main enemy has not been accidental as it drew on long-held anti-German sentiments prevailing in Jarosław Kaczyński's ideological worldview and popular within the high echelons of the Law and Justice (PiS). In Kaczyński political statements Germany features far more often than Russia. He many times remarked that the 2015 elections, won by his own party, had brought a liberation of Poland from Germany's "tutelage". Until 2015, according to this view of the most recent history, Poland was a German colony and the EU was used by Germany as a tool of controlling Poland as Germany had dominated the EU and had instrumentalized its institutions for its own sakes. Similarly, PiS believes that it is Berlin who stands behind the EU's relocation program for refugees. Their stiff resistance against that program, mixed up with Islamophobia, has become one of key elements of PiS popularity in the country and sources of their political support. In PiS's opinion, Germany's push for the relocation of Muslim refugees to Poland and other EU countries will result in watering down the Polish ethnic homogeneity while leading to a loss of control of the country by its own society and elites. Kaczyński also deems that economic convergence between Poland and Germany is a *cul-de-sac* that petrifies Poland's status as a (Germany's) subcontractor and a reservoir of cheap labour. Despite all the above imaginary or real assumptions about Germany, Kaczyński's attitude towards the country is packed with contradictions. When threatened by an impressive German power, he refers to Germany as the essence of a modern Europe that he despised a while ago due to its alleged moral decay.

The history, especially the legacy of the Second World War, plays an important role in the PiS's toll box used against and in their discourse about Germany. Indeed, in response to German criticism of dismantling of rule of law in Poland, in July 2017 Kaczyński launched a campaign aimed at securing reparations Germany should pay to Poland for the crimes and destruction committed during the Second World War. The reparations have been portrayed as a counter-measure against possible sanctions imposed by the EU aimed at linking up a disbursement of the EU funds for Poland with the rule of law in the country. Apparently, the alleged reparations were also supposed to repulse Germany's tendency to reject responsibility for the Second World War through accusing Poles of the complicity in the Holocaust. It is symptomatic that Kaczyński did not demand reparations from Russia that had also invaded Poland the outset of the Second World War and was in charge of a distribution of German financial contributions after 1945.

What's next?

At the beginning of 2018 the prospects for future of the German-Polish relations remain rather bleak. Indeed, the risks of their further deterioration are running high. Throughout the year, they will stay in the shadow of the Article 7 procedure. The most recent reshuffle of the Polish government

most probably will not suffice to improve the country's relations with the EU, including Germany. That would also require a complement - a policy turn. Meanwhile, for Chairman Kaczyński and the executive of the Law and Justice (PiS) the reforms of judiciary are of systemic and fundamental nature. The party will likely remain determined to avoid any tangible concessions concerning political control over the judiciary. As a result, Poland may be presented with a formal warning from the Council of the EU (Article 7.1). The Article 7 procedure, if not reversed, will undoubtedly negatively impact on the Polish leverage during the negotiations of the next Multiannual *Financial Framework of the EU (2020-2026)*. *It will also make Poland's attempts to build coalitions with other EU member states and EU institutions far more difficult if possible at all.* It may well happen, the EC and many so called "net contributors" (including Germany) will succeed in making disbursement of EU funds from the MFF 2020-2026 to net receiver states conditional and based not only on an *ex post* but also *ex ante* assessment of the state of the rule of law in a given member state. In such a case, Poland would risk a substantial decrease in its EU funding. What could follow might be Warsaw bringing the reparations into the international courts as a counter-measure against Berlin's perceived unfair and unjust influence over the MFF negotiations. It cannot be excluded that such a course of the Polish foreign policy against Germany could be met with a public support at home. In the opinion poll conducted at the end of 2017 almost 50 percent of Poles declared that German and Polish interests diverged and barely 10 percent saw them converging.

A serious deterioration of German-Polish political relations would have a disastrous spillover for the Polish economy if an ongoing convergence between the two economies stumbled. Alarming are the news, like the January 2018 article in "Die Welt", alluding to an internal and unofficial report of the German Trade and Invest (GTAI) agency that put Poland on the list of vulnerable countries for the German investors. According to "Die Welt" "in Poland, long a popular destination for investing companies, the climate become icy. Increasingly visible is the growing economic patriotism. [...] the political stability previously appreciated by companies also suffered. The avalanche of law launched in late 2015 has unsettled many companies [...] the government policy drives investors into other markets". It should be underlined that the German economy, would also need a substantial time to recover in case of a loss of a Polish part of its value chain.

In the coming years German-Polish relations will also be significantly influenced by the Eurozone's travails. If the grand coalition (GroKo) will be re-established in Germany the "official" Berlin will be likely more willing to accept some of the French proposals to fix the remaining deficits of the Euro and to boost integration within the Eurozone. If it happens, the economic and political bondage between Germany and Poland will unavoidably weaken since Berlin will engage even more strongly with the Eurozone member states. It may also prompt some unwelcomed geo-economic consequences including European economic projects (i.e. energy) that would incorporate Russia more broadly without Poland's national interests being taken into equation.

If there is any adage worth quoting on the future of the Polish-German relations on January 17, 2018, the day when the new Polish Minister for Foreign Affairs Jacek Czaputowicz is visiting Berlin for the first time since his appointment, is – as always - the one from W. Churchill: "Success is not final, failure is not fatal: it is the courage to continue that counts".

The Weimar Triangle

The future of the “Weimar Triangle”

Adam Balcer

The reactivation of the French-German tandem as a vehicle for European integration after Emmanuel Macron's victory in the French presidential elections has become a highly probable scenario. However, the Polish-French relations have been experiencing the most serious crisis since 1989. Last but not least, the key place occupied by France in the German foreign policy means that the scenario of a persistent downturn in French-Polish relationship could also have a negative spillover effect on the German-Polish relations.

The Weimar Triangle was established at the beginning of the 1990s, but it has run out of steam in recent years. The last summit of presidents/prime ministers took place six whole years ago. However, the Triangle's reactivation during the Russian aggression against Ukraine confirmed its resilience in key historical moments. Between February 2014 and April 2015, the ministers of foreign affairs of the Triangle met five times. Unfortunately, since then they met only once, in the Summer of 2016. It is also very symptomatic that the President of Poland, Andrzej Duda, has visited France only once since winning the elections in 2015, but has had eight bilateral meetings with the German leaders in that same period of time.

The importance of the Weimar Triangle may substantially increase in the coming years, taking into consideration the fact that the EU is facing a key moment in its history. Emmanuel Macron, France's new president, has declared that he aspires to reinvigorate the European integration through even closer cooperation with Germany. His declaration has been met with a positive response on the German side. The future shape of Europe will depend mostly on two factors: the setup of the eurozone and the relations between the latter and the member states which do not use a common currency. Meanwhile, after Brexit, Poland will take the UK's place as the largest member state outside of the Eurozone.

Unfortunately, the Polish-French relations, which hit the bottom in 2016, have constituted the weakest angle of the Weimar Triangle from the very beginning. France's importance to the Polish economy is, for obvious reasons, decisively smaller than that of Germany. The gap between the level of Polish-French relations in social and cultural spheres in comparison to the Polish-German and French-German ties in the above-mentioned fields can almost be described as inexistent. Moreover, the French language is losing popularity in Polish schools in favor of Spanish. Personal contacts between Poles and Frenchmen are considerably weaker than those between Poles and Italians or Spaniards.

As if this was not bad enough, the Polish-French political relations are in tatters. In 2016, the Polish government canceled the largest-ever helicopter contract in the history of Polish

armed forces. Signed with Airbus and worth more than 3.5 billion USD, it had could have been further expanded in the coming years. The implementation of that project would visibly strengthen France's position as the second foreign investor in Poland, right behind Germany. At the same time, because of the French-German nature of Airbus, this investment could be interpreted as a practical expression of Weimar Triangle cooperation in the defense sector and economy as such. Moreover, the Polish minister of national defense accused France without any evidence of reselling the Mistral warships bought by Egypt to Russia for a symbolic euro. In response, the French President canceled his visit to Poland. What is even more important, Poland became one of the main "negative" big issues of the French presidential campaign. In one of his interviews, Macron declared that "we all know who Le Pen's allies are: the regimes of Orban, Kaczynski, Putin. These aren't regimes with an open and free democracy. Every day they break many democratic freedoms." Moreover, Macron promised, that if elected, he would urge the European Union to impose sanctions on Poland for violating democratic norms. His statements provoked a harsh reaction from Polish politicians. Taking into consideration these developments, the re-launch of the Weimar Triangle is needed now more than ever. It may facilitate the reconciliation process between Poland and France which would be a beneficial scenario also for Germany and the entire EU. Indeed, the Triangle can also serve as a facilitator of the decision-making process in the EU.

Audi alteram partem

Andrzej Byrt²

The Triangle of Weimar", designed as a communication and political platform, was meant to help shaping a new European order in a post-1989 era. It has its ups and downs. Today, three partners seem not to share a common vision of future Europa. However, the dialog has to be maintained, despite of current differences and difficulties.

26 years ago Germany's Foreign Minister H-D. Genscher's proposal backed by his French opposite number, R. Dumas, to invite their Polish counterpart, Foreign Minister K. Skubiszewski, to Weimar in 1991, and to form an informal political structure since then called "the Triangle of Weimar" launched a new political format in the post-1989 era in Europe. The idea behind it was to acknowledge Poland's leading role in dismantling the communist system in Central and Eastern Europe (CEE) as well as to offer her political support in transforming her political and economic system into a democracy and thus preparing her for a future EU membership. The two largest democracies and economies of the continental part of the EU lent their hand to the largest newcomer from CEE aspiring to join the EU.

Since then, the foreign ministers of the three countries have met 24 times and the heads of states – 9 times, most frequently in the years 1999 – 2005 under President A. Kwaśniewski from Poland, Chancellor G. Schröder from Germany and President J. Chirac from France. Their good

2 The former Polish ambassador to Germany (1995-2001, 2002-2006) and France (2014-2016).

personal understanding has enabled them to profit from their mutual experience. There have also been irregular meetings of other ministers or representatives of the respective parliaments.

Then came the 2008 crisis with its economic, social and political consequences: economic slowdown, increased unemployment, public debts and deficits, and – as a result – a wave of new populism further strengthened by an unexpected influx of refugees and migrants from the Middle East, Africa and Asia seeking asylum and work. All these phenomena have created new tensions among EU member states. The EU seemed to lose its momentum, the United Kingdom decided to step out, the war in Syria went out of European control, Americans elected a seemingly anti-EU president, and populists seemed able to gain power in Austria, the Netherlands and France. Yet, the worst-case scenarios have not materialized. In, these three important EU countries, pro-EU politicians won their respective elections, thus giving hope for a renewal of the European spirit and necessary reforms of the Union as a whole or at least of the Eurozone. The victory of Emanuel Macron in the presidential and parliamentary elections could be particularly relevant for the reversing of that trend.

Thus, the two- or multi-speed EU, as it is commonly called, may soon start deepening. And two of the three Weimar Triangle protagonists, Germany and France, are likely to lead the reform faction while the third one, i.e. Poland, seems to object it. What then could and should be done by the three actors of the Weimar Triangle, when one of them, Poland, does not wish to immediately join the “Euro club” where Germany and France have been present from its very beginning? Poland is also against their project of a strengthened cooperation among the Eurozone members, distances itself from the Common Security and Defense Policy and contests the relocation program of the refugees from Italy and Greece.

The only pragmatic answer is: *Audi alteram partem*, “listen to the other side” and thus keep meeting and discussing. That is the oldest and also the most democratic method of finding a compromise with a partner who, for one reason or another, does not – at the moment – admit arguments understood as true by the others. We are in a new political situation. In a draft of the main future fields of reform of the EU we can find, among other things, the subjects of migration/asylum policy, security, economic growth and its social equilibrium, tax policies etc., topics vital also for Poland. Within that broad set of questions, there are plenty of uncontroversial fields of common interests which could strengthen the EU’s effort to improve its functioning and to gain the necessary acceptance of European societies.

Poland’s new authorities joining their two partners in the Weimar Triangle: France and Germany in specific European projects (the broadening of the democratic mandate of the European Parliament, European border management, CSDP missions and operations, EU trade competitiveness, agricultural policy, etc.) is only a question of time. The sooner the better, although some issues, such as migration/asylum, Poland’s immediate accession to the eurozone, or some social matters, seem irreconcilable. Although Poland in comparison with Germany (around 20 percent of GDP PPP of the EU without the UK) and France (almost 15 percent) still remains a minor partner (5 percent), its economy in the coming years is going to be characterized by vibrant dynamism (a 3 percent average pace of GDP growth between 2017 and 2022) that may create an invigorating stimulus, also for other EU member countries.

Wise partners are not short-sighted. On the contrary: a long-term vision and wisdom encourage all of them to weigh properly the pros and cons of their common interest: a strong, efficient and just European Union. And Poles have for years had the highest EU approval score. Thus, in the years to come, the continuation of Weimar dialogue with its former intensity and on the same levels will be the wisest form of avoiding unnecessary conflicts which will persist between the EU reform-oriented governments of France and Germany, on the one hand and Poland's authorities having a different vision of that reform. Future political change in Poland is likely to reduce the divide between the three Weimar Triangle partners.

The Weimar Triangle after the French elections: A new opening?

Barbara Kunz³

Contrary to fears held in connection with Marine Le Pen's possible election as French president, Emmanuel Macron's rise to power set free a renewed pro-European spirit. This applies to Germany even more than it does to France. Macron's pro-European discourse engenders enthusiasm in Berlin, where hopes are high that the Franco-German tandem will get back on track.

The list of issues and policy fields requiring action within the EU is indeed long. None of these problems can yet be managed, let alone solved by France and Germany alone. This, almost by default, makes the Weimar Triangle reenter the picture. Even though the hopes for a new impetus for the Weimar Triangle are not linked to the current Polish government or any transformations at the domestic level (or to Macron's accession to power for that matter), external circumstances may force Paris, Berlin and Warsaw to start cooperating more closely again. In this context, some policy fields seem more promising than others. After Donald Trump's May 2017 visit to Europe, Angela Merkel declared that it was time for Europe to take its fate into its own hands. This is, of course, not particularly new, nor is Trump the first American president to ask the Europeans to spend more on defense. But it may never have been as urgent as now. It has indeed been fashionable for several years now to argue that the world is in crisis and that the EU is facing ever more complex challenges. As of 2017, however, this rhetoric has increasingly more implications for the day to day business of international politics: migration, terrorism, the unresolved situation in Ukraine, as well as the uncertainty arising from the new U.S. administration's erratic course – to name but a few.

The key issue in this context is security and, more specifically, the transatlantic link as the foundation of European security. When it is no longer clear whether Washington continues to take Article 5 seriously, Europeans need to get serious about European defense. With the United Kingdom leaving the Union, progress might be within reach – and in any case “without alternative,” to use one of Angela Merkel's signature phrases. But there is still a long way to go. Already when Hillary Clinton announced the United States' “pivot to Asia,” Europeans missed the chance

3 Expert of the French Institute of International Relations (IFRI) in Paris, France

to come up with a unified vision on the conclusions to be drawn. And the post-2014 events in a way proved them right: the United States was still there to help to ensure Europe's security. The temptation to adopt a similar approach in our reactions to Trump is certainly there. Yet, hoping that ignoring the problem will once more make it go away seems naïve. In other words, there is a need for action on a large-scale strategic level and inventing yet another technical body or acronym will hardly do the trick. The Weimar Triangle, due to its composition representing European security concerns in an almost ideal and typical way, seems like the perfect forum to discuss these questions. When it comes to European defense, Paris and Berlin are certainly more enthusiastic than Warsaw. Yet, if Washington reduces its engagement, Poland will hardly have any other choice but to cooperate more closely with its European allies. For now, France and Germany should, therefore, make sure to consult Poland and secure Warsaw's basic engagement. These reflections should first result in a shared understanding of what European strategic autonomy – as called for in the European Global Strategy – really means. Measures at the instrumental level – be it PESCO (permanent security cooperation within the CSDP) or other forms of cooperation – would then follow.

The future of the Eurozone is another central issue that has direct implications for Europe's ability to take its fate into its own hands. But since Poland is not a part of the Eurozone, these questions are not of primary relevance to the Weimar Triangle. Still, including all the 27 member states in the debate about the EU's economic future is crucial. There are also other matters that directly concern the Weimar countries like, for instance, migration, refugees and the protection of EU borders. Moreover, Europeans will have to come up with new – and better – ideas regarding their relations with their neighbors, both to the South and to the East.

Most aspects of these issues are difficult in the Weimar context, some even extremely so. Yet, not cooperating at all will only deepen the problems. In finding solutions, compromise will be key. At the same time, the result must live up to the exigencies dictated by the real world. Since French, German and Polish perceptions of the real world differ, at times even considerably, meeting expectations in Berlin and Warsaw is an excellent benchmark for the EU as a whole. The good news is that, perhaps for the first time in years, the European Union has a real chance to leave the “crisis management mode” behind. The crises are of course still there, but merely attempting to prevent the EU from falling apart is no longer enough. New ideas are necessary and if they pass the Weimar test, chances are that they will also convince the remaining EU 24.

The Transatlantic Relationship

Poland, Germany and the Transatlantic value chains

Adam Balcer

Poland perceives – especially after the Russian aggression against Ukraine – Russia as a serious threat to its own security and the US as its the main guarantee. Meanwhile, though, Germany has substantially changed its policy towards Russia, it remains much less concerned with the possibility of a Russian military attack against any NATO member.

This divergence of perceptions also applies to the two societies. According to opinion polls, most Poles – contrary to Germans – would support their country's engagement within the framework of the NATO obligations against a Russian attack on a NATO member state. It is no accident that the US occupies an unmatched first place as the main source of modern military equipment of the Polish armed forces. Meanwhile, Germany uses the weaponry produced mostly at home or by European joint-ventures. Poland is interested in as large and permanent a military US deployment on its territory as possible. On the other hand, Germany has a reluctant approach to the robust presence of US armed forces in the region, being afraid of the Russian reaction.

The most striking difference of approaches towards Russia between Poland and Germany (and one also related to the US) concerns energy security. Poland pursues the policy which at some stage assumes a complete renouncement of Russian gas supplies. This year Poland has started to import LNG gas from the US. Meanwhile, Germany strives to become a hub of Russian gas in Europe and supports the Nord Stream 2 project. The latter has become recently the most prominent target of sanctions voted almost unanimously by the US Congress.

At first glance, Poland and Germany have built decisively different economic relations with the US in the recent decades. Apart from China and Japan, Germany constitutes US's most important economic partner. It occupies the fifth position on the list of US trade partners and the second place on the list of foreign direct investors. Indeed, German shares in the US trade approach 5 percent and its share in the FDI stocks is close to 10 percent. In consequence, the US plays a crucial role in the German economy. It is sufficient to mention that the US is the first destination for German exporters and investors. Around 20 percent of the entire German direct investment abroad was invested in the US.

On the other hand, Poland has been eager for many years to increase its economic cooperation with the US, however without any bigger success. The volume of Polish export to the US slightly exceeds its export to Hungary (around 2,5 percent of total export) and it is twenty times smaller than what Germany export to the US. However, Poland has considerably well-developed economic relations with the US via Germany through global value chains. Indeed, Polish companies often serve as subcontractors of German export-oriented firms. In fact, in recent years Poland's share in the German trade volume increased to 5 percent and could soon overcome Italy and even the UK.

The German-Polish economic system of “communicating vessels” is sometimes perceived by the Polish ruling elites as neocolonial exploitation and a blind alley for Poland. In their view, in order to guarantee the modernization of Poland, the relations with Germany should be counter-balanced by the increase of economic cooperation with other economies, especially with the US. However, taking into consideration the scale of Polish-German economic ties, the idea of modernizing the Polish economy without Germany or even against it sounds abstract. In fact, a possible trade war between Germany and the US would be a disaster for the Polish economy.

Trump's victory deepened the Polish-German divergences concerning the US considerably. It met with an enthusiastic reaction of the Polish government which stresses its ideological kinship to Trump. On the other hand, in response to Trump's protectionist and populist rhetoric directed against Germany, the German government showed restraint. The level of Germans' distrust towards the US has increased dramatically in recent months and it is as low as Germans' confidence in Russia. On the other hand, Trump's visit in Poland strengthened his standing among Poles. The visit was also interpreted by the Polish government as an endorsement of its reform of the judiciary which has gained spectacular speed immediately after the Air Force One left the Polish air space. The reform was described by leaders of the key political groups in the European Parliament as crossing the red line by which the Polish government “is putting an end to the rule of law and democracy in Poland and leaving the European community of values”.

When Worlds Collide: President Trump, Chancellor Merkel and conflicting concepts of the West

Jana Puglierin⁴

Donald Trump's visit to Poland and the G20 summit went better than expected. In Warsaw, Trump finally made the long-awaited and clear commitment to NATO's mutual defense clause. There was no Russian reset, not to mention any great bargains between Russia and the United States. The US president actually urged Russia “to cease its destabilizing activities in Ukraine and elsewhere, and its support for hostile regimes.” Unlike on earlier occasions, he refrained from explicitly criticizing the EU. He even called the G20 summit “a wonderful success [...] carried out beautifully

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by Chancellor Angela Merkel.” – no Germany-bashing via Twitter and no refused handshakes this time. The G20 leaders were even able to agree on a joint final communiqué, as vague as it may be, despite significant differences on climate change and trade policy. The worst did not come to the worst.

That this came as a great relief is in itself telling. Trump’s leadership has turned the US into a source of unprecedented uncertainty – and the American presidency into a loose cannon. Although Trump’s visit to Europe did not create any sort of actual transatlantic crisis, it has underlined that the German chancellor and the American president do not share a common view of international relations – or of what “the West” is.

In fact, their worldviews could not be further apart. Merkel champions multilateralism, free trade, and environmental protection (though she herself has been accused of a kind of “mercantilism”, particularly in the context of Eurozone). Trump, whose slogan is “America First,” sees the world as “an arena where nations, nongovernmental actors, and businesses engage and compete for advantage” and has already withdrawn from the Paris Climate Agreement. Whereas Merkel believes that international cooperation leads to mutual benefits and win-win-situations for all participants, Trump sees it as a zero-sum game where only relative gains matter. For Berlin, international institutions are linchpins of global diplomacy, for the Trump White House, they merely serve as tools for power projection.

Yes, Trump promised to preserve America’s post-Cold War alliances and promised that “the West will never, ever be broken.” He mentioned the rule of law and the right to free speech and free expression as defining Western values. But while President Barack Obama had expressed his concern vis-à-vis the PiS government’s crackdown on the independence of the judiciary and on journalists, President Trump had nothing but praise for the current Polish administration.

Trump’s understanding of the West is actually very Polish – or rather, PiS-ish. PiS, like Trump, came to power by promising to fight the liberal, globalist ruling classes who are supposedly aiming at transforming their societies “toward a mixture of cultures and races, a world of cyclists and vegetarians, who only use renewable energy sources and combat all forms of religion” – as the Polish foreign minister Witold Waszczykowski put it in an interview with the German tabloid Bild in January 2016. “Making America great again” sounds like the PiS promises of “Rising from one’s knees.” Both Trump and the PiS leadership are convinced that the Western civilization is at risk of decline, under threat from “radical Islamic terrorism” and the “steady creep of government bureaucracy,” as the US president declared in Warsaw. And, most importantly, both think that at the heart of the Western civilization lay “the bonds of culture, faith, and tradition that make us who we are.”

Herein lies the major difference between Trump’s and Merkel’s concepts of the West: when Trump speaks of the “Western civilization” he implicitly means the “culture, faith, and tradition” of “white” people in Europe and North America. When Merkel states that “Germany and America are bound by values – democracy, freedom, as well as respect for the rule of law and the dignity of the individual, regardless of their origin, skin color, creed, gender, sexual orientation, or political views”, she understands the West not in cultural, religious, or historical, not to mention ethno-nationalist terms. Merkel’s understanding is universal. Her West is a place where people share

certain fundamental political beliefs, including liberal democracy, the rule of law, human rights, and gender equality. While Trump (and the PiS) define the West geographically and want to pull up the drawbridges, Merkel's West knows no geographical, only political bounds.

Trump's Warsaw speech might have been meant as "an apologia for the West," as the Wall Street Journal's editorial page put it, where the president took "a clear stand against the kind of gauzy globalism and vague multiculturalism represented by the worldview of, say, Barack Obama and most contemporary Western intellectuals." If so, he also took a clear stand against Merkel – and much of what the West has been standing for.

Polish-German support for the reestablishment of Transatlantic community

Marcin Kędzierski⁵

The Transatlantic partnership constitutes a vital fundament of the European integration. There was an obvious coincidence between the Truman doctrine and the beginning of European integration. One of the reasons that explains this coincidence might be the fact that after 1945 Germany's foreign policy, an engine of that integration, has changed significantly. In the past, the Second Reich's foreign policy followed the Prussian tradition represented by Otto von Bismarck. His basic aim was to maintain an equal distance towards European powers and to become an *eh-rlicher Makler* (an honest broker). Furthermore, he followed the rule of "Russia first" in his policy towards Central-Eastern Europe. After the Second World War Konrad Adenauer, owing to the Cold War order, reshaped considerably the foreign policy of the "Bonn Republic". Thus, since 1949 Germany has been a follower of Atlanticism. The second reunification of Germany in 1991 further strengthened the transatlantic linkage through the so-called American-German "Partnership in Leadership".

Unfortunately, the US-centric world we used to live in does not exist anymore. Washington has been systematically losing the privilege of being the global economic and military hegemon. Beijing started to question its economic position, and Kremlin did the same in terms of military power. As a consequence, Washington has had to redefine its foreign policy objectives. The pivot towards Asia, announced by Barack Obama, was a turning point in American foreign policy. It concurrently meant a symbolic withdrawal of the US from Europe. The annexation of Crimea and the Russian aggression in eastern Ukraine might be seen as a consequence of that geopolitical shift. Although the US decided recently to deploy for the first time a slightly larger contingent in Central Europe, it is more of an ad-hoc attempt of rescuing stability rather than a strategic move. The economic interests of the US as a maritime power lie in the Pacific, not the Atlantic.

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The emergence of new world order must have had an influence on Europe. Germany, which after the global financial crisis became EU's "reluctant hegemon", had to redefine its foreign policy as well. The emergence of a multipolar world has brought back the Bismarck heritage, as Frank Walter Steinmeier announced. No doubt, history does not repeat itself identically – we live in a different world than Bismarck did. It is definitely far more complex and multidimensional. However, it is getting more and more visible that Germany is trying to find its new (old?) *Sonderweg*. From the Polish perspective, the most important element of this new approach is a return to the "Russia first" rule through the Nord Stream 2 project. However, the current tension in the relations between Berlin and Washington is even a more momentous issue for Poland. Despite the geopolitical shifts, the membership in the EU and NATO and good relations between Europe and America still constitute the Polish fundamental *raison d'état*. Therefore, nothing is worse from Warsaw's perspective than the deepening cleavages within the Transatlantic community. That is why president Trump's Warsaw speech was so important: he declared the willingness to defend the Western world, but did not present any dangerous concepts such as the division between the new and the old Europe.

There are certainly a few differences and tensions between the EU and the US which exceed the American-German relationship. The major long-running issue – often neglected – constitutes the future of the global trade. Washington supports sea trade while the EU might be interested in the development of new land trade routes such as the Belt and Road Initiative. However, despite tensions between Poland and Germany and the latter and the US, Berlin and Warsaw should go hand in hand towards a reestablishment of the transatlantic community. There are several strong arguments for that cooperation. Germany has become a *Zivilmacht* and needs American military support. It does not mean that Europeans do not have to spend 2% of our GDPs on defence or create our own military capabilities. However, the Western European societies are mentally demilitarized and will not become "militarily independent". Moreover, Germany (and the whole EU) are global ambassadors of liberal democracy. This idealism has brought tensions between Berlin and Trump, but in the long run these will probably be reduced. After all, Trump is definitely far more liberal than Vladimir Putin. Moreover, taking into consideration the recent voting in the Congress, it seems that the heritage of value-based foreign policy pursued by neoconservatives may remain influential for many years in the Republican Party. Thus, despite the geopolitical interests, Washington will at the end of the day rather propound the defence of democratic, Western values over deals with illiberal, authoritarian Kremlin which only at the first glance looks as an indispensable partner of the US in global governance. For the same reason, Germany should not try to strike the great deal with the Kremlin ignoring Poland and hopefully it will resign from the Nord Stream 2.

The economic interests with America are still too important for Germany which in the recent months has already entered into an economic dispute with China. Therefore, after the German parliamentary elections, Berlin will probably unfreeze its relations with Washington. Eventually, Angela Merkel cannot be satisfied with Trump's glorious visit to France just after the Hamburg "failure" and will probably not let Emmanuel Macron replace Germany as America's main partner in Europe. Therefore, we should not even exclude a scenario of return to the negotiations of a new TTIP. Paradoxically, Donald Trump can surprise us by his *modus operandi* being predictably Transatlantic.

The Eurozone and the Single Market

Germany and Poland under the umbrella of the Single Market

Adam Balcer

After Brexit, Germany and Poland will remain the only proponents of the liberal approach to the Single Market among the largest EU economies. However, while the rule of law constitutes a basic foundation of the Single Market, the Polish government's internal policy seriously undermines the separation of powers.

In the coming years, the Single Market will probably become a crucial anchor keeping Poland in the EU. Especially taking into consideration how gloomy the perspective of Poland joining the eurozone looks because of the government's and society's strong skepticism towards that idea. Moreover, from the point of view of Polish membership in the EU, the Single Market constitutes a fundamental engine of economic growth and modernization of Poland's economy. In fact, it plays a more important role than the EU funds and agricultural subsidies do. The Single Market also plays a very important role in the German economy and in the German-Polish economic relationship. Poland's model of economy strongly resembles the German one. Poland's export of goods and services in relation to the GDP increased from 35 percent in 2004 (the year of accession to the EU) to almost 55 percent. In fact, the above-mentioned indicator is even smaller in the case of Germany, only slightly exceeding 45 percent of GDP and rising by 10 percent since 2004. By comparison, the export of goods and services in relation to the GDP oscillates around 30 percent in France, Italy and Spain. Thanks to the Single Market, Poland and Germany established a very close trade and investment symbiosis. Poland, together with the V-4 countries, occupies a key place in German economy's value chain as the main subcontractor in the industrial field.

In theory, Germany and Poland could count on the European Commission's support for maintaining the Single Market. However, closer cooperation between them is hindered by tensions resulting from the Polish government's internal policy of the consolidation of the executive power that dismantles the rule of law. Moreover, Poland's defense of the Single Market may easily lose credibility if the Polish government implements its "reforms" which are indirectly targeting the interests of European companies which invested in Poland (e.g. the re-nationalization of Polish media). Unfortunately, the Polish ruling elite started to present the Polish-German economic convergence, which is strongly intertwined with the Single Market, as a blind alley. Jarosław Kaczyński describes Germany as a neocolonial power exploiting Poland economically and suggests that the situation should be changed by diversifying Polish economic ties with

non-EU partners. It is very symptomatic that in the governmental Strategy of Development, more than 400 pages long, the EU and Germany are not defined as main engines of the second wave of Poland's modernization.

Certainly, the positions of the EC, Germany, and Poland on the Single Market sometimes collide. For instance, the EC's amendments to the Posted Workers Directive were rejected by Warsaw as too protectionist. This issue is very sensitive for the Polish economy because Polish posted workers account for the largest number, around one-fourth, of all such workers in Europe. Their share in the Polish employed labor force exceeds 3 percent. The Single Market is experiencing difficult times also because of political developments in the EU. Brexit (the exit of the most free-market oriented big economy) encouraged pro-protectionist policies within the EU, promoted especially by Emmanuel Macron, France's new president. The closer France's cooperation with Germany gets, the more concessions towards France Berlin will want to make.

The future of Single Market is strongly correlated with the future of the eurozone. The further integration of the EU members using European currency will contribute to a de facto fragmentation of the Single Market into first-rank members (the eurozone members) and those of the second rank (non-eurozone countries). A greater coordination of tax policies and the social policy combined with separate funds for the eurozone (de facto its budget) should be taken into consideration as a plausible scenario.

How can the EU single market and cohesion policy be saved?

Józef Niżnik⁶

It seems that the only way to save the principle of cohesion and take full advantage of the single market is to encourage all the Member States to join the core in deepening European integration.

The success of European integration has always depended on several factors, including the political will of national leaders, the global context, the removal of barriers in the common market, the lowering of economic disparities among Member States, and on developing the feeling of transnational togetherness in their societies. The last three factors became the declared goals of European Community leaders and the subject of the EU's official policies. However, these goals do not necessarily support each other and, as it happens, may even be contradictory. Nevertheless, for over half a century the process of integration was effective enough to radically change Europe and to prove that win-win measures involving the redistribution of wealth among the Member States are possible.

Despite the economic terms in the names of the founding treaties from Paris and Rome, the real plans of the architects of European integration were political, and contained the hope for

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a European federation as the ultimate goal. In fact, at crucial moments (like those when the enlargement of the EU was at stake) the political objectives of integration were clearly of primacy. In effect, Europe, while building economic growth, has enjoyed peace – and the better-off states not only did not pose a threat to those lagging behind, but contributed financially to their development. Owing to effectively applied structural funds, the European Union was approaching economic and territorial cohesion. Political union and social cohesion also seemed within reach.

Such was the case until the failure of the Constitutional Treaty (2005), the subsequent series of financial and fiscal crises in the eurozone, and finally the massive inflow of refugees and migrants from Africa and the Middle East. These developments have shown the weakness of the EU's social cohesion, exposed radical differences in the understanding of the political goals of European integration, and encouraged nationalist movements. Although differences of this kind had already been discernible, in the current context they created a background of political struggles within the Member States, the most dramatic one being the British decision to leave the EU. In response, the economically strongest countries of the euro area have initiated a debate on deepening the integration of just those states that are willing to forge ahead. In fact, the EU's treaties do allow "enhanced cooperation" of the willing, so such a move would not require a new treaty. This way, a "multi-speed Europe", probably involving some or even all the euro area states, may become an institutionalized fact. However, this development would deepen differences in the political and social visions that the Member States have regarding the future of the EU. Thus, an "ever closer Union" is not only in question, but may have become a more distant prospect than ever before.

What then will be the fate of the Single Market and Europe's long-cherished idea of a cohesive community? The problem is that the enhanced cooperation of some states will affect those outside such an agreement. Indeed, ideas for a multi-speed Europe have already raised anxiety among the states reluctant toward such change or having quite different views on the common future. There are, for example, fears that the regulation stipulating that the pay of posted workers comply with the rules of the host country will eliminate the competitive advantage of those Member States which now offer services below local costs. Although this practice is formally incompatible with the EU's principle of fair competition, it is one of the instruments which has helped substantially weaker economies to function on the Single Market and, in effect, has been a way to compensate for the generally worse economic position of some Member States. The states working together within an enhanced cooperation scheme may be expected to apply further measures of this type. Another fear is linked to the possible separate budget of the eurozone. Although existing regulations preclude enhanced cooperation from affecting the common EU budget, such cooperation may limit the funds devoted to the cohesion policy in a number of ways.

Today it seems that the only way to save the principle of cohesion and take full advantage of the single market is to encourage all the Member States to join the core in deepening European integration. In fact, one may well suspect that this is the hope of those countries which are now preparing such institutional change in the EU. Despite the official declarations of the states which now oppose such a prospect, e.g., the Visegrad countries (excluding Slovakia), we can expect that the institutional changes implemented in the EU will compel those countries to see the future of the EU in a different light. Rapid changes in the global context may become an additional factor, once again making the ideas of community and solidarity a primary value for all European societies.

The Europe that emerges from behind the curtain

Klaus Bachmann⁷

Outside the eurozone we will see a more and more fragmented Single Market, shaped according to the needs and wishes of the eurozone members, who, thanks to their dominance in the EU institutions, will be free to pass any legislation they wish to.

I spent the last months before the start of my summer vacation in Berlin, participating in on-the-record and off-the-record meetings and conferences about the political situation in Europe and the German and French-driven reform of the EU, or rather, the eurozone. For an observer from Central Europe – even one with a lot of intimate knowledge and interest in European Integration – it was dizzying to observe how precise and detailed were the plans that have already been elaborated to detach the eurozone from the EU and to create a eurozone polity which can act independently from the EU institutions. Europeans may not only be astonished by the boldness of this reform's design and by the extent to which it has been neglected by the media, but also by how easily it can come into being – even without the need to resort to time-consuming, risky, and frustrating formal amendments to the European treaties.

Eurozone members already control the necessary qualified majority within the Council of the European Union which allows them to pass legislation and to launch an enhanced cooperation proposal. After Brexit, this will be even easier as they will no longer face any cross-cutting vetoes by Britain in EU matters. How will this new eurozone will look like? It will have its own parliament, its own finance minister with a competence to control the ramifications of national budgets (and possibly even veto budget deficits), its own resources (a kind of eurozone tax), its own redistributive mechanisms (funds), and possibly also a separate president of the eurozone council, similar to the power which Donald Tusk now wields as the chairman of the European Council.

German politicians would generally want such a eurozone to be open to newcomers. But under the current treaties eurozone membership is linked to specific conditions and, taking into consideration the domestic political developments in Hungary and Poland, it is difficult to imagine that these conditions will remain only economic and financial. One might well expect, formally or informally, a new version of the Copenhagen criteria to show up whenever a new country wants to join the eurozone. And joining the eurozone will be much more attractive than it has been in recent years, because the EU's budget is likely to shrink (mainly, but not solely due to Brexit), and any possible compensation is likely to be channeled into the eurozone budget rather than into the general EU budget. Next, joining the eurozone will mean joining the Banking Union and a number of other risk-sharing and potentially redistributive mechanisms, which are particularly attractive for economically and financially weaker Member States that would thus be much better sheltered from asymmetric shocks and the consequences of global crises.

It is obvious that making the eurozone stronger and more attractive will make EU membership less attractive than it was. Outside the eurozone we will see a more and more fragmented Single Market, shaped according to the needs and wishes of the eurozone members, who, thanks to their dominance in the EU institutions, will be free to pass any legislation they wish to. We have already been able to observe that in recent years, when the freedom of movement was undermined piecemeal by national court decisions and the European Court of Justice. We are also seeing the once competition-friendly service directive turned into its opposite – an instrument for protectionist practices.

Since Emmanuel Macron and Angela Merkel agreed not to exclude treaty changes, it is clear that a treaty revision will start, possibly after the German election in September. However, for most of the above-mentioned changes, treaty revision is not necessary. Treaty changes are likely to be limited to issues consensual among all the Member States and can be decided upon either by the European Council alone (unanimously) or at least without another Convention.

The hot issues, especially the detachment of the eurozone from the wider EU, will have to be dealt with separately. But the current treaties already provide a number of opportunities, of which only a few provide the reluctant Member States with an opportunity to use their veto. This kind of opportunity is the case with the so-called passerelle clauses, which enable the European Council to shift decision-making unanimously to qualified majority voting. But vetoing can be impeded by resorting to package deals. There are two other methods which don't involve veto opportunities. First, the merger of different EU positions into one post. This way, an eurozone Finance Minister could emerge even long before a treaty amendment, for example by merging the chairman of the Ecofin Council with the position of the vice-chairman of the European Commission. Second, a lot of changes can be made by intergovernmental decision-making. This way, the eurozone Finance Minister could gain his or her controlling competences with regard to national budgets and a parallel eurozone parliament could be created to match the European one, either with delegates from national parliaments or with delegated EP members. Summing up, the deepening integration of the eurozone will gradually transform the Single Market into a sort of a European Economic Zone within the EU, an important but definitely second-rank instrument of European integration.

The Rule Of Law

A Lawless Europe? Poland on a collision course with the EU (including Germany)

Adam Balcer

Poland has never had worse relations with the European Commission, the European Parliament and Germany since its accession to the EU. The key problem is the undermining of the rule of law by the Polish government.

The tensions between Poland and the EC started immediately after the victory of the Law and Justice Party in the Autumn 2015 elections. In January 2016, the European Commission made the unprecedented decision to initiate the procedure to monitor the rule of law in Poland. This was based on the judgment of the prestigious Venice Commission consisting of a group of recognised legal authorities. It evaluated the Polish government's policy towards the Constitutional Court and criticised it almost unanimously (132 for, with one Hungarian lawyer against). The Law and Justice government had argued that the evaluation was groundless and that the measures taken by the EC against Poland were unlawful. Moreover, the Polish government undertook an uncompromising stance in its dialogue with the European Commission by rejecting any concessions, opting for confrontational rhetoric, and intensifying legal "reforms". This meant that the issue of how the rule of law was functioning in Poland not only failed to die down in Brussels, but became even more of an issue.

In consequence, the EC brought the question of the rule of law not being complied with in Poland up for discussion for the first time in the forum of the European Council during the meeting of European ministers in May 2017. During the first exchange of views, 17 countries, including France, Germany, Italy and Spain, expressed critical opinions of the internal situation in Poland. Only Budapest supported Warsaw. Poland remained even more lonely during the second discussion in the European Council which took place at the end of September.

Furthermore, the situation in Poland was the subject of debate in the European Parliament four times in 2016. The European Parliament voted with great majorities twice, in April and then in September 2016, in favour of resolutions calling for Poland to be punished if the government in Warsaw failed to apply the recommendations of the EC. It was an exceptional situation for the internal politics of one country to be so frequently the subject of debate and votes in the European Parliament.

Towards the end of July 2017, the European Commission adopted the third consecutive set of recommendations on the rule of law in Poland. The Commission determined that the government

in Warsaw had failed to take action to counter the objections contained in the previous two sets of recommendations concerning the Constitutional Tribunal. The July recommendations also mentioned the four bills passed by the Polish parliament which heralded profound changes in the judiciary. Two of these were vetoed by the president who presented new – and, again, partly unconstitutional – projects in the autumn. However, he did sign the remaining two. Also in July, the European Commission launched two procedures against Poland concerning the violation of EU law. Within one of these procedures, the EC filed a case against Poland to the EU Court of Justice. The court's preliminary verdict upheld the Commission's position.

The dismantling of the rule of law in Poland contributed to a substantial deterioration of German-Polish relations. Initially, Angela Merkel and the leading politicians in Germany were cautious in their comments on the situation in Poland, being convinced that harsh criticism from Berlin could bring negative consequences because of the bitter historical legacy (German occupation of Poland). However, in May 2017 when Emmanuel Macron assumed the presidency in France, Angela Merkel joined his criticism of Poland, emphasizing that “we must be able to speak openly if we do not agree with certain processes.” In August she became even more outspoken. One day after the Polish government again dismissed the EC inquiry as groundless, the German chancellor said she was taking the Commission's worries very seriously. “This is a serious issue because the requirements for cooperation within the European Union are the principles of the rule of law. [...] However much I want to have very good relations with Poland [...] we cannot simply hold our tongues and not say anything for the sake of peace and quiet.”

Permissiveness or Consistency? Democratic cutbacks in Member States vs. the unity of the EU

Kai Olaf Lang⁸

There is a growing worry about the state of democracy in the European Union Member States. Particularly the developments in Hungary and in Poland have raised concerns and sparked intensive debates about illiberal backsliding and de-democratization.

For many, it is particularly disquieting that the EU, which defines itself as a community of values and principles has not been able to effectively tackle and limit such processes in its Member States. Proponents of a more consistent protection of democracy in the EU have denounced the lack of appropriate instruments to hedge against deficits in the rule-of-law and democracy. Once the EU had improved its toolkit, the blame for an insufficient political will to curb cutbacks in democracy was put on specific Member States. Whereas both arguments (and mainly the second one) have some validity, there are more fundamental factors, which complicate attempts to implement a more consistent democracy policy within the Union.

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First, democracy has many faces. This holds true not only for the many varieties of democracies: from semi-democratic copies to effective pluralism and competitive policy-making, but also for what is usually called liberal democracy. Hence, advocates of political reform in EU Member States can easily argue that there is no single and binding model of democracy they have adhere to.

Second, the EU is a polity based on the permanent tension between shared powers and that what is at the discretion of the Member States. When it comes to issues of their democratic *modus operandi*, the situation is particularly contentious and sensitive. Here, there is a competition between common values and “non-conferred competencies”, which explicitly include “fundamental political and constitutional structures”. Referring to the right to define their “constitutional identity”, governments and parliamentary majorities in Member State have a heavy weapon at their disposal to fend off EU action regarding changes to the political system.

Third, governments which initiated or carried out major procedural or institutional changes in their political systems have also applied their domestic reading of democracy at a more general EU level: in Hungary and even more visibly in Poland, governments have pursued a sort of “legitimacy first” approach. According to this philosophy, democratically elected parliaments and governments accountable to them are entitled to change not only policies, but also the rules of the game. More particularly, if there is a conflict between the will of the majority and the legal situation, there is a preference for “the political solution”, which has a much higher level of legitimacy than law-based restraints, whose observance is regarded as “legal impossibilism”.

With these factors in mind, there is little wonder that the EU has so far only developed a limited capacity to shelter Member States’ democracies from being undermined. And, for sure, there will be no easy way to overcome these barriers. The crucial issue is certainly a new commitment to democracy. In this respect, the Rome Declaration has been a missed opportunity because it gathered Member States behind a broad range of important values, without conveying a new message of obligation. It is understandable that, for pragmatic reasons, a diverse community has to give leeway to its members for the interpretation of specific norms. But with regards to basic foundations of democracy, it is necessary to define the core of what this entails in practice, irrespective of the different faces of European democracies. Therefore, Member States should not only be faithful to general principles like democracy and rule-of-law, but to their specific building blocks, such as media pluralism, an unrestricted existence of civil society, the division of powers and “fair play” during elections.

In consequence, it may be said that the EU needs a sort of a practical “*acquis démocratique*”. This is, first of all, a political affair. Of course, it is necessary to have a clear legal appraisal of what is going on in the Member State that is being investigated. Nevertheless, formal legalism alone will not help. Last years’ experiences have shown that Member States that go for the accumulation of power can easily take on legal battles, e.g. with the European Commission. By turning a bigger political issue into a series of smaller legal ones, Member States are often (through some smart adaptations) able to comply with EU law and at the same time maintain the content of the original act. Moreover, many practices decreasing democratic fair play can be implemented without changing the law at all. Thus, what the EU needs, is the ability to assess the Member States politically – without falling into the trap of making this a party-political or ideological assessment.

Finally, the EU and its Member States have to soberly estimate the advantages of action and the costs of passivity. If the EU remains permissive to democratic irregularities among its members, it risks the proliferation of de-democratization toward the other states of the community, it weakens its capability to act as a normative actor internally and externally, and it agrees to the concept of a loose conglomerate rather than a genuine political union. On the other hand, if the EU evolves toward more democratic strictness and the sanctioning of democratic non-compliance, this increased normative solidity could lead to a point where a country might be in a position of frozen membership or even prefer to “leave the club”.

The end of Rechtsstaat? Rule of law in Poland and in the European Union

Adam Bodnar⁹

The year 2016 changed everything. A set of coordinated actions by the ruling parliamentary majority, the government, and the President paved the way to the destruction of the independence of the Polish Constitutional Court.

I started my legal studies at the University of Warsaw in 1995. I remember well the lectures on constitutional law. One of my teachers asked me to read a complex commentary to the Article 1 of the Polish Constitution. It stated that Poland is a democratic state ruled by law, securing social solidarity. The commentary was written by Professor Mirosław Wyrzykowski, who had spent years in Germany, Austria and Switzerland working as a scholar. He quoted extensively Roman Herzog, Klaus Stern, the judgments of the German Bundesverfassungsgericht, as well as the emerging jurisprudence of the Polish Constitutional Court. He gave intellectual backbone to the Polish legal principle.

Later on, as a student, scholar, practitioner and NGO activist, I was observing how the Polish concept of the Rechtsstaat was growing. Almost every week, the Constitutional Court challenged flawed legislation, interpreted basic rights, successfully reviewed complaints by citizens and the Ombudsman. Legislators were steadily learning that some inappropriate tricks would not go unchecked. The government took more and more caution when preparing draft laws. Scholars put continuous pressure to shape best practices in the legislative process. Certainly, many of us complained about the inefficiency of the courts, about certain unwise rulings of different courts, and about various legislative mistakes. But we had a feeling that our legal system was slowly improving, and that citizens were having more and more trust in the law and in the operation of the state. There was a prevailing belief that even significant mistakes could be repaired with the use of legal instruments stemming from our 1997 Constitution.

However, the year 2016 changed everything. A set of coordinated actions by the ruling parliamentary majority, the government, and the President paved the way to the destruction of the

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independence of the Polish Constitutional Court. The Court exists and the Constitution has formally not been changed. However, the Court is without a real power of judicial review and is not any longer reliable in protecting constitutional principles and rights. As Ombudsman, I receive letters from citizens asking for help, but at the same time warning that I should not go to the Constitutional Court. They are afraid of the result that may put them in a position worse than before the start of constitutional adjudication. They still believe in common courts.

Indeed, the toothless Constitutional Court opened the way to legislation that could have never even been thought of before, like the recent Law on the Supreme Court. It provided for the dismissal of all the Supreme Court judges and gave the Minister of Justice the right to “pick and choose” those who would stay in the Court. The paralysis of the Constitutional Court in 2016 created a window of opportunity to pass various laws that strengthened governmental powers, and others concerning public media, the prosecutor’s office, or the intelligence services. I submitted most of those laws to the Constitutional Court, but it was to a great extent a symbolic gesture.

Independent courts still remain the symbol of the rule of law in Poland. The July 2017 protests symbolized their value to the society. Nevertheless, despite the President’s vetoes of two laws (on the Supreme Court and on the National Council of Judiciary), the third one – the Law on Organization of Common Courts – entered into force. We can now observe how the Minister of Justice is starting to make his individual decisions on dismissals and appointments of presidents of courts. But we are also observing strong pressure by the government and government-friendly media on the judiciary and a smear PR campaign directed against judges. It is already bringing a “chilling effect”. Judges started to be afraid of personal consequences of their decisions. Such a situation may prolong the decision-making process and enforce opportunistic choices. And the government is aware that most judges do not have any other professional choices than that of being a judge.

This way, impartiality of judges is called into question by the “chilling effect”. In this environment, the Polish citizen cannot feel secure any longer. The end of the rule of law may also gravely affect the position of Poland in the European Union because it undermines the principle of mutual recognition of judgments within the EU. However, the negative consequences of such a scenario to the Polish economy will not be felt immediately, thus it does not hinder the government from implementing controversial policies.

My personal dream is to teach future Polish students the theory of the rule of law on the basis of the painful examples from our recent history. I hope that it will be possible to overcome the current crisis of the judiciary. If that happens, Polish democracy would emerge much stronger. But, unfortunately, it may take years or even decades. It will not just be a question of changing laws, but of reinforcing civic values such as a genuine belief in human dignity, the ideal of public service, a fully-fledged devotion to the Constitution and treating the law as the highest value in a democratic state.

European Values

Diverging European identities and values

Adam Balcer

European values have become one of the hottest issues discussed currently in the EU. They may be defined from various angles: political (liberal democracy and human rights), legal (the rule of law and the division of powers) or cultural (identity), the most vague and complex of them all. However, these fields are in fact strongly intertwined. The attitude towards the rule of law and liberal democracy depends strongly on how the national community is defined.

The ethnicity-oriented nationalism evoking “ancient” origins (nativism) and common features of culture (often religion) as basic pillars of national identity prefers a nation imagined as a monolith. On the other hand, civic nationalism in its current version promotes a more complex vision of the nation, accepting its diversity (individual freedoms, minority rights) and treating the state and citizenship as the main points of reference for the national identity. It is not an accident that ethnic nationalism is especially popular among national populists. They want to portray themselves as defenders of an imagined national homogeneity which is permanently threatened by external and internal enemies. It is the sovereign “democratic” will that constitutes the main binder of the nation. That’s why, in their opinion, majority rule should not be too constrained by the rule of law. These days in Europe, the main expression of divergence between the two visions of the nation (the ethnic-populist and the civic-state) has turned into an attitude towards Muslims. Most of the national populists perceive almost all Muslims or, best-case scenario, the great majority of them as a priori unable to be integrated into European societies. Meanwhile, the proponents of civic nationalism promote an individual approach to every citizen and believe that most of Muslims have already become or are able to be integrated into those societies.

The rise of national populists is going to have serious implications for the EU and its identity. Indeed, national populists try to present themselves as the defenders of nations against supranational and federal European utopias. The fact is however, that the main ongoing confrontation is between ethnic nationalism and the civic nationalism which constitutes the key pillar of the EU. It means that the acceptance of the main proposals of national populists in regard to the definition of the nation will signify the beginning of the end of the EU because it will undermine its democratic foundations, the rule of law and the idea of inclusive identity.

Indeed, the current tensions between Poland and Germany are deeply entrenched in the sphere of values and identities. According to the opinion poll conducted in 2016 by the Pew Research Centre, around three quarters of Poles agreed that the Roman Catholic faith was an important criterion in determining whether someone was a true Pole. In the same study, around 70%

of Polish people declared a negative opinion of their Muslim co-citizens, even though the small Muslim community in Poland causes no noticeable problems. As a matter of comparison, the attitude towards Muslim co-citizens was decisively more positive in Germany. Around 30 percent of Germans expressed a negative attitude towards Muslims and defined Christianity as an important criterion for being a true German. In the same opinion poll, Poles showed that they were decisively more afraid than Germans of Muslim refugees arriving in their country, though the number of asylum seekers from MENA trying to find shelter in Poland is completely negligible. Despite that fact, many Poles are genuinely afraid of the Islamization of their country.

Unfortunately, Polish fears are being reinforced almost on an everyday basis by the ruling elite. According to the Polish government and the pro-government media, the EU relocation of mostly Muslim refugees from Italy and Greece to Poland is part of a hidden agenda of the European mainstream elites under a German leadership. They want to provoke a massive inflow of immigrants which will undermine the Polish national homogeneity in order to control Poland easier. The link between the EU and Islam, defined as a main threat to Polish security, identity and sovereignty, found a worrying expression in the opinion poll conducted by IBRIS, a Polish research centre, in the summer of 2017. More than half of Poles supported Poland's exit from the EU if the membership were to be conditioned by the acceptance of six thousand refugees within the framework of the relocation programme. Less than 40 percent were ready to accept them in order to remain in the EU.

Leviathan enchained: EU's value enforcement deficit

Josef Janning¹⁰

As a law-based community, the European Union depends on the rule of law, the separation of powers and an independent judiciary guaranteed and functioning within Member States. However, the EU lacks law enforcement powers. Only the obedience of the law by European political elites ensures the application of European regulations within Member States and provides citizens with means to claim their rights under the European treaties.

The European Union has hardly any means at its disposal to safeguard and uphold these values among its Member States. Its democracy-promoting impact intertwined with the rule of law mostly applies to prospective members rather than the current ones. Currently a safeguard clause to strengthen the basic values within the EU is expressed in Article 2 of the Treaty on European Union (TEU). On the other hand, Article 7 of the TEU stipulates a naming and "shaming" process handled by the European Commission, leaving any decision on putting sanctions on a Member State accused of violating EU values to the Council of Ministers and the European Council, i.e. in the hands of Member State governments. Meanwhile, those governments often do not want to establish European jurisdiction over their constitutional law.

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However, the majority of legal system the EU Member States is currently created by the EU institutions. In consequence, the national constitutions sometimes have to be amended in order to align them with the EU *acquis communautaire*. For instance, the German Grundgesetz had a clause obliging men to serve in the armed forces when called upon (Wehrpflicht). On these grounds, women were excluded from the draft and from serving voluntarily in combat units. The European Court of Justice overruled the German constitution on the grounds of non-discrimination in the workplace as codified in the EU treaties. In consequence, the German constitution was changed. This example points to a crucial pillar of EU integration, namely: the rule of law. It replaced interactions between states based on power by a decision-making process based on law. Therefore, the rule of law is not just a German obsession with the Rechtsstaat, as is sometimes argued in European political circles. And this is precisely what the current Polish government puts into question: the division of powers and an independent judiciary.

There is another set of legal norms and principles, which are equally essential to the functioning of the EU. It comprises the principles, norms and institutions of a market economy. They are the basis on which market governance rests at the EU level, such as competition and procurement rules, anti-fraud policies, anti-trust regulation and the whole body of single market legislation. While the EU as an economic organization could theoretically function with restrictions on media freedom or the disrespect of national minorities, it could not function if the essentials of market economy strongly intertwined with the rule of law were not respected. Considering the current refugee or euro crises, this argument could be expanded to include the obligations under Schengen and European Monetary Union. One Member State's inability or unwillingness to deliver on the rules and conditions set forth in the respective agreements weakens the EU at large and directly affects the security or well-being in the other Member States. The German government's unilateral decision in September 2015 (to temporarily not apply the Dublin rules on asylum seekers gathering on a massive scale in Hungary) was certainly stretching the clauses of the Schengen *acquis*. The spirit of the agreement would have needed prior consultation. However, the Polish refusal to implement the relocation scheme for a defined number of refugees already present in Greece and Italy, a number passed according to the rules of the EU treaties is an evident breach of those treaties. Moreover, the "respect for the law and for its due process" argument also gives substance to the notion of solidarity, often evoked by Warsaw, which is part of the wider set of values the European Union is built on. The rule of law ensures that solidarity is mutual and inclusive, neither manipulated by some to the detriment of others nor simply practiced *à la carte*.

In consequence, the EU would need a more robust article 7.b establishing processes and instruments to sanction violations of the rule of law by Member States quickly and decisively. Currently, the instrument in place applies *ex-post*, as the Commission could take Member States to court for breach of the treaties, a process which often takes long to begin and even longer to be settled. It cannot be applied early on, however, when the principles of market economy or the rule of law are weakened or put into question.

The European Union is not the super-state that it is often portrayed as in national debates regarding Europe. In fact, it still resembles more a service provider than a genuine layer of governance above and superior to Member States. However, the strengthening of the sanctioning capacity (faster reaction) of the EU in those areas of the market where it is essential to its proper functioning would be a good start to change this situation. It would imply more robust rules on

enforcing the proper rule of law (independent judiciary) as this is the core functional value of the entire structure.

Identity matters!

Marek Cichocki¹¹

According to Frank Furedi, the British sociologist born in Budapest, what we are currently witnessing in the EU should apparently be described in terms of a “European culture war”. Not only is the financial stability of the integration project or its social coherence at stake, but the very essence of belief in the normative foundations of the project are starting to be questioned.

Undoubtedly, Poland and Germany are two large countries in the centre of the EU which are diverging politically at an increasing rate along the main fronts of the unleashed European culture war. At the geopolitical level, especially in the case of the policy toward Russia, Berlin and Warsaw have recently become closer than at any time within the last decades. Economically, Germany and Poland are highly interdependent and their trade exchange is booming. The real causes of growing tensions between the two countries are placed in the sphere of values and norms, European and liberal, and their diverging interpretations.

Germany is probably the country which most closely identifies with the norms and rules of the EU. Having committed unconceivable crimes during the World War II, it later recognized that a strong commitment to the Western liberal values and a devotion to the principle of the so-called *Westbindung* were the precondition and a historic chance for the Germans to return to the international society and the family of European nations. European integration became the main track to obtain this strategic goal. Germans have adopted masterfully the vision of open, multicultural and secularised society based on competing individualism as the model of Western, liberal modernisation mixing it with the elements of their own legal, positivist and anti-political tradition of the *Rechtsstaat*.

With time, enhancing its place in the EU up to the current dominant position, Germany has been transforming itself from a country adopting the Western, liberal values into a country shaping, interpreting and upholding them in the name of the European project. Taking special responsibility for the EU as the normative power, Germany contributed, as any other Member State, to the evolution of the integration project from a mere community of interests to a community of norms and values. The role Berlin played in working out and establishing the Charter of European Fundamental Rights at the end of the 1990s constitutes one of the most vivid examples of this influence.

Polish perception of the normative power of the EU is certainly different from that of the Germans. Poland has joined the EU as a transition country from the Central Europe after fourteen

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years from the collapse of the Eastern Block, however it did not come out of nowhere in terms of values and tradition. The idea that it was solely the EU association process that made Poland democratic and the Polish society compatible with European values, widespread in some academic and political circles of the West, is patently false and misleading. Surviving Nazism and communism, two modern totalitarian systems of the 20th century, reaching its political independence and democratization in 1989 through the widespread democratic and social movement of “Solidarność”, Poland has a particular perspective on the European integration. Indeed, its normative foundations echo in current Polish politics. Rejecting the bad experience of the Cold War-era division of Europe, European cooperation and unity still seem to be the main objectives of integration for the politicians in Warsaw and for the Polish public opinion.

Hence it makes many Poles so nervous if they hear any talk of differentiated integration. However, these expectations of undifferentiated unity seem to be increasingly a paradox when paralleled more and more often with calls coming from Warsaw on respecting diversity deriving from autonomous democratic processes of different Member States. For many Poles, the unity of Europe means respecting diversity which is rooted in the principle of the self-determination of democratic nations as well as in different national identities and cultures. This strong emphasising of national and democratic differences is additionally strengthened by the Polish historical experience of the 20th century making many Poles rather sceptical of the absolute relevance of any kind of supranational structures or universal European norms and sensing a new threatening possibility of tyranny and suppression of freedom. The exact same feelings towards history make so many Poles sceptical towards the EU as an efficient political and military agent in case of security challenges, they still prefer to see the American military presence in Europe as the only reliable security guarantee.

German and Polish normative premises on the European integration vary and diverge, especially now in times of crises in the EU. They should be taken seriously as an object of honest inquiry and political dialogue. Otherwise they can lead to the escalation of the European culture wars and may deal a serious blow to the integration process. As we already know after the Brexit referendum of 2016, interests alone do not determine politics. Values and identities can change everything and at a surprisingly quick rate.

Russia

Similarities above differences: Poland and Germany in EU front against aggressive Russia

Adam Balcer

Poland and Germany are the only two countries among the biggest EU Member States genuinely interested in the Eastern Europe and by default concerned by the Russian aggression against Ukraine. In consequence, the shape of EU policy towards the Eastern Partnership countries and Russia is considerably correlated with the character of the bilateral relationship between Berlin and Warsaw.

The Russian aggression against Ukraine has dramatically changed the security situation in Europe and substantially influenced the debate on the security of Europe. It revealed serious divergences between Poland and Germany which, however, did not hinder their cooperation. The key positive factor which facilitated finding a modus vivendi between Warsaw and Berlin was Germany's consistent position on the EU sanctions against Russia. In fact, Germany became the most important proponent of keeping them until the Kremlin changes its aggressive policy towards Ukraine. This consistent German policy is based on solid social foundations. The Russian aggression against Kyiv resulted in a decisive rise of Germans' distrust of Russia and, especially, President Putin. In consequence, sanctions still have the support of the majority of Germans. However, in the summer of 2017 a Forsa survey revealed that almost 65 percent of Germans would like the German-Russian relations to be improved while only 40 percent would like to see similar efforts towards the transatlantic relationship with the US.

Poland – because of its frontier location within NATO and the EU, and being the only country that borders Russia, Ukraine and Belarus – sees Moscow's neo-imperial policies as an immediate and serious threat towards its own security. Therefore, Poland and the majority of countries from the Eastern flank (the Baltic states and Romania in particular) have emphasized that Russia has been permanently violating the 1997 NATO-Russia Founding Act. Meanwhile, Germany in particular wants to stick to the original spirit of the Founding Act. Berlin's restrained position should be explained by its traditional post-Second World War pacifism and convictions that a larger NATO military deployment may provoke Russia's over-reaction. However, Berlin has engaged in the enhanced forward presence (EFP) launched by NATO after the summit in Warsaw, taking over the command of one of four battle groups (Lithuania). Despite the abovementioned deficits, the EFP sends a clear signal: if Russia invaded, it would have to fight the forces of most of the allied countries, including the main powers, including Germany.

On the other hand, Poland's position on the Russian aggression against Ukraine presented as principal seems sometimes ambivalent. The Polish-Ukrainian bilateral relations deteriorated considerably in the Summer of 2017. In Poland, the far-right anti-Ukrainian groups which treat Russia as a lesser evil or even as a potential ally, may count on the lenient approach of the Polish government. In August 2017 the Polish Minister of Foreign Affairs tried unsuccessfully to start a rapprochement with Russia by giving lessons to Ukraine regarding its politics of memory in a Russian pro-government newspaper. Muslims, Germany, and the rise of nationalism in Ukraine (which is presented in a distorting mirror) are more often presented as key challenges than Russia's aggressive policy. Moreover, after 2014 Poland has not managed to speed up the modernization of its armed forces. To the contrary. According to the most recent report published recently by Stratpoints, a think tank established by prominent former Polish generals, the modernization program is facing serious delays.

Poland's and Germany's interests in the security of the energy sector diverge as well. Poland has a strong negative position on the Nord Stream 2 project which foresees constructing the second gas pipeline running under the Baltic Sea between Germany and Russia. As seen from Warsaw, Nord Stream 2 would deprive Central-Eastern Europe of its status as a transfer region between Germany and Russia. At the same time, it should be admitted that the Nord Stream 2 project has met with a substantially stronger internal opposition in Germany compared to the first pipeline.

EU policy toward Russia under the EU sanctions – responsibility, risk taking, rules and resources

Ernest Wyciszkievicz¹²

EU and its members in the conclusions of summits of the European Council unequivocally assessed the Russian aggression against Ukraine as an unacceptable violation of international law. Sanctions regime translated words into action. Contrary to Russian expectations, their open meddling in other countries' electoral campaigns and info-sphere, and driving wedges between and within Member States has produced meagre results. The Kremlin's aggressive policy has created more Russia critics than Russlandverstehers.

Still, there have been recurring attempts in the EU, including in Germany, to water down Russia's responsibility. And so quite often some European and, to a lesser degree, German politicians make a semantic twist and start seeing the Ukrainian conflict as a civil war instead of an inter-state conflict triggered by an obvious aggressor (Russia), or separatists instead of Russia-backed proxy forces. Another group – mainly worshippers of geopolitics – turns a blind eye on Putin's actions and underlines alleged structural causes of the conflict rooted in Western disrespect towards Russia's 'legitimate' interests and post-Soviet traumas.

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Nevertheless, political consensus in the EU prevails, though it has been under pressure from certain EU Member States. Poland and Germany, cooperating closely, contributed greatly to the European unity vis-a-vis the Russian aggression against Ukraine. Currently, in the age of Russia under the EU sanctions, Berlin and Warsaw should promote the four R's: responsibility, risk taking, rules and resources as ruling principles of the EU policy towards Russia and Eastern Europe.

Responsibility. It is not the abstract post-Cold War order that failed in 2014, it is not the European security architecture that crumbled due to Western faults, it is not the deterministic logic of history that led us into the crisis. It is Russia under the command of president Putin that undertook the fully-fledged aggression against Ukraine and breaking nearly every regulation that could have been broken when it comes to the spirit and the letter of international law. Only after Russia takes genuine responsibility for its aggression and delivers real progress on the ground, should there be any talk of EU engagement, including a gradual lifting of sanctions. Even the slightest efforts to ask Russia for concessions by putting part of the blame on the EU or NATO backfire immediately with Russian agitprop turning the argument around in good old doublespeak logic that "War is Peace" and "Aggression is Self-Defense".

Risk taking. Risk aversion sometimes pushes some of EU's democratic politicians to get back to "business as usual" with Russia, even though there is no way back. The authoritarian Russian politicians are simply not to be held accountable for misdeeds to their people, so they are more willing to take risks and test the resolve of their more vulnerable partners. This neatly explains why Russia interfered, directly or by proxies, in electoral processes in the West to increase political costs of challenging Russia for incumbents and newcomers. All the while, Moscow has been showing its ideological flexibility. For instance, in case of German elections, Moscow focused particularly on the far left and the far right. Although Russia harmed itself by overacting, it sent a powerful signal that European political culture of risk avoidance is in fact extremely risky. Risk taking in practical terms means not falling into the traps of war scaremongering "nuclear war" or "economic doomsday". Indeed, the EU sanctions constitute the best exemplification of the successful resilience against this emotional blackmail.

Rules. Since the reports of the death of the European order are an exaggeration, its principles should be upheld. Russia's blow to the system of international law is rooted in its preference for informal, tacit agreements among great powers to make the smaller players comply. Yet, the international reality of today is fundamentally different than that of 1815 or 1945, and denying agency to small and mid-sized states such as Poland is simply unrealistic due to prohibitively high political costs of such actions for those willing to get back to any kind of exclusive great power game. The main powers of the EU, including Germany, should be aware that any sort of "grand bargain" at the expense of Central and Eastern European states might bring a short relief but would actually mean inviting trouble in the future from those willing to grasp the land of their neighbours.

Resources. The Panama and Paradise Papers have turned the spotlight on something that European elites have been well aware of for years, ever since the wealth of countries ruled by dictators/autocrats started to flow through tax havens to the EU. A peculiar financial interdependence emerged between a part of Western political and financial elites and post-Soviet, Asian or African kleptocrats. Obviously, this problem is much bigger than Russia, but it can be a key to EU policy towards that country as well as towards Eastern Europe. This implicit support of corruption

and money laundering goes to the very heart of the credibility of the EU in the East, since it discredits its association policy based on *acquis communautaire*, foreign aid programs or democracy promotion, so important for Eastern Partnership countries. For EU policy toward Russia, real steps in reducing money laundering, illegal tax avoidance or evasion, and eliminating secrecy havens would have tremendous significance as instruments, making it difficult for Russian elites to turn public goods into private gains and, subsequently, to make them more vulnerable to outside pressure. What is even more important, it would increase EU's resilience to unwanted practices of corruption that have been travelling together with Russian money and pipelines.

We and Europe: EU-Russia relations in times of crisis

Gabriele Freitag¹³

It remains a striking phenomenon that Russians have coined their relation towards the continent in the telling phrase “my i Evropa” (we and Europe) thus expressing a lacking sense of belonging towards Europe, irrelevant of whether they live in the European or Asian part of their country. It also remains a striking fact that for many Western Europeans Europe ends at the borders of the European Union (for some Europe even seems to end at the borders of the rivers Oder and Neisse) thus at best they express an indifference towards Central and Eastern Europe.

Over the last years the divisions between the EU and Russia have deepened dramatically. But the setting within the European Union has also changed. The pro-European majority in this year's elections in the Netherlands, France and Germany cannot conceal the fact that the pro-European stance in the European Union is dwindling. Old and new populist parties, on the right and on the left of the political spectrum, are forming anti-EU alliances within the Union and also with Russia. And with the new populist government in the USA, it is becoming ever more evident that the political East-West dichotomy is getting increasingly blurred. The concept of Western democracy itself, though, has certainly not outlived its purpose. Fortunately, neither the EU nor Russia are monolithic entities. This makes the situation more complex but offers chances to reach out to those who are still ready to listen.

When it comes to EU's relations towards Russia, there is no need to change strategies and goals decisively but simply to define them more clearly. We are currently witnessing a supposed battle on values which is in fact a conflict about (mutually agreed upon) principles and rules. Russia has launched a militant campaign against a degenerate Gayevropa that mobilizes nationalist forces on the domestic front but also serves as a pretext to depart from the rule of law on the international arena. But this battle on values is not restricted to a contestation between the EU and Russia. The current Polish government, with its prominent anti-Russian rhetoric, shows striking similarities to its demonized foe when claiming to be the true representative of European values while simultaneously discrediting its own democratic institutions and political opponents.

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Thus, the *casus belli* and the battle lines are not as clear-cut as the political rhetoric makes us believe.

In this highly emotionally-charged contestation, the EU as a political body also rather tends to refer to the vague concept of European values instead of talking about its own interests explicitly. In general, these interests do not collide with the claimed values, namely transparency, predictability and justice as prerequisites for peace, democracy, the rule of law and prosperity. Clearly defining its own interests might enhance the EU's communication and negotiation with outside partners and conflicting parties who tend to denounce EU politics as hypocritical talk. But this offensive approach requires that the interests and values, actions and words be indeed compatible. And the EU is truly vulnerable regarding for instance its own double standards towards countries with a track record of human rights abuses.

What is wanted from the EU and especially from Germany is a more coherent policy towards Russia that acknowledges the anxieties of Central European and Baltic countries like Poland regarding Russian expansionism. This policy should show solidarity within the EU but simultaneously try to reach out to Russia, calling for collaboration in the fields of economy, certain fields of security and people-to-people contact. What is also wanted from the EU is a more explicit stance towards the countries of the Eastern Neighborhood. Why not acknowledge vis-a-vis Russia that there is a competition for collaboration with the countries in the post-Soviet space as long as this competition does not deprive the respective countries of the opportunity to collaborate with both sides? And while detesting any claims towards exclusive spheres of interest, the EU could make it more explicit that Russia itself is of utmost interest to the EU and in particular a prosperous Russia. An articulate and coherent policy is also what pro-European voices in Russia expect of the EU and certainly of Germany.

The EU considers that Russia strives to assert its role as a global player and perceives the EU as a major challenge to its security and ambitions. Due to its own weaknesses, Russia regards unpredictability as a vital instrument of foreign policy. In contrast to this approach, accountability of its own policy is most probably the first and foremost prerequisite of a sustainable EU foreign policy. The prospects of overcoming the conflict with Russia in the near future are weak. And therefore it is all the more important to keep up constant and coherent communication.

It is also apparent that the concept of Europe as a peaceful and tolerant place of cohabitation and namely the EU as its most prominent representative has lost its attractiveness for many people in Russia. Dialogue on different levels to reach out to the people and thus try to counterbalance the anti-European rhetoric of the Russian state media is all the more important – the ultimate goal being a change of perspective from “we and Europe” to “we in Europe”.

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