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**“Law and Justice?”
Understanding Poland’s asylum policy through the lens of Europeanization**

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Abstract

This article investigates Poland's rejection of the migrant relocation scheme that was put in place by the European Union (EU) in response to the 2015 migrant crisis. The conceptual framework of Europeanization is used to demonstrate the process of Poland's accession to the EU in 2004, and to analyze the developments of Poland's asylum policy. The body of literature on Europeanization highlights the power that EU *acquis communautaire* has in shaping candidate countries policies to match the values of the EU. This includes candidate countries adopting the restrictive nature of the EU's migration policy. Through the implementation of the Amsterdam Treaty, the way in which policy decisions on asylum and migration were made shifted away from the intergovernmental approach towards the community method. This paper will argue that following the shift in decision-making at the EU-level, tension rose between the interests of the EU and its Member States, as not all Member State's interests were being represented at the EU-level. This paper concludes that in the case of Poland asylum policy failed to Europeanize, and a clear divergence emerged between the interests of Poland as a Member State and the views and priorities of the EU.

List of Acronyms

Committee of experts on the legal aspects of territorial asylum, refugees, and stateless persons (CAHAR)

Civic Platform Party (Platforma Obywatelska, PO)

Central and Eastern Europe (CEE)

Centre for Information, Discussion and Exchange on Asylum (CIREA)

Common European Asylum System (CEAS)

European Community (EC)

European Court of Human Rights (ECHR)

European Court of Justice (ECJ)

European Union (EU)

Justice and Home Affairs (JHA)

Law and Justice Party (Prawo i Sprawiedliwość, PiS)

Non-Governmental Organization (NGO)

North Atlantic Treaty Organization (NATO)

Organization on Security and Cooperation in Europe (OSCE)

Police and Judicial Co-operation in Criminal Matters (PJCCM)

Qualified Majority Vote (QMV)

Schengen Information System (SIS)

Treaty on the European Union (TEU)

United Nations (UN)

United Nations Refugee Agency (UNHCR)

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Chapter 1: Introduction

Fourteen years after Poland's accession to the European Union (EU), one might ask if there is anything new that research on Europeanization can provide. This body of literature has explored questions such as: What are the impacts of Europeanization on asylum policy in Poland? Have new, Eastern, Member States been subjected to greater Europeanization than older, Western, Member States? To what extent are Poland's national interests reflected in the development of its asylum policy?

Although the Europeanization of a candidate country's accession to the EU is not contested, understanding how the international environment can affect domestic policy development can help us make sense of nation state's actions (Kicinger, 2009; Kicinger, Weinar and Górný, 2007; Górný, 2007; Okólski, 2004; Radaelli, 2003; Veermersch, 2005). In particular, this paper will explore Poland's rejection of the EU's migrant relocation scheme, in an attempt to control the 2015 European migrant crisis. This paper will unpack this puzzle through the following research question: To what extent has asylum policy in Poland been Europeanized? This paper will argue that the shift towards asylum policy decision-making at the EU-level, created a dynamic that does not reflect the interests of all Member States. As a result, this paper finds that the Europeanization of asylum policy in Poland has failed. Even though Poland initially accepted the EU's policies on asylum prior to accession, the lack of Europeanization of Polish institutions fosters the values and priorities of the government of the day, rather than bureaucratic processes to govern this policy field in Poland today.

A new geopolitical order in Europe, especially in Central and Eastern Europe (CEE), resulted from the collapse of communism in 1989. These countries that were once artificially excluded from Europe's migration flows were suddenly undergoing migration trends that they had no previous experience managing. The movement of people is closely related to one of the four core freedoms central to the EU. Thus, the preparation of CEE countries for EU accession is an important starting point for understanding asylum policy in Poland. The year 2004 marked the largest enlargement of the EU, encompassing ten new Eastern and Mediterranean Member States, Poland included. According to Geddes, "policy in the Central and Eastern European countries has arisen almost entirely as a result of the requirements of EU accession and... EU policy models and ideas about borders, security and insecurity have been explored to CEE countries" (2003, 173). Since the late 1990s, when CEE countries' EU accession negotiations officially began, the role that the EU played in shaping the policy orientation of CEE countries is not disputed. Exploring the developments of national migration and asylum policy may shed some light on how developments at the European level can be used to explain changes back at the national level. This paper will use the case of Poland will be used to take a closer look at the domestic situation surrounding migration and asylum policy to understand EU-Member State dynamics, this analysis being conducted through the lens of Europeanization.

On September 25, 2015, the President of the European Council, and former Polish Prime Minister, Donald Tusk, addressed the United Nations (UN) 70th General Assembly, emphasizing the strength of European values in light of the "unprecedented refugee and migrant crisis" facing the region. Poland once again faced pressure from

the EU to implement the Treaty on European Union (TEU) Article 2 values, listed below, that it signed on to when it first became an EU Member State. Due to the influx of asylum seekers entering the EU in the past three years, the topics of migration and asylum have become urgent issues throughout the continent. The 2015 European migrant crisis was categorized as Europe's largest influx of migrants that Europe has seen since the Second World War. However, the alignment of EU and Member State interests and values was the source of much tension. Many CEE countries rejected the EU's primary tool, the migrant relocation scheme, to respond to the European migration crisis, the migrant relocation scheme. This research paper will use the conceptual framework of Europeanization to gain a deeper understanding of EU's and Poland's interests. This paper attempts to understand why Poland's ruling Law and Justice party (PiS) decided against accepting asylum seekers under the EU's relocation scheme in light of the European migrant crisis.

According to Article 49 of the TEU, EU membership is open to "any European State which respects the values referred to in Article 2 and is committed to promoting them" (Treaty on European Union, 2007). The TEU Article 2 values are: "Respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the right of persons belonging to minorities" (Treaty on European Union, 2007). These values are enshrined in the 1993 Copenhagen criteria for enlargement, which states: "Membership requires that [the] candidate country has achieved stability of institutions guaranteeing democracy, the rule of law, human rights, respect for and protection of minorities, the existence of a functioning market economy as well as the capacity to cope with competitive pressure and market forces within the

Union. Membership presupposes the candidate's ability to take on the obligations of membership including adherence to the aims of political, economic and monetary union" (Treaty on European Union, 2007). As laid out in the EU Treaties, these values are the essence of the European community, and they unite Member States. Today there has been renewed interest in respecting these values, as they have been subject to the controversial issue of migration relocation in Europe. The EU is recognized internationally as a community of shared values, and thus it is important to understand the drift of these values among Member States, in order to reunite the interests of the EU and its Member States.

Paper Structure

This research paper is comprised of seven chapters. Chapter 2 explains the research design of this paper. The conceptual framework of Europeanization is explained through the works of scholars including, Radaelli, Featherstone, Lavenex, Kicinger, Börzel, Risse, and Favell, among others. The explanation of the conceptual framework of Europeanization is followed by the rationale for the case selection of Poland. Lastly, definitions are included for concepts that are essential to the understanding of migration policy in the context of this paper. These definitions include the distinctions between the terms *migrant*, *immigrant*, *refugee* and *asylum seeker*.

Chapter 3 discusses the development of asylum policy at the European level. Chapter 3 also explores the rise of asylum-related issues at the level of the EU-level from 1989-1997, including the implementation of the Schengen Agreement and the

enlargement of the EU's external border in 2004. This chapter examines a prominent debate between security and humanitarian concerns, which was divisive in migrant and asylum discourse. Current asylum procedures and migrant management is discussed, as well as the status of the present Common European Asylum System (CEAS), and the European Agenda on Migration. In sum, this chapter will present the interests of the EU in this policy field.

Chapter 4 will switch gears and focus on the establishment of Poland's asylum policy. The chapter reviews two studies that present how Poland's asylum policy was Europeanized in the lead-up to Poland's EU accession. This chapter includes developments at bilateral and multilateral forums, and Poland's interactions with asylum issues before and during EU accession. Chapter 4 outlines mechanisms such as twinning projects, policy transfer, EU and Schengen acquis, and introduces concepts, such as Poland's categorization as a safe third country, to demonstrate the gradual adoption of asylum policy in Poland. Lastly, this chapter will trace the evolution of Poland's legislation, which addresses migration and asylum, and explains Poland's current approach to dealing with asylum issues.

Chapter 5 continues to look at the Member State level. More specifically, this chapter focuses on Poland's domestic political situation, ranging from 1989 to the present day, to analyze the country's domestic approach to this international issue. Chapter 6 presents the implications of Europeanization today in relation to the current political situation in Poland. To conclude, Chapter 7 will comment on EU-Member State dynamics associated to the European migrant crisis, under the lens of Europeanization. This chapter also lists interesting areas for future study that

have surfaced while researching on Europeanization to better understand a country's response to an international problem.

Chapter 2: Research Design

In this chapter, the conceptual framework of Europeanization is deconstructed. Deconstruction of the conceptual framework provides the foundation for the understanding of the conceptual lens that will be applied to a case study. This will be followed by a rationale for the selection for the case of Poland. Finally, the chapter concludes by clarifying the use of terminology used in migration policy dialogue, as there will be a focus on asylum specifically, in the context of a Member State's approach to managing the movement of people within their borders.

Conceptual Framework: What is Europeanization?

At the time of the biggest eastern enlargement of the EU in 2004, literature on Europeanization reached a peak. In general, this body of literature focuses on the process of change by which non-European subjects take on European characteristics (Börzel & Risse, 2000). More specifically, certain bodies of Europeanization literature focus on analyzing European variables and the impact of the EU on candidate and Member States (Börzel & Risse, 2000; Börzel, 2001; Cowles, Caporaso, & Risse, 2001; Favell, 1998; Featherstone & Radaelli, 2003; Geddes, 2002; Radaelli, 2000). In Chapter 4, the studies of Vermeersch and Kicing, et al., will demonstrate the processes by which Poland's asylum policy undoubtedly became Europeanized prior to, and facilitated Poland's accession to the EU.

Europeanization is not a novel concept. Rather, it is seen as an orchestration of existing theories and concepts, with imports from other theories prominent to the study of international relations, governance and comparative politics (Featherstone and Radaelli, 2003). Thus, a challenge in the use of Europeanization as a framework is that it can lack conceptual clarity if not properly defined. In the early days of Europeanization research the absence of a common definition was the subject of heated debate among scholars (Olsen, 2002; Radaelli, 2007). This absence of a common definition posed methodological challenges linked to what was actually being studied, as research on this topic can “run the risk of conceptual stretching” (Radaelli, 2000, 1). This brings forth the methodological challenge of the degree or extent to which a subject of research is Europeanized. This is a component often found in “-ization” trends, especially in comparative politics (Lavenex, 2002). If the definition of Europeanization is too narrow, the number of properties included in the study will shrink, and thus, fewer empirical cases can be found. However, if the definition is too broad, studies can face issues of degreeism. Sartori reinforces this conceptual limit of Europeanization research, arguing that everything to a certain degree can be Europeanized. This could result in misinformation for the purpose of Europeanization research overall. Therefore, the distinction between the difference in kind and the difference in degree should be made, especially in comparative research (1970).

In 2003, Claudio Radaelli published the following definition that captures the various conceptualizations of the topic and unites Europeanization scholars:

“Europeanization is a process of a) construction, b) diffusion, c) institutionalization of formal and informal rules, procedures, policy

paradigms, styles, 'ways of doing things' and shared beliefs and norms which are first defined and consolidated in making EU public policy and politics and then incorporated in the logic of domestic discourse, identities, political structures and public policies" (Radaelli, 2003, 30).

This definition was accepted by Europeanization scholars because it "captures the whole life-cycle of public policy with possible feedback effects between the national level and the EU, [and] focus[es] on processes rather than outcomes, thus it is suitable for comparative policy analysis of Europeanization" (Saurugger & Radaelli, 2003, 213). Further, Salgado and Woll add that this definition highlights that Europeanization is an interactive process, rather than a uni-directional response to Europe (2004). In other words, this conceptual framework attempts to capture the dynamics of the EU pressure, or lack thereof, on the national level, including on governments, public administration and civil society, of EU Member States or candidate countries (Grande, 1996 in Radaelli, 2008).

In the 1970s and 1980s, the aforementioned EU-Member State dynamic attributed to Europeanization was studied from a vertical, top-down approach. This understanding of Europeanization followed the chain logic that there would be pressure of European interests onto Member States that would result in change at the domestic level. However, this body of studies focuses primarily on uni-directional change toward narrow and direct impacts around the idea of implementing European policies on Member States (See Table 1B). Although, this approach to studying Europeanization has since evolved, as described in Radaelli's definition, a volume edited by Cowles et al., finds that top-down Europeanization research design can be used to distinguish Europeanization from European

integration (Table 1A), as the focus of analysis shifts towards the impact of the EU on the domestic level (year). In 2007, Ette and Faist describe that top-down models of political structure and policies are taken for granted, an observation that was recognized in a shifted of literature focusing on European effects on domestic structures and policy (2007).

Also following a vertical process, the bottom-up studies from the early days of Europeanization research used slightly different research deign, stating instead that: “European policies (or politics) as independent variables and tracking down the consequences for domestic actors, policies, and politics... starts and finishes at the level of domestic actors” (Radaelli, 2003, 16). Bottom-up logic thinks of the role that Member States play in European integration. This approach later evolved into the study of Europeanization (Ette and Faist, 2007). Following the bottom-up logic, Gualini argues that: “Europeanization is not the [solution], but the [problem]” (Radaelli, 2004, 2). As graphically shown in Table 1C, the starting point of Europeanization in this research design is a system of interactions at the domestic level. This method demonstrates another mechanism of impact, as it goes beyond the response to Europe, to focus on the domestic factors of change at the European level, which trickle down to the domestic level.

Table 1: Three approaches in the early study of Europeanization

A) European Integration	Domestic → European variables → EU
B) Top-down Europeanization	EU → European variables → Domestic
C) Bottom-up Europeanization	Domestic → European variables → Domestic

Source: Radaelli, 2003

To counter the more uni-directional study of Europeanization, a horizontal approach gained more traction in the early 1990s. Börzel and Risse described this as a process of persuasion, where “European policies, norms, and the collective understandings attached to them exert adaptational pressures on domestic-level processes” (2009, 2). Their research explored the degree of “internalization of new norms and the development of new identities” (2009, 2). This aspect of Europeanization studies borrowed schools of thought from sociological institutionalism, which analyzed agents of change, also known as norm entrepreneurs, that would mobilize the issues to the domestic context and persuade domestic actors to refine their interests and identities to accept the more European ‘way of doing things’. Aspects from the study of political culture and the way that formal and informal institutions were conducive to building consensus of these new norms and identities that Member States would take on to become Europeanized, are also central in Börzel and Risse’s research (2000, 2001, 2009).

Europeanization has also been characterized as soft or hard processes. Similar to the horizontal Europeanization, Finnemore and Sikkink, and Schimmelfennig, refer to softer forms of Europeanization, a process of framing and socialization. Again, this is not a matter of uni-directional influence from the EU onto Member States, but rather a “process of adaptation to a changing context involving actions of both the Member States and EU actors” (Vermeersch, 77, 2005). This body of Europeanization literature is more related to “power norms in shaping state behaviour” (Finnemore and Sikkink, 1998) and contributed to the international relations side of Europeanization. Further to this, Schimmelfennig has argued that

within the “institutional environment’ like the EU, political actors are concerned about their reputation as members and about the legitimacy of their preferences and behaviour,” and thus want to justify their interest” (2001, 48). Schmmelfennig believes this rationale can be used to describe the entire EU enlargement process. However, examining these softer elements of Europeanization is more difficult to operationalize, as noted by scholars taking this approach (Grabbe, 2002; Vermeersch, 2005).

On the other hand, hard forms of Europeanization are more easily operationalized in empirical research. Grabbe used five mechanisms to operationalize Europe’s impact on the national level: “1) provisions of legislative and institutional templates, 2) aid an technical assistance, 3) benchmarking and monitoring, 4) advice and twinning, 5) gate-keeping: access to negotiation and further stages in the accession process” (2003, 312, in Vermeersch, 2005). Vermeersch uses dimensions from Grabbe’s hard approach to Europeanization, which will be elaborated in Chapter 4.

According to Radaelli, through the evolution of the study of Europeanization, scholars have “contributed to the emergency of new insights, original explanations, and have posed interesting questions on three important issues: 1) the understanding and analysis of ‘domestic impact’ of international politics; 2) how to endogeneise international governance in models of domestic politics (in terms of research design); and, 3) the relationship between agency and change” (2004, 2). The emergence of Europeanization research has hence brought forward European studies to the mainstream of political science. To make sense of the contributions of

Europeanization research, it is important to view Europeanization as “a set of post-ontological puzzles” (Radaelli, 2004, 2). This means that a process of European integration, as developed by EU institutions and policies, is in progress. Europeanization as post-ontological puzzles is not synonymous for European integration or understanding EU governance as more intergovernmental or supranational. Instead, there is a theoretic focus that Europeanization research is bringing focus back to domestic politics without assuming a balance of power between EU institutions and Member States (Radaelli, 2003, 3). This summary of Europeanization is supported by Börzel’s conclusion that “integration theories are not well suited to understand Europeanization as their main puzzle is the explanation of dynamics and outcomes of European integration rather than domestic effects” (2004 in Radaelli, 2004, 3).

The nature of Europeanization has also been conceptualized in the field of governance, institutional design and dialogue, expanding on Radaelli’s definition. For the purpose of this paper, it is most important to understand the dimension of Europeanization as the extent and influence of the EU on the domestic. This conceptual framework will focus on the political domestic factors in Poland to better understand Poland’s response to international challenges. By looking at Poland’s domestic political situation both at the time of EU accession and today, this paper will attempt to understand Poland’s response to the European migration crisis, and the dynamics between the EU and Member States.

Case Study: Poland

The case of Poland presents an interesting study. After years of occupation and partition, Poland is an independent state anchored in western political, economic, security and multilateral institutions such as the European Union, the North Atlantic Treaty Organization (NATO), the Organization for Security and Co-operation in Europe (OSCE) and the Organisation for Economic Co-operation and Development (OECD). Poland is one of the most homogenous countries in Europe, and the majority of its immigrants come from its Eastern European neighbours, many of which were former Soviet states, in particular from the Russian Republic of Chechnya (International Organization for Migration, 2018). Following EU accession, Poland was considered a model of post-communist transformation. Additionally, it grew to hold the largest border of the newly enlarged EU. This geographic position captured the attention of Western Member States, considering the rising immigration trend coming from the east. However, once the Aliens Act of 1998 came into force, which will be further discussed in Chapter 4, this trend began to decrease. The alignment of Poland's 1998 migration policy to EU demands will be further elaborated in Chapter 4 as well. However, the position between East and West, not only geographically, but in terms of variance in history, culture and social contexts, highlight areas in which Poland varied from the EU, and thus, presents itself as a candidate for the study of Europeanization.

In the second half of the 1990s Poland gradually shifted from being a major migrant-sending country, to a country of net-immigration and transit (Vermeersch, 2005). For more than a century, Poland was one of the largest sending areas in

Central and Eastern Europe. At the time of Poland's accession to the EU, the Polish Government made immigration to Poland more difficult largely to meet the requirements to join the EU, and Schengen zone (Waldie, 2018). These concepts will be explored in Chapter 4 to demonstrate the creation of Poland's post-communist migration policy.

In regard to Poland's asylum policy specifically, this is a policy field that was never subject of major political discussion in Poland. Recently, domestic and international refugee non-governmental organizations (NGOs) have been active in criticizing Poland's asylum procedures and low rates of refugee status recognition, especially in times of the regional emergency, known as the European migration crisis. As it will be discussed, from the birth of Poland's asylum policy, there was little internal pressure to allot the issue as a political priority (Vermeersch, 2005).

As a point of departure, Table 2 presents the big picture, outlining the number of persons who have applied for international protection in Poland in the past ten years (from January 2007 to May 2017). The purpose of these statistics is to show that international protection of foreigners to Poland is not a new, nor unique phenomenon. In fact, the number of applications is relatively consistent during the peak years of the 2015 European refugee crisis. However, it is clear, especially in comparison to other EU Member States, that immigration to Poland is relatively small-scaled.

Table 2: Number of persons who applied for international protection in the Republic of Poland between 2007 and 2017

Citizenship	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	Total
Russia	9,239	7,754	5,726	4,795	4,305	6,084	12,849	4,112	7,989	8,994	1,455	73,302
Georgia	31	71	4,214	1,082	1,735	3,234	1,245	726	394	124	39	12,895
Ukraine	55	40	36	45	67	74	46	2,318	2,305	1,306	303	6,595
Armenia	43	50	147	107	216	413	206	135	195	344	46	1,902
Tajikistan	1	0	2	0	0	9	5	107	541	882	65	1,612
Other	679	596	462	505	564	939	902	797	901	672	189	7,206
Total	10,048	8,511	10,587	6,534	6,887	10,753	15,253	8,195	12,325	12,32	2,097	103,512

Source: Office for Foreigners (Urząd do Spraw Cudzoziemców)
Special Report: Top 5 – International Protection

Although the study of Europeanization also presents a good opportunity for comparative research, the use of a small-n case study will allow for an analysis between EU and Member State interests. This dynamic will be important in understanding Poland's rejection of the EU's relocation scheme to relieve the burden of other Member States along the EU external border, at the time of the peak of the 2015 European migration crisis.

Definitions: Migrant, Refugee, Asylum Seeker

According to the EU's border surveillance agency, Frontex, that collects data on illegal crossings of the EU's external border from national authorities, in 2015, 1.83 million irregular border crossings were reported. In comparison to statistics from Eurostat, approximately, 1.25 of these people applied for asylum in the same year (European Parliament, 2018). However, asylum applications are not evenly sought after across EU Member States. In accordance to the Dublin Regulation, people must apply for asylum in the first EU country that they enter, most of the time that being countries along the EU external border (European Parliament, 2018). With the influx of this large number of border crossing, a large majority of crossing

identified as irregular migration, are among the reasons for which people entering Europe become grouped together and the types of migrants entering Europe is blurred (Lavenex, 2001). Terms such as *migrant*, *refugees*, and asylum-seeker, have been used interchangeably in explaining what was later entitled, the European migrant or refugee crisis. The arrival of so many people has not been felt in Europe since the Second World War, hence the nomenclature of crisis (European Parliament, 2018). Although the rationalisation for the choice of the term crisis will not be explored in this paper it is worth noting that other regions have been subject to much larger migratory influxes, and the use of this word has been discussed at length.

Nevertheless, the distinction between the interchangeable use of migrant and refugee to describe the crisis is worth exploring. The use of the term migrant paints the crisis with broad brushstrokes, implying multiple reasons for a person's departure from their country of origin, including that people left voluntarily. This is not always the case, as according to the aforementioned Eurostats statistics, this was not the case for the majority of people, as many claims to asylum were filed.

The term refugee on the other hand, as defined by the European Parliament, is "a person who has been recognized as being in need of international protection. According to the [1951] Geneva Refugee Convention, a refugee is a person who 'owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such fear, unwilling to avail himself of the protection of that country'" (European Parliament, 2018). However, for

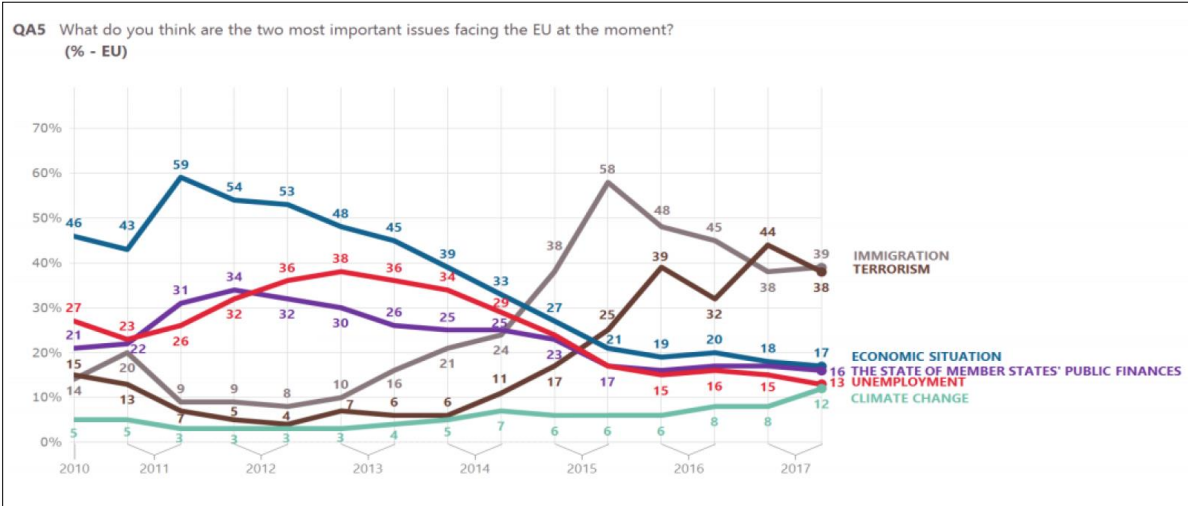
the purpose of this paper, it is important to note that an asylum-seeker is “a person requesting international protection due to the risk of persecution in his or her home country. To qualify as a refugee, an asylum-seeker needs to present evidence for evaluation” (European Parliament, 2018). It is thus essential to distinguish the use of these terms, as the impact of language can change the narrative of the crisis. In the case of Poland in particular it is necessary to vocalize the crisis from the perspective of asylum-seekers, to better understand the reasoning for which refugee status has not been granted under the EU relocation scheme. As it will be explained in the next chapter, although the EU has the legal and moral obligation to protect people who are fleeing from their country of origin and cannot return due to risk of serious harm or fear of prosecution (Common European Asylum System, 2018), these definitions do not lay down the rules and procedures regarding how Member States grant refugee status (A Common European Asylum System, 2014). This dimension of the asylum policy remains under the authority of Member States.

Therefore, for the purpose of this paper the terms migration and asylum will primarily be used. Even though the paper focuses on asylum policy, both terms will be used as asylum is a dimension of larger migration policy that can consist of, but is not limited to other aspects, like citizenship, regulation of legal and illegal migration between countries, border control, repatriation, social inclusion and settlement of immigrants, relations with third countries, to name a few prerogatives that exist in this policy field (Vermeersch, 2005). Narrowing down to focus on one reason why people move, even though it occurs simultaneously with other reasons,

and is impossible to segregate, demonstrates the difficulty in determining genuine asylum-seekers from other migrants.

Chart 1 uses survey statistics from Eurobarometer to trace issues that citizens living in EU Member States believe to be the most importance facing the EU. The sudden attention given to migration and terrorism related issue, in light of the 2015 European migrant crisis, demonstrates the heightened dialogue and abrupt importance given to the topic.

Chart 1: Issues facing the European Union



Source: Eurobarometer

It is vital to include the term migrant in this paper, because during the outbreak of the crisis, the leader of the ruling political party in Poland, Jarosław Kaczyński, created a narrative that grouped together all migrants, not solely asylum-seekers. In local, regional and international news articles, Kaczyński was quoted saying that migrants carry “all sorts of parasites and protozoa, which... while not dangerous in the organism of these people could be dangerous here,” as a reason

for which Muslim migrants, not only limited to asylum-seekers could pose problems for Poland's homogenous society (Cienski, 2015). Other statements that gained media attention by Polish officials declare that "Poland would have to completely change [their] culture and radically lower the security in [their] country" if refugees were accepted, making claims to the securitization of migration (Cienski, 2017). Further, Polish officials were also quoted saying that "Poland would have to use some repression [to prevent] a wave of aggression, especially towards women" (Cienski, 2017). However, it is important to state the use of the term migrant, as in the case of Poland, as refugee status has clearly not been given to asylum seekers. Thus, in Poland the refugee crisis is not the most appropriate term to use, as the current ruling party did not accept any refugees. The political narrative and approach that the Polish Government has taken will further be explored in Chapters 4 and 5.

Chapter 3: Asylum Policy at the European Union

This chapter addresses migration and asylum policy at the level of the EU. It begins by explaining that although this policy falls primarily under nation state authority, the EU has shaped the direction of this policy to respect greater international standards. It continues by describing attempts at policy harmonization, and the eventual shift in decision-making as per EU Treaties. This is followed by the debate that emerged from Member States' concerns, namely security versus humanitarian considerations, which were prevalent in the way that the issue of

asylum was framed. This chapter concludes by explaining current EU asylum procedures and the Common European Asylum System (CEAS).

How Migration and Asylum became Issues of EU Policy (1989-1997)

Asylum policy falls under the authority of nation states, therefore, EU Member States have full responsibility to control their own asylum system. Nevertheless, through Directives and Regulations, the EU has shaped and reinforced international obligations and standards on Member States to ensure that they are complying with greater international standards such as the 1951 Geneva Refugee Convention and its 1967 Protocol. In fact, the Geneva Convention has been incorporated into EU law, in Article 78(1) in the Treaty of the Functioning of the European Union (Treaty of the Functioning of the EU, 2007). In particular, enshrining the principle of non-refoulement, which by definition states that asylum-seekers cannot be refused entrance at the EU's external border, nor can they return to a third country if they are at risk of returning to a situation that can cause them harm. Furthermore, migration and asylum related issues gained attention and were thus implicated at the EU level following the development of the European Single Market Project. This system guarantees the freedom of movement of goods, capital, services and labour, which are also known as the four freedoms of the EU. In particular, the freedom of movement of services and labour apply to movement of people, in turn affecting policies related to migration and asylum.

Due to the pressure as a result of irregular migration, Member States "increasingly coordinated their immigration and asylum policies in view of relieving

domestic asylum procedures and combatting illegal immigration” (Lavenex, 1998, 276). In 1991, Member States organized intergovernmental conferences, first in Berlin where discussions lead to the desire to develop solutions to their common problems, much of which included illegal migration, smuggling and trafficking. The second such meeting held in Vienna “gathered experts from the Interior Ministries of more than thirty countries.... [to] fight against illegal immigration... proliferation of restrictive entry conditions, the enforcement of border controls and herewith the limitation of access to domestic asylum procedures” (Lavenex, 1998, 283). These forums allowed both Western and Eastern European countries to engage for the first time in a dialogue that addressed common problems that individual states were facing. Western European states addressed concerns of security threats coming from the East as a result of the end of the Cold War, which created a “mass inflow of people fleeing destabilization in post-Soviet republics” (Anioł, 1996 in Kicingier, 2009, 81). This security concern directed Western, and as a result, EU policy towards a more restrictive approach. In addition to combatting illegal migration, Western European states also had to address the fear of a mass influx of people following the collapse of communism in Eastern Europe. An example of more restrictive policy approaches that were taken to address this concern, was the increase of readmission agreements between Eastern and Western European states to protect the open internal borders of the EU as a result of the Schengen Agreement.

At the time of the first intergovernmental conferences, migration and asylum issues were not explicitly a part of the EU’s agenda. In 1992, under the Maastricht Treaty, the then-logic of the EU’s pillar structure officially placed asylum issues in the

third pillar of the EU, that of Police and Judicial Cooperation in Criminal Matter (PJCCM). Like the conferences that took place in 1991, this was the intergovernmental pillar of decision-making at the EU, and required unanimity of Member States. With reforms to the structure of the EU through the 1997 Amsterdam Treaty, came a shift in governance from the intergovernmental nature of decision-making to the community integration method. This shift placed migration and asylum issues to the first pillar, known as the European Community (EC). Here decisions making was more largely attributed to EU institutions, where the European Commission has the ability to initiate and propose legislation, and where the Council of Ministers and European Parliament contribute to final decision-making. Concurrently, this shift brought the Schengen Agreement to the first pillar as well, resulting in the alignment of Schengen acquis to the overarching EU acquis (Vermeersch, 2005). In other words, just as migration and asylum policy was first discussed through intergovernmental methods in the third pillar, the Schengen Agreement was also established through this approach, and thus made outside of the EU institutional framework. This shift in decision-making was made to allow for greater harmonization of policy, as it does not require unanimity, but rather uses Qualitative Majority Voting (QMV), the implications of which will be elaborated in Chapter 6 (Common European Asylum System, 2018; Kicing, et al., 2007; Lavenex, 2001; Vermeersch, 2005).

Dimensions of Asylum Policy: Security vs. Humanitarian Concerns

From the early 1990s onwards, tension between security concerns, including internal political interests of then-EU Member States in relation to the control of

migration flows and protecting international security, came into conflict with international normative commitments to human rights (Vermeersch, 2005). In essence, the 1951 Geneva Convention and the 1967 Protocol address the status of refugees, once it has been granted, and is less invested in the way states should organize the status of such determination (Lavenex, 2001). In this context, tension between security concerns and international commitments made towards protecting the rights of refugees began to grow in light of increasing rates of migration following the collapse of communism. At this time “the regulation of asylum procedures in Western European states had become increasingly politicized and migration policies as a whole became an over heated debate” (Lavenex, 1998). As a result, the balance of security with “the normative core of the asylum concept has become increasingly blurred” (Lavenex, 2001, 30). At this time, migration management systems reflected the desire of Member States to harmonize their approaches to border protection and asylum, based on their will to cooperate in the field of regulating migration.

As observed by Vermeersch, “the focus has clearly shifted away from the humanitarian aspect of asylum and has gone in the direction of enhancing control, implementing entry requirements, and abolishing the possibility that asylum seekers file applications in more than one Member State” (2005, 76). At this point, the harmonization process was slow because states are driven primarily by their national agenda, which in this context meant the restriction and control of migration flows, rather than looking out for the protection of those seeking refuge. It was only once the EU realized the lack of humanitarian tradition in former communist

countries that the need for refugee matters was recognized. Therefore, this policy area became an element of the European Commission's pre-accession plan, while still following a protectionist logic of its current Member States (Lavenex, 1998). According to Geddes, "responses to migration and asylum have been 'securitized', with responses to migration constructed as threats that can strike at the very heart of the political identity of a given community... which accompanied by security logics that were clearly evident in post-Cold War setting" (Huysman, 2006, 52). Although this paper does not specifically address the dimension of securitization of asylum policy, it is a large feature of how asylum policy was shaped at the European level, and disseminated to new Member States in the 2004 EU enlargement. As noted in Chart 1, the securitization of the issue can be linked to the prioritization of terrorism on the EU's agenda.

Current Asylum Procedures at the EU

To achieve a more collaborative approach to migration management, it is important that policy and regulations strike a balance between security and social cohesion concerns on the one hand, and humanitarian aspects of asylum and migration on the other. Today, security fears are ever present, partly as a consequence of terrorism and concerns of increased crime (European Parliament, 2018). At the level of the EU, there is a standardized approach to the acceptance of migrants and asylum-seekers to address such concerns.

Upon asylum-seekers arrival to an EU external border, a series of screenings, including medical and fingerprint are conducted to register migrants. The EURODAC system, a biometric database, is used by every Member State,

which requires that for migrants to enter, such aforementioned screenings must take place to facilitate the application of the Dublin Regulation. This Regulation determines Member State responsibility for processing asylum claims. EU law does ensure that common practices among the processing of applications in Member States includes interviews conducted for every asylum-seeker, the right to appeal negative decisions, and access to the labour market (European Parliament, 2018). However, the Dublin Regulation is set up on the principle of mutual recognition of negative asylum decisions, which means that a second Member State has the authority to decline a second application of an asylum-seeker, if a person's claim was already rejected by a first Member State. This creates the incentive among asylum-seekers to avoid seeking international protection in countries in which they do not want to stay in the longer term. Consequently, this can force asylum-seekers into hiding and leave them to resort to actions leading to criminality. On the other hand, if an asylum-seeker's application has been approved by a Member State, the applicant receives residency for up to three years, but retains their original nationality (European Parliament, 2018).

CEAS and the European Agenda on Migration

In 2013, the EU took steps to further harmonise asylum regulations, by concluding the second phase of the Common European Asylum System (CEAS). The EU has been working since 1999 to improve the CEAS framework, established at the EU Tampere Council. The CEAS was developed based on two dimensions: 1) that only one Member State would be responsible for processing asylum

applications; and, 2) to foster greater harmonisation of national standards of asylum to internal movement of asylum-seekers and refugees within the EU (Common European Asylum System, 2018).

With the second phase of the CEAS the following five key acts were improved. First, the Dublin III Regulations, restate that one of the two dimensions of the CEAS: that only one Member State can examine an asylum claim, in order to avoid asylum-seekers lodging claims in multiple countries at a time and to prevent 'refugees in orbit' – asylum-seekers for which no Member State processes their claim. By default, it has been declared that the first Member State of entry is the country that must examine the asylum application, also known as the 'first host country-principle'. The original Dublin Regulations, were adopted and made part of the Schengen Agreement in the 1990s. At that time, it connected the abolition of internal border control to the management of migration and asylum claims. In order to strengthen the external EU border and its control, these regulations imposed more restrictive entry conditions and heavier visa requirements for migrants (Lavenex, 1998).

However, in the case of mass influx of asylum-seekers in 2015, and the fact that Member States with an external EU border face more claims for international protection, these Member States can be overburdened, as was the case for Greece, Italy, Malta and Hungary. This can result in poor living conditions for asylum-seekers, including mistreatment, unjustified detentions, and lower rates of application approval (Common European Asylum System, 2018). Consequently, asylum-seekers aim to continue their journey to reach countries such as Sweden or

Germany, where they hope to have greater chances of gaining refugee status. To address this challenge, in September 2015, the Council of Ministers decided on a temporary relocation programme, targeted to relocate 160,000 asylum-seekers, to alleviate the pressure in Member States like Greece and Italy. The relocation scheme took into consideration gross domestic product (GDP) and unemployment rates of Member States to ensure an even distribution and capacity for asylum-seekers to be accepted. Six months later, in April 2016, only 1,145 asylum-seekers had been successfully relocated (Common European Asylum System, 2018). Despite the European Commission's proposal to make this a mandatory and permanent distribution scheme, only seven out of twenty-eight Member States accepted their share of asylum-seekers. This demonstrates the resistance that was growing among Member States for this kind of a solution to a problem facing the entire continent. Moreover, Slovakia and Hungary brought forward a court challenge to the Court of Justice of the European Union, to dispute the validity of this relocation scheme (Common European Asylum System, 2018).

Secondly, the Qualification Directive made clear the grounds on which international protection can be granted to asylum seekers, amplifying the binding composition of the Geneva Refugee Convention (Common European Asylum System, 2018). Third, the asylum procedure Directive established common procedures, which in turn strengthened the rights of asylum-seekers during the asylum procedure itself, as described at the beginning of this chapter (Common European Asylum System, 2018). Fourth, the Reception Conditions Directive was created to ensure standards among Member States that allows asylum-seekers similar access

to services such as to employment, education and healthcare (Common European Asylum System, 2018). Fifth, the EURODAC Regulation was improved to centralize fingerprint information and data sharing to more easily determine the first point of entry of a migrant to the EU, which will determine where their asylum-application can be made (Common European Asylum System, 2018).

In sum, the evolution of asylum policy at the EU-level has been quiet expansive over the years. At times, the policy has been proactive, and other times it has been more reactive or responsive to emergencies. Best practices have continued to develop from past experiences. There is appetite from the EU-level to continue to develop common approaches to migration issues, as they affect all Member States due to the European Single Market and open internal borders, however, CEE countries have blocked this possibility for the time being.

Chapter 4: Asylum Policy in Poland

This chapter discusses the process of Europeanization of asylum policy in Poland prior and during EU accession. It begins by describing how Poland first began to engage with migration and asylum policy issues. It also analyzes the challenges of the Eastern enlargement, including the moving target of EU acquis. Additionally, the evolution of Polish legislation over the years related to asylum is presented and analyzed against the conceptual framework of Europeanization. This chapter concludes by describing Poland's current approach to asylum issues.

Europeanization of Asylum Policy in Poland

In the body of literature specifically addressing the Europeanization of asylum policy in Poland, two articles in particular track developments in this field. The first article written by Peter Vermeersch, is a comparative study that uses the cases of Poland and Slovakia to explore how “the EU has exerted pressure on both countries to tighten their borders in order to fight illegal immigration; they have also been urged to restrict entry conditions and increasingly consolidate their asylum systems” (2005, 71). His article “shows that in adopting new immigration and asylum policies these countries have mainly responded to EU interests and less to interests linked to domestic issues” (2005, 71). The second article written by Anna Kicingier, Agnieszka Weiner, and Agata Górny, “aims to demonstrate the extent to which immigration policy and politics have been Europeanized in Poland” (2007, 181). This article focuses on two dimensions as per Radaelli’s definition: policy as explained by hard Europeanization and politics as demonstrated by soft elements of Europeanization.

Vermeersch begins by discussing attempts at the harmonization of asylum policy. He argues that “since Member States are mainly driven by their national agenda on this issue, harmonization has been slow and has been achieved almost exclusively in cases that are meant to restrict and control immigration flows” (2005, 76). This argument demonstrates the pressure faced by candidate countries to adopt measures in the interest of already existing Member States that was driven by fear of “internal security, domestic economic protection and restricting labor

migration,” following the fall of communism in the east, as was discussed in chapter 3 (Lavenex, 2001 in Vermeersch, 2005, 75).

Vermeersch continues by stating that CEE countries faced challenges in meeting the constantly moving demands of EU acquis on asylum policy. He states that “the requirements that have been demanded from candidate countries were much more linked to the preferences of the current Member States than to needs in administration and judicial infrastructure in the candidate countries” (2005, 76). This is reflective of the security versus humanitarian debate, as Lavenex argues, “the acquis has been on measures that were developed as instruments to limit generous refugee regimes in the Member States, and not with entrenching a new normative tradition on refugee protection in the new members (2002, 703). These elements are important to consider, as they significantly contribute to the way in which the nature of Europeanization is understood in the eastern EU enlargement.

To operationalize this research, Vermeersch studies the “hard transfer of policy and legislation to the candidate countries” of Europeanization, as defined by Grabbe in Chapter 2 (2005, 77). In particular, he focuses specifically on the processes of benchmarking, monitoring and gate-keeping, specifically to study the EU’s conditionality, acquis, and strategy on EU accession negotiations. He uses this approach as a starting point to the study, considering that there are many variables at play. To ensure that domestic changes are in fact a result of EU pressure, rather than other variables, Vermeersch used European Commission’s reports that documented the negotiation positions of the EU and candidate countries, allowing the EU’s conditionality policy to be evaluated. It has been argued that such reports

may have softer forms of Europeanization embedded in their nature, as they are related to framing and perception of the issue, especially as the pre-accession period fostered a lot of media attention. Nonetheless, Vermeersch states that “by studying the negotiation positions one might get a better understanding of the domestic views on EU demands” (2005, 78). It is impossible to solely analyze Europeanization from a hard or soft perspective, as the two are difficult to abstract, but this type of research does provide a good starting point in understanding the bigger picture of EU-Member State dynamics.

In the 1990s, the same security fears felt in Western European countries were also felt in Poland due to its visa-free border with its eastern neighbours. Once Poland began engaging with Western EU Member States, areas of particular focus, other than immigration policy directly, was border security and visa policy. Therefore, the majority of twinning projects were in the realm of fighting trafficking, illegal border crossing and organized crime. Because of the internal abolition of border controls in the Schengen zone, the EU has sought to harmonize visa policies for third-country national (Piorko and Sie Dhian Ho, 2003, 182). The EU urged Poland to adopt the Schengen visa regime upon accession. The common visa regime is important for the EU since it fundamentally changes the nature of the external border of the Union.

In this process “the Europeanization of domestic immigration policies not merely as a process in which domestic transformations are influenced by the EU, but one in which domestic opportunities for policy changes are largely ignored in favour of the policy preference of older EU Member States – in other words, the

“adoption of the Schengen acquis ‘in full’ implies that the candidate states in Central Europe have no choice but to modify their requirements of entry and visa policy and practices conform principles, regardless of their prior nature” (Baan, 2002, 34 in Vermeersch, 2005, 85).

Poland also looked Westward in search of guidance from established Member States, or what authors have also called ‘policy emulation’ (Bulmer and Radaelli, 2004; Cornelius and Tsuda, 2004). The first challenge that Poland sought solutions from the West was in regards to their first experience with the rise of protection of asylum-seekers. This is a change in Poland’s migratory pattern, as it was for a long time only known as a country of transit and was not prepared for what was to come (Szonert, 2000). Steps taken by Poland included the ratification of the Geneva Refugee Convention in 1991, opening an office of the Helsinki Foundation in 1992, and accession to the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) in 1993.

Secondly, to gain credibility with its Western neighbours, Poland signed readmission agreements with current Schengen countries. As these countries dropped visa requirements to enter Poland, Poland became obligated to re-accept nationals and third-country national who initially entered into the EU illegally from Poland. These agreements are what turned Poland into a refugee-accepting country, rather than only a country of transit (Lavenex, 1998). Readmission with Germany in particular came with large financial compensations for Poland through the Phare program, which was used, along with German guidance, to develop and improve Polish border infrastructure (Vermeersch, 2005, 81).

In 1997, when EU accession negotiations officially began, the “accession conditionality levelers of the Union” had the most influence on Polish asylum policy at the time (Grabbe, 2002). Amendments to the legislation in 2001 and 2003, which will be discussed in the next section of this chapter, largely came from the requirements for greater Europeanization cooperation as stated in multiple European Commission reports. The underlying purpose in those documents was to enhance protection of the EU external border, especially in the soon-to-be newly enlarged east, and to increase the restrictiveness of entry regulations (Igllicka, 2003). This placed Poland in a position as the new gatekeeper to Europe, as it has the largest border with the east (Piorko and Sie Dhian Ho, 2003). However, over time the changes in legislation became less drastic for overarching amendments to be made. Instead, the now-established institutions and procedures had to reflect the EU and Schengen acquis, with regard to visa policy, which constantly added new dimensions of expectations from candidate countries (Kicinger, et al., 2007).

Kicinger, et al. viewed 1990 as the year that Poland joined European migration flows, as it was in this year that the country liberalized its passport law. Once artificially removed from population movement, gradually became privy to the “diffusion through distinctive channels, including diverse international agreements, treaties, and activities... facilitated policy transfer and policy learning,” which placed Poland’s asylum policy in line with EU standards (2007, 181; Geddes, 2003; Dolowitz and Marsh, 2000). This process, was also known as having characteristics of hard Europeanization. Later, in May 2000, these elements of Europeanization continued to flourish in Poland, through the official opening of EU accession

negotiations through the EU's Justice and Home Affairs. As per the European Commission's recommendation, the use of the mechanism of EU conditionality was very prevalent at this stage of policy formulation in Poland. More specifically, the mechanism of EU conditionality, also known as EU *acquis*, implied an EU-driven direction of policy-learning.

Supporting this channel of Europeanization that promoted the mechanism of EU *acquis* and in addition to intergovernmental conferences that took place in 1991 as described in Chapter 4, Poland also engaged in other forums on asylum cooperation including the ad hoc Committee of Experts on the Legal Aspects of Refugees (CAHRA) within the Council of Europe; the Centre for Information, Discussion and Exchange on Asylum (CIREA), a forum for the purpose of consultation; collaboration with the United Nations Refugee Agency (UNHCR); and the Helsinki Foundation. By participating in these forums, this increased the number of interactions between EU and Polish officials, in multiple venues, which were the focal points for the process of Europeanization to begin. Being present at these events allowed for twinning projects, which laid the foundation for further policy learning, it fostered a sense of "learning from doing, and networking" which personalized the process and promoted policy transfer on multiple levels of government (Kicinger, et al., 2007, 183).

Further, Kicinger et al. discuss the softer elements of Europeanization, in regards to policy-makers' attitudes on policy formulation. Not only was Poland in a weaker position, due to EU *acquis*, in comparison to other EU partners at the time. Poland was also under a considerable time restraint to adopt policies that would

reflect EU interests, thus sidelining many of its own domestic interests in the name of EU-approved policies. This has been studied by analyzing political behaviour, discourse, culture, and ideas to name a few aspects that define the soft dimensions of Europeanization. From this perspective, it is clear that the long-term nature of this issue can pose political and social consequences. Thus, Poland opted for restrictive policy choices, following the ever present EU standards. In an interview that Kicingier, et al. conducted with a representative from the UNHCR, their response demonstrated that people “from outside the administrative process are baffled that immigration is perceived as a policy problem in a country with insignificant immigration flows” (2007, 191). In further analysis conducted by Huysmans, this is representative of the fears and concerns that policy-makers had that was reactionary to the securitization of immigration policy at the EU-level (2000).

Kicingier, et al. conclude by saying that “the beliefs and norms shared by Polish policy-makers and the discourse reading Polish immigration policy are relatively well Europeanized. In contrast, the institutional side of immigration policy-making and execution, especially concerning generally accepted ‘ways of doing things’ seem[ed] rather resistant to European influence” (2007, 182). This is largely due to the lack of political interest on migration issues at the time, which resulted in the lack of lobbyists or opposition to the status quo. This can explain why Polish legislation on asylum was largely unchanged leading up to EU accession, even though the country was not under communist rule for the past decade.

Further, Kicingier et al. make further remarks on the influence that Europe had on Poland’s domestic political scene. First, they observed a dichotomy between “us”

and “them”, devices from Poland’s idiosyncratic policy-making style. This reflects the notion that at the time, migration to Poland was considered a problem of Europe, and not yet of Poland. This depoliticized perception of migration to Polish policy-makers runs in contrast to the remainder of then-EU Member States. It is from this discursive division that fears of migratory influxes could have on national security, which was followed by marginalization, exclusion, and xenophobic attitudes of society and politicians began to rise and become more evident in discourse and the public’s perception of the issue. Secondly, Kicingier et al. note that at the time of Poland’s asylum policy Europeanization, the issue was considered more as a problem of the future, instead of one that could be addressed at present. In the view of Polish policy-makers, EU membership fostered the adoption of attitudes similar to those of the EU and other Member States. Poland was aware that through democratization, capitalism and greater European integration, migration would become a part of Poland’s foreseeable future, but there was a lack of policy planning preparing for long-term solutions.

In summary, both articles conclude by raising the argument that EU conditionality was a key influence in candidate countries adoption of migration and asylum policy, which was necessary to reflect the interest of the EU and the enlarged union. Therefore, in essence Poland’s asylum policy reflects the restive nature that was inherent in the EU’s policy, “although there might still be an important political discourse in Poland on the country’s traditional hospitality to refugees... the legal and political practice increasingly point to a firm willingness to limit the number of refugees. Such a shift of emphasis is explained by the Polish

government as inherently connected to the adaptation to EU standards” (Bem, 2004, 474 in Vermeersch, 2005, 81). As a result, rather than policy being focused on protecting neighbourly relations with the east, the domestic interests of new Member States had a limited role. Additionally, asylum policy at the EU level took an approach focused on security dimension, over a focus on international norms on refugee protection.

Evolution of Polish Asylum Legislation

Looking specifically at Polish legislation, the first piece of Polish legislation that addressed migration was the 1963 Act of Aliens, which was developed during the communist era when the concept of foreigners was very much an exotic phenomenon. The spirit of this legislation was developed more as a tool to keep track of foreigners, rather than to manage migration flows (Łodziński, 1998). Least to say, dimensions of asylum and refugee status were not prominent at this time.

Until 1995, the issues of migration and asylum were not of high political importance and were rarely discussed. However, they were among the first amendments that were made to Polish migration legislation, by including an institution of refugee status to be exact (Kicinger, et al., 2007). Changes were gradually made to in this policy field, a year after the Polish Ministry of Foreign Affairs lodged Poland’s application for EU accession. It is evident that the Polish government “failed to formulate and clearly articulate its policy goals in the field of migration” without pressure from the demands of EU acquis (Kicinger, 2009, 92). This led to the new Act of Aliens in 1997, where “important legislative steps were taken and a more comprehensive immigration

policy came into being... which, among other things, modernized visa and residence permits and introduced new possibilities for combatting illegal immigration. The introduction Aliens Act marked the beginning of a new tendency of Polish immigration policy towards great control over and restriction of inflows” (Stola, 2001, 197 in Vermeersch, 2005, 80). In line with EU accession preparation, this new legislation incorporated EU inspired resolutions and emerging Polish interests in migration, the latter which were focused not surprisingly on security issues (Łodziński, 1998; Stola, 2001). As a result, this new legislation allowed state authorities to limit the influx of migrants and direct population movement. This was evidently inspired by best practices from the West, as Poland had no previous experience to draw from (Weinar, 2007). At the time of the development of this legislation, the Polish Parliament was concurrently developing a new national Constitution (that of April 2, 1997). Consequently, the Constitution reflected elements relating to migration issues, as displayed in Table 3.

Table 3: Elements of Migration and Asylum Issues in Poland’s 1997 Constitution

Section	Description
Article 6	Affirmation of close ties of Polish diaspora abroad
Article 34	Basic rules regarding acquisition of Polish citizenship
Article 52.2	The right to leave the country
Article 52.5	The right to settle in Poland for persons of non-Polish origin
Article 56	The right to asylum and refugee status with reference to the Polish law and international agreement

Source: Weinar, 2007

When the EU Treaty of Amsterdam came into force in 1999, Poland had begun to develop legislation with basic concepts relating to migration to have in

their repertoire. As topics related to migration gained more legislative prominence, there was no policy documents that would be able to be used to elaborate the nation's migration policy goals. The reasoning for this is closely linked to the low politicization of migration in general, which in turn did not put pressure on the bureaucracy to give more emphasis to the issues (Weinar, 2006). Scholars have described Poland's approach to migration policy after 1989 as 'handling' the situation, rather than "creating a future-oriented migration management system with clear policy goals established according to current migration doctrines (Weinar, 2009, 92-93).

In May 2000, once accession negotiations with the EU's JHA Directorate began, more significant impulses grew to amend Polish legislation, much more than were amended in 1997, in particular due to pressures of meeting EU acquis. In 2001, an amendment was made to legally identify Poland as a "third safe country" and a "safe country of origin". These classifications forced the country to consider to formally participating in human rights protection mechanisms. Other concepts such as "marriage of convenience", and "temporary protection", which did not previously exist, were now new dimensions in Polish law. In comparison to amendments to Polish law in 2001, there were more specific changes due to European influence than in 1997, which targeted Polish legislation to adapt new EU measures that Poland previously did not consider (Kicinger, 2009).

Following the 2002 Treaty on Accession, in 2003, Poland introduced two new Acts: 1) 2003 Aliens Act; and, 2) Act on Granting Protection to Aliens within the Territory of the Republic of Poland. The latter is a piece of legislation that is the first

piece of legislation to directly address asylum. This legislation includes distinctions between all forms of humanitarian migration to make sure Poland is in line with practices of other European countries. It elaborates on regulations regarding border crossing and infrastructure, visa issuance, residence permits, and identity documents for foreigners or travellers. While these changes were not radical, they were necessary to make in order to keep up with both the Schengen and EU acquis. The former legislation introduced the concept of “tolerated stay”, which was a brand new concept in Polish law. This permitted protection to unsuccessful asylum-seekers, who for humanitarian reasons could not return to their country of origin. As a result, a new institution was created to address this issue (Kicingier, et al., 2007).

As of 20 July 2007 the authority competent in matters of granting protection to foreigners within the territory of the Republic of Poland is the Head of the Officer of Foreigners, who conducts proceedings for granting refugee status with the help of the Refugee Proceedings Department (A Common Asylum System, 2014). On 1 January 2012, the act of 28 July 2011 on legalizing the stay of certain foreigners within the territory of the Republic of Poland and amending the Act on granting protection to foreigners within the territory of the Republic of Poland and the Act on foreigners entered into force (European Migration Network, 2018). The aforementioned act introduced into the Polish legal system two institutions which are an expression of solidarity with states experiencing increased migration burden – resettlement and relocation. Resettlement is the transfer of foreigners recognized as refugees by the United Nations High Commissioner for Refugees from a third country to the territory of the Republic of Poland, in order to grant them refugee status or subsidiary protection on

the territory of the country. Relocation, however, is the transfer of a beneficiary of international protection from a Member State to the territory of the Republic of Poland. Foreigners who satisfy the conditions for granting refugee or subsidiary protection status set out in the Act on granting protection to foreigners within Poland can use resettlement and relocation. Resettled or relocated persons are to be granted refugee or subsidiary protection status, after completing the refugee proceedings, which shall be partly conducted in the foreigner's country of residence. The decision has to be issued within 30 days from the date of their entry into the territory of the Republic of Poland (A Common Asylum System, 2014).

On 1 May 2014 the Act of 12 December 2013 on foreigners entered into force. Its provisions modified the procedure model in matters relating to granting refugee status by removing a form of national protection – the permission of tolerated stay, as well as by waiving of issuing decisions on the expulsion (issuing a return decision) within the refugee procedure. A lot of these amendments in 2014 were made to implement into the Polish legal system the provisions of the directive of the European Parliament and the Council 2011/95/UE of 13 December 2011 on standards for the qualification of third country nationals or stateless persons as beneficiaries of international protection, the uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection-granted (A Common Asylum System, 2014).

Current Polish Approach to Asylum

In 2012, Poland adopted a strategic document entitled “Migration policy of Poland – the current state of play and the further actions” (Polityka migracyjna Polski

– stan obecny i postulowane działania) with the purpose to convey the direction of action, propose solutions and recommendation for the government and administration in the field of migration. The aim was to better integrate the administrative practice, legislation, monitoring, financial planning, coordination of activities, offices, institutions and ministries, to allow for more effective decision-making that would result in the cohesion of actions undertaken towards foreigners in Poland (European Migration Network, 2016). The main theme of the document was the “adaptation of migration policy to labour market priorities and the need to ensure competitiveness for the Polish economy. The adopted direction of action includes such issues as legal migration, counteracting illegal migration, integration, international protection for foreigners, emigration, citizenship and repatriation, efficient functioning of the legal and institutional system and monitoring of migration processes” (European Migration Network, 2016). However, under the Law and Justice (PiS) government, in October 2016, the document was annulled, and there are no signs of a new document guiding the current events and migratory situation in Poland, or Poland’s engagement with the EU, or even regionally (European Migration Network, 2016).

Chapter 5: Domestic political situation in Poland today

This chapter lends itself, as recommended by the conceptual framework of Europeanization, to take a closer analysis at the domestic political situation in Poland. This historical review allows to better understand the current situation. The shift in the style of the governing party is central in this chapter.

The political environment in Poland has drastically changed since the election of the Law and Justice party (Prawo i Sprawiedliwość, PiS) in October 2015, a party that ran its election campaign on its opposition to accepting refugees from Muslim countries (Gocłowski, 2018). It was the first time since 1989 that a party won a majority, ending eight years of a centre-right coalition led by the Civic Platform party (Platforma Obywatelska, PO). The leader of the PiS party, Jarosław Kaczyński, who does not have a formal role in the government, but is the most powerful politician in Poland as he holds the PiS party together, said that refugees could spread disease and parasites, which influenced the rhetoric surrounding this issue (Gocłowski, 2018). Poland, like many former communist CEE countries advocate rather for local solutions to the causes of migration.

At the time of PiS' electoral victory, Beata Szydło, affiliated to PiS, was elected as Poland's Prime Minister. In this election, two news parties were born that passed the eight percent threshold required to gain seats: the anti-establishment Kukiz'15 movement, and the economically and socially liberal Modern Party (Nowoczesna). The main left and centre-left alliances of parties, such as United Left, failed to meet the threshold for entry to the parliament, the Sejm. The opposition in Poland remains weak. Critics of PiS express that the rhetoric established by Jarosław Kaczyński continues today and encourages hostility towards foreigners ahead of the local elections in 2018, and general elections in 2019 (Polish political system, 2018).

Compared to former Polish Prime Minister, Donald Tusk, PO affiliate, and current President of the European Council who represents EU leaders, accorded high priority to its role as defacto representatives of new Member States in the EU, and

sought to be part of the mainstream and inner circle within the EU, PiS governance takes a more self-interested, skeptical approach, and has recently been in disagreement with the EU on a number of files including: the rule of law; depiction of the history of the Second World War, including legislative amendments prohibiting freedom of speech; rejection of EU obligations (migrant quotas); illegal logging in the Białowieża forest; and, judicial reforms that stand against liberal values. The combination of various amendments to legislation has accumulated into a series of concerns that called for the EU to trigger TEU Article 7 proceedings (Cienski, 2017; Polish political system, 2018; Waldie, 2018). These proceedings are divided into two parts. First, the preventative mechanism of Article 7.1 TEU can be activated only in case of a 'clear risk of a serious breach' and second, the sanctioning mechanism of Article 7.2 TEU only in case of a 'serious and persistent breach by a Member State' of the values set out in Article 2" (Treaty on European Union, 2007). However, the implications of TEU Article 7 would require further scrutiny as it consists of far more than solely an analysis of Poland's migration and asylum approach.

Today Poland is still considered a democratic republic that is governed by their 1997 Constitution. It has a bicameral legislature with a 460-seat lower house, the *Sejm*, which has multi-member constituencies with representatives allocated on a proportional basis, and a 100-seat upper house, the Senate, which has single member constituencies elected on a first-past-the-post basis. In order for legislation to pass, it generally must pass through both houses, however, the *Sejm* can override a rejection by the Senate (Polish political system, 2018). As a result of the 2015 elections, PiS gained control both the executive and legislature, allowing the

government to enact a series of controversial measure. It appears that Poland is more concerned with political unity of its domestic actions, rather than the possible harm to Poland's international reputation. PiS is remaking many laws, replacing personnel, and as a result creating an alternate, less EU-friendly vision for the direction of the country. Through these measures Poland has broken liberal economic and social policies, which does not necessarily classify the ruling party as populist per se, but definitely as Euroskeptic. However, the majority of Poles continue to want to remain a part of the EU (Ciencki, 2018; Waldie, 2018). There is strong consensus that Poland is a European country and it hopes to remain that way. To remedy some of these issues, Jarosław Kaczyński recommended a Cabinet reshuffle to attract more centrist voters to support the party, and to lighten the country's image abroad. Yet, the country continues to shy away from the EU *acquis communautaire*, which binds Poland to other EU Member States (Ciencki, 2018).

At the party's inception in 2001, PiS, co-founded by its current leader Jarosław Kaczyński, and his twin brother, Lech Kaczyński, after years of back and forth between supporting various conservative movements, was categorized as a centre-right party. Jarosław Kaczyński was Prime Minister from 2006-2007, and Lech Kaczyński was President from 2005 until his death in 2010 in a controversial plane crash. Kaczyński has a strong history in Polish politics, beginning in the 1980s as a prominent member of the *solidarity* movement, a trade union, which led the opposition to the pro-Soviet government of the day (Waldie, 2018). Following the collapse of the communist regime in 1989, the Kaczyński brothers accused the government of having continued ties to the former communist powers, who they believed still had influence

and were effectively running Poland. Jarosław Kaczyński, who for the remainder of the paper will be referred to as Kaczyński, today is only formally a Member of Parliament, but continues to dominate as a PiS political figure and is certainly a divisive player in the Polish political scene. He did not run for president or prime minister in the 2015 elections, in a successful effort to increase his party's appeal to moderate voters, as over the years PiS shifted from being a mainstream party to one that is more commonly defined as a socially conservative, populist party (Davies, 2016).

A study from the Warsaw University Centre for Research on Prejudice, found that young Poles in particular have hardened their views and attitudes towards migrants and minorities. In 2015, the study showed that “37 percent of young people between the ages of 18 and 24 has a negative perception of Jews... and nearly 90 percent of young people were against Poland accepting migrants” (Waldie, 2018). It is evident that “Kaczyński saw the 2015 migrant crisis as a defining moment, and led the charge against accepting any refugees in Poland. His anti-immigration stand found a receptive audience in a country that is virtually mono-ethnic and has almost no experience with multiculturalism. He also tapped into the economic disgruntlement promising that a Law and Justice government would increase minimum wage, lower the retirement age for pension eligibility and offer families with more than one child a monthly [stipend]... that kind of social benefit was almost unknown for Poland – and it won over scores of middle class voters” (Waldie, 2018). The policy promises that PiS ran on in 2015 reflects the shift of the party's priorities from center-right to a far-right ideology.

Considering the mixed views from the former governing PO priorities with the current PiS perception on migration, this has left the situation in Poland with a lack of

migration initiatives from the central government, as stated in Chapter 4 with the PiS cancellation of migration documents (European Migration Network, 2016). During the majority of this time, from 2007-2014, Tusk as Prime Minister helped guide Poland to the EU mainstream. However, as a result of the 2015 elections, Poles grew dissatisfied. With the sudden inflow of migrants coming to Europe, the former PO government, who had agreed to accept 6,200 migrants, after the election, none has come to Poland (Waldie, 2018).

However, Poland still has an institution responsible for granting protection status of migrants, known as the Office for Foreigners. The institutional effects of Europeanization on Poland's asylum system have not been discussed in too much detail as of yet, particularly because, as Kicinger et al. noted, the effects were less seen during Poland's accession period to the EU. Other than the name of the institution changing, changing policies reflecting PO or PiS policies on migration have not penetrated the infrastructure institution. As a result, as it has been covered in the media, the Law and Justice party "is a reference neither to law and order nor social justice, but to the idea that the Polish state itself is lawless and unjust – if the state is illegitimate, the normal rules of political behavior no longer apply" (Davies, 2016).

In 2015 Kaczyński told the Financial Times that "we must try to consolidate Polish society at large along the lines of positive Polish traditions and values" (Waldie, 2018). Seconding this notion, Konrad Szymanski, Poland's secretary of State for European Affairs, said that "the government hopes to resolve its issues with the EU, but he insisted Law and Justice will not pull back from its signature policies – including accepting migrants." He continues, "we believe that it is obviously against our beliefs,

our approach,” and that the country has no “specific experience with co-existence, or co-operation, or any experience with the Middle East... the liberal societies of the West already put the question how we can accommodate the cultural difference?” (Waldie, 2018). Following this notion, Kaczyński has been quoted saying that “there are some differences related to geography, various parasites, protozoa that are common and are not dangerous in the bodies of those people, [but] may be dangerous here. Which doesn't mean there is a need to discriminate anyone, but you need to check” (Cienski, 2017). The narrative under the PiS government has thus shifted from the values that the PO had demonstrated.

Other political figures, such as Polish Interior Minister, Mariusz Błaszczak said “in agreeing to take refugees, the [previous government] put a ticking time bomb under us... we are defusing that bomb” (Cienski, 2017). This is the same Minister who in 2016 stated, Poland would not even accept refugees from the Russian Republic of Chechnya, saying that they were a threat to national security (Cienski, 2017). In a political broadcast message, Kaczyński stated that “after recent events connected with actors of terror, [Poland] will not accept refugees because there is no mechanism that would ensure security” (Broomfield, 2016). This latter point marks the lack of Europeanization in the Polish asylum system. Overall, this media coverage displays the security and cultural fears felt and executed by PiS. This will further be elaborated in Chapter 6, along with the extent of Europeanization in the field of asylum in Poland.

Chapter 6: Implications

As described in Chapter 2, measuring the extent of Europeanization can prove to be a difficult task, considering that anything to a certain degree can be Europeanized. Following the conclusions of Kicingier, et al., certain dimensions of Radaelli's definition of Europeanization, have sparked change in Poland, more than others. As discussed in Chapter 4, it was evident that in the lead-up to the 2004 enlargement, Poland was subject to powerful leverage from the EU acquis to meet the requirements for accession, in particular on the visa and border policy aspects linked to migration and asylum issues in the region. It has been seen that Poland took on the EU's restrictive policy, as at the time EU policy conveyed its concern for security risks surrounding the enlargement of the EU's external border. This restriction took priority over the international norms of protection of asylum seekers. Although Kicingier, et al., argued that the beliefs of Polish decision-makers have changed at the time of accession, the failure of institutional change at the Office for Foreigners, resulted in a lack of corporate memory of Europeanization (2007). Thus, this allowed for the institution to be subject to the political preference of the ruling party, rather than objectively following procedures for granting protection.

In today's context this argument holds, as the ruling PiS party continues to reject the EU's relocation quota and develops laws that completely alter the personnel and processes by which the country is able to make decisions to reflect their national interest. Therefore, even though Poland initially accepted EU policy on asylum prior to accession, the lack of Europeanization of Polish institutions leaves them subject to fulfilling the values and priorities of the government of the day. The

Office of Foreigners is a direct example, as during accession, the name of the office responsible for asylum changed, yet the personnel and their biases and political motivation stayed the same (International Organization for Migration, 2018). Due to the lack of Europeanization of asylum institutions in Poland, there is a lack of founding principles to direct asylum policy in Poland today, which allowed the PiS party to break the agreement of the PO to accept 6,200 migrants made in 2016 (Migration and Asylum, 2018).

Going beyond the lack of Europeanization in Polish institutions responsible for asylum policy-making, the shift in asylum policy-making at the EU-level, has direct implications for Member States. As described in Chapter 3, the EU moved the issue of migration from the intergovernmental model, towards a European community method, using the QMV system. This voting system deepened the sentiment of “us vs. them” as described in Kicinger, et al.’s findings. Countries whose votes did not represent the majority, felt that their interests were not important nor taken into consideration at the supranational level of the EU. This in turn created two categories of Member States, and deepened the rift between the EU and its Member States. As such, countries, often regionally, formed partnerships to strengthen their voices in the Union to express disapproval of EU policy. In this case, Poland banded together with Czech Republic, Hungary, and Slovakia, creating the Visegrád Four (V4). In the case of migration, these countries together advocated for local solutions to the causes of migration, and opposed the EU relocation quota. However, the technicalities for each V4 member varies (Visegrád Group, 2018).

Echoing the argument that the method of decision-making on asylum policy created a gap between the interests of the EU and its Member States, with Poland's lack of experience with multiculturalism meant that this was an issue that was perceived by decision makers as a problem for the future. With the lack of institutional knowledge to develop any solutions apparent future problem, the issue of asylum never really resurfaced until it came to a time of crisis, and again the country remained less able to respond. Given Poland's history, the Polish people did not share a sense of responsibility for what happened in other parts of the world that caused nationals to flee, unlike other Western EU Member States, who had a history of colonization. This plays into the reasoning why Poland supports locally based solutions to migration and does not see itself as implicated in finding a solution. Indeed, this stance, reflects Poland's socially conservative values that support the interests of a homogenous population, rather than contributing to EU solutions to international issues. Again, the variance between EU and Member States interests failed to align.

Chapter 7: Conclusion

Poland's journey towards gaining EU membership was not without compromise. Leading up to EU accession, Poland had to measure up to the influence of fulfilling EU requirements as preconditions of membership, in particular in the fields of asylum procedures, visa regulation, and border control. Most of the leverage in this policy area originally came from restrictive EU policies to limit illegal migration. The study of Europeanization demonstrated in this paper highlight that

Poland did not willingly accept the EU's asylum system. EU requirements in this field were rather attributed to promoting the interests of existing EU Member States in the ever-expanding EU. As explained previously, this had an effect on the ability of the Union to agree on common values, and thus undermined the basis of the spirit of the EU.

Today Poland faces the consequences of the EU Commissions' recommendation on December 20, 2017 to trigger TEU Article 7, for reasons that go beyond Poland's rejection of the EU's relocation scheme. Poland's current political environment and prioritization of national interests is viewed as a threat to the vision of the EU as a community of common values on the international stage. However, the use of this provision is more symbolic, as TEU Article 7.2 which requires unanimous consent among Member States, is blocked by Hungary, who supports Poland (Visegrad Group, 2018; Waldie, 2018). This action highlights the differences in EU and Member States interests, which as was described in this paper has been influenced by how asylum policy decisions are made, to the prominence of national interests of new Member States in the Union, which play a limited role.

Although fourteen years after Poland gained membership to the EU, Europeanization research still provides a lens to unpack Member States' national interests in light of issues in the international arena. As demonstrated in this paper, Poland was influenced by EU demands, in particular to follow the EU *acquis communautaire*, which led to a restrictive migration policy. The restrictive nature of migration policy prioritized security concerns over the humanitarian dimension of the policy field. This paper could have explored the issue of migration through the lens

of securitization, considering the rise of fear of terrorism as noted in Chart 1. However, the conceptual framework of Europeanization, also considers security risks, as demonstrated in the way asylum issues were framed at the level of the EU, and trickled down to impact national migration policy. This framework allowed for a deeper analysis of the dynamic between the EU and its Member States.

The conceptual framework of Europeanization also allowed for a national analysis of policy to be conducted in the context of issues of international importance. This has been demonstrated in Chapter 3, as traditionally, asylum policy fell to the authority of nation states, but gradually became a part of the domain of the European community dimension of policy-making at the EU. At the EU-level, although QMV in theory, is representative of all Member States, in practice, it reflects the interests of the majority, not necessarily all Member States. This has posed challenges for states who did not see their interests represented at the level of the EU. This became especially difficult when it came to the development of common approaches to EU-wide issues, such as the 2015 European migrant crisis. Consequently, this amplified the “us vs. them” dichotomy, which was demonstrated as a dimension of asylum policy that failed to Europeanize, as explored in Chapter 6.

Going forward, in light of Poland’s current political environment, an interesting dimension of this topic for further study would be to explore the rise of the right-wing political parties in the CEE region, as migration issues feature prominently on their agendas. Finally, to address the question posed in the title of this paper, after having explored the development of asylum policy in Poland and the country’s

situation today, echoing the name of Poland's ruling party, where is the law and justice in Poland's approach to addressing issues of asylum?

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