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COUNTERACTING IRREGULAR MIGRATION IN THE EUROPEAN UNION AS A PRIORITY OF POLAND'S POSITION ON THE NEW PACT ON MIGRATION AND ASYLUM

PRZECIWDZIAŁANIE NIEREGULARNEJ IMIGRACJI W UNII EUROPEJSKIEJ JAKO PRIORYTET POLSKIEGO STANOWISKA W SPRAWIE NOWEGO PAKTU O MIGRACJI I AZYLU

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—— ABSTRACT ——

The analysis aims to reconstruct, explain and evaluate the position of the Polish government on the essential elements of the EU migration and asylum policy proposed by the European Commission in the New Pact on Migration and Asylum. Thus, the article discusses the potential priorities and objectives of the EU migration and asylum policy from the point of view of the Polish government, articulated both during the ongoing work on the EC document (2018–2020) and after its publication in September 2020. However, the article is not intended to present the Polish government's position on the particular, detailed solutions contained in the legislative proposals of the EC due to the New Pact on Migration and Asylum. Although, it allows identifying what the Polish side considers desirable, tolerable and

—— ABSTRAKT ——

Analizy zawarte w niniejszym artykule mają na celu odtworzenie, wyjaśnienie i ocenę stanowiska polskiego rządu w sprawie zasadniczych elementów unijnej polityki migracyjnej i azylowej zaproponowanej przez Komisję Europejską w Nowym pakcie o migracji i azylu. Artykuł omawia zatem potencjalne priorytety i cele unijnej polityki migracyjnej i azylowej z punktu widzenia polskiego rządu, artykułowane zarówno w trakcie trwających prac nad dokumentem KE (2018–2020), jak i po jego opublikowaniu we wrześniu 2020 roku. Zamierzeniem artykułu nie jest jednak przedstawienie stanowiska polskiego rządu w sprawie konkretnych, szczegółowych rozwiązań zawartych w propozycjach legislacyjnych KE, zapowiadanych w nowym pakcie o migracji i azylu. Artykuł pozwala jednak określić, co

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acceptable, and what is utterly unacceptable in terms of the proposed changes to EU migration and asylum policy. Therefore, the main priorities of the Polish government regarding the reformed policy are indicated and explained. The first two concern counteracting irregular immigration by enhancing the protection of external borders and intensifying cooperation with third countries (in particular as concerns readmissions and returns), which means approving the postulates of the EC. At the same time, the third priority opposes the EC's proposal addressing asylum issues.

strona polska uważa za pożądane, tolerowane i akceptowalne, a co jest całkowicie nie do przyjęcia z punktu widzenia proponowanych obecnie zmian w polityce migracyjnej i azylowej UE. W związku z tym wskazano i wyjaśniono główne priorytety polskiego rządu dotyczące reformowanej polityki. Dwa pierwsze z nich dotyczą przeciwdziałania nieregularnej imigracji poprzez wzmocnienie ochrony granic zewnętrznych oraz intensyfikację współpracy z krajami trzecimi (w szczególności w zakresie readmisji i powrotów), co oznacza akceptację postulatów KE. Z kolei trzeci z omówionych priorytetów strony polskiej dotyczy kwestii azylowych i sprzeciwia się propozycjom KE w tym zakresie.

As concerns the implementation of the New Pact on Migration and Asylum, put forward by the European Commission (EC) in September 2020 (European Commission, 2020c), the joint adoption of the Council and the European Parliament (EP) of a legislation package that details the individual elements of this strategy has posed a considerable challenge. Achieving a consensus on the details of a broadly understood migration policy will not be easy. Bearing in mind the differences in how the Council and the EP have so far tackled the migration issue, and matters of asylum in particular, it will actually be up to member states, more than anything, to negotiate the ultimate legislation governing the EU's migration policy.

The positions of member states on the issue of migration and asylum have long remained divergent. Considerable differences emerged both in 2011–2013 when attempting to amend the Schengen Borders Code (on matters such as the conditions for the reinstatement of temporary border checks inside the Schengen zone (EU, 2016)) and when implementing the European Agenda on Migration (European Commission, 2015), put forward by the EC in 2015 and outlining proposed EU activities concerning migration and asylum. The different approaches of member states to migration result from numerous political, economic, societal, and cultural factors. Some of them, such as the migration experience of some

states or the attitude of their societies to receiving migrants and refugees, can frequently change; others, such as the positioning of a given state on a migration route and bearing the responsibility for the protection of external EU borders, are significantly more permanent. Still, the advocates of various solutions in EU migration policy can interpret each such factor and use it in different manners in public debates.

This article presents and explains the position of the Polish government on the fundamental elements of EU migration policy that has been developing and evolving since 2015. The 2015 parliamentary elections (October 25) brought about a political change in Poland, resulting in the formation of a new government (with Beata Szydło and, subsequently, Mateusz Morawiecki as Prime Minister) which has enjoyed the stable and unfaltering support of the Law and Justice (PiS) Club in parliament[1]. This change has translated to Poland altering its attitude to general EU matters (such as the desired division of power between the EU and individual member states in the realm of shared competencies, the principles of European institutions' functioning, the acceptable scope of EU policies and the degree of their communitarization) as well as numerous individual issues, including migration policy. Given the Polish government's frequently highly critical attitude to the migration and asylum proposals tabled by the EC since 2015, it seems essential to indicate the key vectors of Poland's position when assessing the feasibility of the solutions stipulated in the New Pact on Migration and Asylum being implemented.

The analyses presented in the article are preceded by a brief discussion of the origins and fundamental resolutions in the New Pact on Migration and Asylum. Next, the main priorities of the Polish government regarding the reformed EU migration policy proposed by the EC are indicated and explained. While the first two concern counteracting irregular immigration, approving and supporting the postulates of the EC, the third priority opposes the EC's proposal addressing asylum issues. Importantly, the article is not intended to present the Polish government's position on the individual legislative provisions proposed by the

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[1] In the 2019 elections (October 13), the Law and Justice Club retained its parliamentary majority and formed a government again (the second government of PM Mateusz Morawiecki). This parliamentary support waned in mid-2019 in the wake of several representatives of Porozumienie Jarosława Gowina and several other MPs having left the Club and formed the Polskie Sprawy caucus. Due to this reshuffling, the Solidarna Polska party gained influence in the Law and Justice Club, a radical right-wing party openly criticizing European integration and rejecting further communitarization of EU policies and law.

EC and regarding the New Pact on Migration and Asylum, which are expected to undergo certain modifications as part of the legislative process. The purpose of the article is to indicate the general framework of what the Polish side considers desirable, tolerable and acceptable, and what is utterly unacceptable in terms of the proposed changes to EU migration policy.

As the negotiations on the programmatic tenets of future migration policy in EU institutions have been partly confidential, and access to the official negotiating positions taken by the Polish government is limited, its attitude will be reconstructed on the basis of public information, such as government reports on the participation of Poland in the works of the EU for the parliament, texts of the joint positions of the Visegrad Group (V4) countries and the Salzburg Forum on the EU's migration policy, information published on the websites of the Ministry of the Interior and Administration regarding the position of the Polish government on EU migration policy, and public statements of Polish government representatives during press conferences devoted to EU migration policy.

FROM THE EUROPEAN AGENDA ON MIGRATION TO THE NEW PACT ON MIGRATION AND ASYLUM

The challenges posed by the management of migration policy have been part of the agenda of issues of key importance both at the level of the EU and member countries. The humanitarian and political crises in the EU that were sparked by the influx of exceptionally large numbers of asylum seekers have revealed a whole range of shortcomings in EU asylum and migration solutions, as well as external border controls. The EU replied, drafting the European Agenda on Migration which began the review of these policies. It contained *ad hoc* intervention activities, medium-term measures, as well as long-term systemic solutions. The proposals were assumed to serve four purposes: reducing the incentives for irregular migration, improving the management of external borders, enhancing the common asylum policy, and developing a new policy on legal migration (European Commission, 2015, pp. 8–20).

Over the months and years that followed, the postulates addressing the above four areas were clarified and detailed through legislative proposals introducing modifications to various aspects of EU migration policy. However, not every solution proposed by the EC at the time enjoyed the full approval of member

states. And a number of solutions were substantially modified during negotiations between member states and in the course of the legislative procedure in the EP. Relying on its complex, multi-layer and multi-actor decision-making system, the EU was eventually able to adopt solutions where the necessary compromise had been possible. Even that, however, has not translated into all agreed solutions being implemented at the level of member states.

The clearest example here is the failed attempts to review the operation of the EU's asylum system by introducing a relocation mechanism. First, an exceptional and temporary relocation mechanism for persons in need of international protection was proposed[2]; then a permanent and compulsory relocation system that would be triggered automatically in the situation of a migration crisis; and, finally, a hybrid solution proposed by the EC where the compulsory relocation system would be triggered only in emergency situations, while in other, 'less challenging' situations, relocation would be carried out on a voluntary basis (European Commission, 2017).

EU member states and institutions found it difficult also to agree on the scope of changes to be introduced to the existing mechanisms and determine new mechanisms of legal migration (EU, 2021)[3], even though the need for a more ambitious policy in this matter had long been indicated. Consequently, the implementation of stipulations in the 2015 EU migration agenda was distinctly limited and boiled down to taking the measures to achieve the goal that had enjoyed the widest approval of member states, namely to curb the influx of uncontrolled migration to the EU. To achieve this goal, activities were taken in two areas: the management of the external EU borders[4] and cooperation with

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[2] This mechanism was established by virtue of Council Decision (EU) 2015/1523 of 14 September 2015 and Council Decision (EU) 2015/1601 of 22 September 2015. Out of the stipulated 160,000 as few as under 30,000 persons were relocated during the two years of the mechanism being in force. A large majority of states fulfilled only a fraction of their respective obligations, with some doing so only symbolically (Austria, the Czech Republic, and Slovakia) and two states completely failing to fulfil any obligations (Poland and Hungary) (Adamczyk, 2017; Potyrała, 2018).

[3] The revision of the key instrument in the field of legal migration, the Blue Card, was only approved in May 2021.

[4] A number of important steps were taken with respect to the management of the EU's external borders, such as the adoption of the flagship initiative establishing the European Border and Coast Guard, extending the powers and operational capabilities of Frontex (renamed the European Border and Coast Guard Agency), strengthening border checks of the citizens of the EU and third countries, revising the functioning of the Schengen Information System (SIS) and Visa Information System

third countries[5]. This resulted in actually restricting the number of persons attempting to cross the EU's borders violating regulations and, by this token, in the relative temporary alleviation of pressure on the national asylum systems of member states.

In the long run, however, the situation turned out to be unstable, and the measures applied to manage the external borders – insufficient. The migration pressure on the EU increased in 2017 again and was coupled with another 'redirection' of the migration stream from one route to another[6]. As the number of irregular migrants trying to enter the EU was increasing, the states responsible for the protection of the external EU borders took various measures to seal them, while the states with no external borders first introduced and then repeatedly extended the temporary border checks on the internal EU borders. Yet physical barriers (such as razor-wire fences) put up along the external borders of the EU (e.g., Greece-Turkey, Hungary-Serbia, and Hungary-Croatia) and intensified patrols within border areas by increased numbers of officers deployed there (including military officers) did not yield the expected outcomes, and migrants continued to cross the borders. It was then that the practice of limiting or even preventing migrants from submitting applications for international protection (also through push-backs) became common.

Serious shortcomings were also revealed in the EU's policy of including transit countries, especially EU neighbours, in the system monitoring the influx of migrants to the EU. Originally, the instruments of external policy were sup-

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(VIS), as well as deciding to create new systems supporting border checks: Entry/Exit System (EES) and the European Travel Information and Authorization System (ETIAS).

[5] Within the framework of partnership with third countries, in particular countries of origin or transit, the EU (1) signed an agreement with Turkey and allocated resources for the Facility for Refugees in Turkey which helped Turkey in retaining immigrants trying to get to Greece; (2) launched partnership frameworks whereby various aspects of migration management (curbing irregular migration, increasing efficient border controls, combating migrant smuggling and human trafficking, and applying return and readmission mechanisms) became part of bilateral relations and, in fact, conditioned the scope of cooperation with third countries (and EU assistance to them) on their capacity and readiness for commitment to managing migration; and (3) in November 2015, established in Valetta a trust fund to promote stability and eliminate the reasons for irregular migration and displacement in Africa (European Commission, 2016).

[6] In 2017, most migrants tried to enter Europe via the Central Mediterranean route. When the borders on this route were sealed, the traffic via the Western Mediterranean route intensified in 2018 and the migratory pressure on the East European route increased. In 2019, fewer arrivals were reported on the Western Mediterranean and Central Mediterranean routes compared to 2018, while the Eastern Mediterranean and Western Balkan routes saw an increase in the number of arrivals.

posed to offer incentives (financial incentives of liberalisation of visa regimes) to encourage and pressure neighbouring countries to closely cooperate with the EU in fighting migrant smuggling and human trafficking, fulfilling their readmission agreements and admitting (within the framework of returns) their citizens who entered the EU illegally. This approach posed an actual threat that the EU might become dependent on the policies of third countries, some of which are non-democratic and authoritarian. This can be well exemplified by the actions of the Turkish authorities in 2020, which resulted in a resumption of rapidly increasing immigration on the Greek-Turkish border, or the decisions of the Moroccan government to cease to protect the Moroccan border with Ceuta, Spain, for several days in mid-May 2021, thereby allowing thousands of African migrants to enter this enclave. In the long run, transferring partial responsibility for managing migration to the EU to such neighbouring states becomes not only politically hazardous and highly expensive financially, but it also 'legitimises' inhumane behaviour and violations of asylum procedures.

All that meant that even the relative successes European states had won after 2015, when they implemented a package of legal, institutional, operational and financial solutions to stabilise the situation on the external EU borders and curb irregular migration, turned out unsatisfactory (Trojanowska-Strzęboszewska, 2020). There remained the challenge to restrain the original reasons for irregular migration to the EU, combating migrant smuggling networks and human trafficking and increasing the scope of humanitarian aid for refugees staying in neighbouring countries.

Being aware of the problems the whole of the European Union was facing as regarded migration, but also taking into consideration the varied and sometimes even incompatible expectations of different states in this area (as revealed by the crisis in 2015–2016), the EC embarked on developing a new migration strategy. Drafting this document took many months, intensified in late 2019 and took two complete consultation rounds with member states, the EP, national parliaments, civil society institutions and social and economic partners (European Commission, 2020d). Originally scheduled to be announced in the first quarter of 2020, the strategy was eventually published by the EC in September 2020 as a communication titled a New Pact on Migration and Asylum.

The EC intended for the pact to establish a new, durable European framework of managing migration to "offer a proper and effective response to the opportunities and challenges in normal times, in situations of pressure, and in crisis situations". The EC emphasised that the proposals presented in this

strategy "provide a comprehensive approach, bringing together policy in the areas of migration, asylum, integration and border management", all of which should increase the effectiveness of EU operations (European Commission, 2020c, pp. 1–2). The key proposals include, first and foremost, (1) a new border controls procedure[7], including a screening procedure at external borders (European Commission, 2020b), asylum border procedure and – where applicable – a swift return procedure; (2) a new solidarity mechanism (including, for example, relocation, return, operational support, assistance in the external aspects of migration) to provide support to the states exceptionally burdened with irregular migration and asylum seekers; (3) the establishment of the European Union Agency for Asylum based on the European Asylum Support Office[8]; (4) the strengthened coordination of returns at the EU level; (5) the expanded scope of the Eurodac system and including it within the goals of the return policy and combating irregular migration; (6) development of partnerships with third countries to enhance the management of migration and asylum; and (7) supporting legal entry routes to the EU via resettlement and encouraging skilled workers.

Importantly, the strategy is not binding. Adopting its proposals and translating them into concrete legal acts depends on the declarations of individual member states, made in the course of negotiations in the Council, and decisions of the EP as an equal legislative institution.

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[7] In formal terms, this new control procedure is to be treated as preceding entry into the EU. "During the screening, migrants will be registered and screened to establish identity and health and security risks. Migrants will then be referred to the appropriate procedure, be it asylum, refusal of entry or return. Finally, it will be determined whether an asylum application should be assessed without authorising the applicant's entry into the Member State's territory in an asylum border procedure or in a normal asylum procedure. Where an asylum border procedure is used and determines that the individual is not in need of protection, a return border procedure will follow" (European Commission, 2020a, p. 4).

[8] The EP passed the regulation establishing the European Union Agency for Asylum in November, and the Council took the decision on December 9, 2021.

COUNTERACTING IRREGULAR MIGRATION AS A PRIORITY OF POLAND'S POSITION

Enhanced protection of external borders

It followed from the statements presented by the representatives of the Polish government that counteracting irregular migration should be a priority of broadly understood migration policy. And the main instrument to achieve it should be enhanced protection of external EU borders. The communitarian dimension of EU borders was emphasised, implying the joint responsibility of all states for their appropriate functioning. The Polish minister of the interior addressed the issue of the unstable Greek-Turkish border in early 2020, saying that "we have to treat the Greek border as the EU's border – this is our common border that we need to defend from the influx of illegal migrants" (MSWiA, 2020a). This approach was maintained with reference to the destabilisation on the Polish (and Lithuanian) border with Belarus in the fall of 2021 and voiced in the communications issued by the Polish Ministry of the Interior and Administration, which reported migrants attempting to cross the border illegally. An official letter from the Polish Ministry of the Interior and Administration to its German counterpart also stressed that the measures taken by Polish services to prevent migrants from crossing the Polish-Belarussian border were intended to defend the integrity of the external borders of the EU.

In the opinion of the Polish authorities, stable and secure external borders of the EU and efficient border checks of persons who cross them are a prerequisite to fully reinstating the Schengen zone. The Schengen zone is among the EU's most significant achievements (Wrona, 2020), which is why we should seek to reinstate the complete freedom of movement that has been restricted by some member states, which for several years now have maintained temporary border checks on internal borders, given secondary migratory movements or terrorist threats. To achieve that, the Polish authorities argue that the external borders of the EU have to be strengthened (MSWiA, 2021b).

This was the reason for the Polish side to support EU initiatives launched after the 2015–2016 crisis to systemically strengthen the protection of the external EU borders on the one hand and, on the other, to respond *ad hoc* to support frontline states' border controls, including the Western Balkan states associated with the EU. Among other things, the following measures were approved: (1) the establishment of the European Border and Coast Guard (EBCG) as an element

to promote the development of European integrated border management (and increase the effectiveness of external border checks) which both the new agency and services of member states would jointly be responsible for; (2) renaming Frontex the EBCG Agency, which was associated with increasing the powers and operational capacity of the latter (including the later amendment of the relevant regulation which entered into force in 2019[9]); and (3) the revision to the Schengen Borders Code as regards the rules for border checks at the external borders of the EU (Ministerstwo Spraw Zagranicznych, 2019b, p. 67).

The Polish government also supported legislative work on regulations aiming to increase the efficiency of information systems applied in EU border management, including the following:

– making better use of and enhancing the Schengen Information System (especially as regards the implementation of return decisions and the enforcement of entry bans);
– extending the scope of use of the Visa Information System, as well as introducing changes to the EU Visa Code and thus linking the EU's visa policy with the readmission policy (which would facilitate the application of a leverage mechanism consisting in offering some kind of bonuses to third countries cooperating with the EU in the field of readmission, or introducing restrictive visa measures towards countries that do not sufficiently comply with their readmission obligations);
– introducing the interoperability of information systems used in the areas of border management, visas, police cooperation, judicial cooperation, asylum and migration to maximise the exchange of information[10];

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[9] Poland supported the amendment to the regulation on the EBCG by questioning (via a statement to the minutes) the removal from this proposal of provisions enabling Frontex to support the returns of irregular migrants from third countries, as well as raising the issue of a negative impact of the too rapid increase in the capacity of the Agency's permanent corps on the national capabilities to protect external borders. It was emphasized that the implementation of the new regulation on the EBCG required significant financial resources from member states. Therefore, it was important that this process should be properly supported from EU funds (Wrona, 2020, p. 9).

[10] Interoperability was believed to improve combating serious crimes, terrorism and irregular migration, while at the same time being "a highly ambitious and complicated issue the implementation of which according to the agreed agenda will be difficult to achieve" (Wrona, 2020, p. 7). Therefore, the Polish government called for this agenda to be adapted to take into account real possibilities and conditions in member states, and for the entire implementation of the interoperability to be supported by the EU in terms of finance and logistic.

– launching new systems supporting checks, namely the Enter/Exit System and ETIAS (Ministerstwo Spraw Zagranicznych, 2019b, p. 67).

In its assessment of the New Pact on Migration and Asylum, the Polish government consistently stressed that the EU should focus on strengthening the protection of its external borders. This was expressed as follows: "The robust protection of the external borders of the EU and the establishment of new pre-entry procedures will significantly reduce the need for solidarity measures. The cornerstone of EU security is carrying out appropriate checks at the external borders and recognising that entering the EU is the most important moment to carry out security checks" (Kancelaria Prezesa Rady Ministrów, 2021a, p. 99).

From this point of view, the Polish authorities approved the new border control procedure proposed in the pact. In doing so, they opted for the screening procedure to be applied to all third-country nationals who illegally cross the external border or are detained for illegal stay. It was emphasised that the grounds for exempting certain categories of foreigners from this procedure should be limited, as it would trigger secondary migratory movements, thereby undermining the purpose of the reform. It was argued that "taking into account the categories of persons applying for international protection at the border [introducing exemptions from the application of this procedure] – in many cases would rule out its application in Polish conditions" (Kancelaria Prezesa Rady Ministrów, 2021b, p. 40).

INTENSIFICATION OF COOPERATION WITH THIRD COUNTRIES, IN PARTICULAR AS CONCERNS READMISSIONS AND RETURNS

Poland was also clearly in favour of shifting the emphasis in the discussion on EU migration policy to the external dimension and welcomed the June 2018 conclusions of the European Council on the intensification of activities in this area. It was believed that intensive cooperation with neighbouring countries and other countries of origin and transit should provide fundamental instruments to combat irregular migration (termed "illegal" by the Polish authorities), posing a threat to Europe. It was deemed essential to involve third countries in the initiatives to eliminate undesirable migration flows. The Polish government was in favour of determining a specific scope of cooperation with third countries, one concentrating on "supporting partners' capacity for border protection, preventing illegal migration, combating migrant smuggling and human traf-

ficking, expanding asylum possibilities, providing aid in combating the reasons
for migration and creating alternatives for potential migrants" (Ministerstwo
Spraw Zagranicznych, 2019a, p. 33).

Importantly, the prioritisation of border checks and the external dimension
of migration translated into the practical involvement of Polish services in offer-
ing operational support to other frontline member states and EU neighbouring
countries suffering from huge migration pressure. In the discussions held in
EU institutions and bilateral meetings, Poland reminded that the Polish Border
Guard and Police had repeatedly been involved in Frontex operations (e.g., in
Bulgaria, Greece, Spain, Macedonia, Romania, Estonia, Italy, and Hungary) serv-
ing the purpose of maintaining or reinstating impermeable external borders
(MSWiA, 2019c). Resolving to support Greek services protecting the border with
Turkey from an influx of large numbers of migrants, including persons seeking
international protection, in March 2020, the Polish government argued that this
was the type of activity the EU's support should focus on, using the stronger
mandate of Frontex, and allowing individual states to operate at the level of their
respective capacities rather than focusing on compulsory relocation (MSWiA,
2020b).

Further instruments the Polish government believed should become the
priorities in cooperation with third countries, or perhaps in the entire EU
migration policy, included readmissions and returns. Poland referred to problems
related to the execution of return decisions and stressed that all member states
must enforce them[11]. However, bearing in mind that their effectiveness depends
on cooperation with the countries of origin and transit, the Polish side opted
for a variety of instruments of EU external policy to be applied (visas, trade,
development aid) to encourage these countries to cooperate. The position of the
Polish government remained the same for several years: "Poland has consistently
emphasised that improving cooperation with third countries, including in the
area of return and readmission, using the leverage mechanism, is a necessary
condition for the functioning of the EU's system to manage asylum and migra-
tion. Poland has expressed support for the strategy of developing mutually
beneficial, tailor-made, comprehensive partnerships with third countries. The

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[11] It should be noted that during the negotiations on the revision of the Return Directive, Poland
objected to combining the amendments to this directive with changes in the functioning of the
Common European Asylum System (including, in particular, the asylum procedure (APR) and the
compulsory border procedure).

priority regions with which the EU should intensify cooperation include North Africa, the Sahel, Sub-Saharan Africa, the Western Balkans, and the Silk Road; the need to resume the full implementation of the EU-Turkey statement has also been addressed. Poland has consistently emphasised the importance of the Eastern Partnership and insisted that this region should also be treated as a priority at the EU level" (Kancelaria Prezesa Rady Ministrów, 2021b, p. 41).

REFORM OF THE ASYLUM POLICY:
YES, BUT WITH NO COMPULSORY RELOCATION

In the face of the experience of the 2015–2016 migration crisis, followed by several years of unrelenting pressure on the asylum systems of member states, the Polish government saw that the Common European Asylum System (CEAS) would have to be revised. The existing EU asylum policy was acknowledged not to respond effectively to migration challenges. However, any reform should begin by recognising that the EU's overarching goal is to "curb the uncontrolled influx of migrants and combating secondary flows" (Wrona, 2020, p. 7). These goals should drive concrete revisions of regulations or change the practice of CEAS operations.

Therefore, the solutions promoted by Poland included, first and foremost, the following: (1) to tighten current asylum procedures to offer international protection only to persons who actually need it[12], (2) to shorten the duration of asylum procedures, (3) to increase sanctions against migrants violating procedures, and (4) to link CEAS with border protection management, including the return policy (Ministerstwo Spraw Zagranicznych, 2019b; Kancelaria Prezesa Rady Ministrów, 2021a). Greater emphasis should also be placed on instruments that eliminated secondary migratory movements, which translated into support for the introduction of swift mechanisms allowing economic immigrants to be distinguished from those qualifying for international protection (accelerated asylum procedure) using the enhanced border procedure.

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[12] The head of the Polish Ministry of the Interior and Administration argued that "it is necessary at the earliest stage possible to distinguish between foreigners trying to use the possibility to apply for asylum as a way to enter the EU's territory from those who are in actual need of international protection. It is also necessary to take swift decisions and actions aiming to return those persons who should not stay in the EU" (MSWiA, 2020e).

The Polish government deemed it particularly important to ensure that the possible reform of CEAS, including its key element – the Dublin Regulation – should guarantee the sovereignty and not infringe on member states' competences (MSWiA, 2019c, 2019b). "Poland encourages cooperation at the European level, but – alongside other countries – clearly indicates the need to respect the powers of member states to decide on asylum and migration policies on their respective territories" (MSWiA, 2019a). This concerned both systemic proposals[13] and interim solutions proposed as alternatives in the absence of consensus on adopting permanent mechanisms. The requirement to respect sovereignty in reforming CEAS was expressed in terms of a postulate that changes in this area should be introduced while working out the broadest possible political consensus, which would translate into the effective functioning of the system.

Introducing a relocation mechanism to the EU's asylum system was out of the question for the Polish government. After the PiS party assumed power, the Polish side consistently rejected various solutions to the mechanism of redistribution of migrants and asylum seekers, refusing all compulsory and automatic solutions[14]. In the opinion of the Polish authorities, the relocation mechanism infringed on a state's sovereign right to decide about foreigners' entering and staying on its territory. They argued that "while respecting its international obligations, it is a member state that, within its competences, should decide on the entry and stay of foreigners on its territory, taking into account, in particular, the needs of the labour market and integration opportunities" (MSWiA, 2020e). Secondly, relocations were perceived as an instrument threatening the security of host countries and their nationals. They were considered to be related to domestic and economic security, and therefore it was argued that they should be at the sole discretion of individual countries. Thirdly, the effectiveness of the relocation mechanism as an adequate response to massive migration to the EU was questioned. "In

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[13] The 2018 proposal to transform the European Asylum Support Office into a fully-fledged EU Agency for Asylum was recognized to be an issue that might infringe on the sovereign rights of the state. The Polish government was opposed to granting extended powers of control to this new institution and allowing it to operate in member states without their consent.

[14] Poland was also critical of the initiative submitted under the Malta Declaration, signed on September 29, 2019 by Germany, Italy, France and Malta in the presence of the Finnish Presidency and the European Commission. This declaration proposed to launch a pilot project involving an automatic system of relocation of refugees and persons who were applying for refugee status (but only those rescued at sea by the military, coast guard or ships of international organizations), with EU technical, operational and financial assistance. This system would be compulsory, but only for countries that voluntarily acceded to it (Germany, Italy, France, & Malta, 2019).

the opinion of Poland, the introduction of the relocation mechanism would provide a strong incentive to undertake dangerous and illegal migration across the Mediterranean Sea and an argument favouring criminal organisations smuggling migrants" (MSWiA, 2019b). Finally, the relocation mechanism was rejected, pointing out that admitting migrants would bring about undesirable outcomes for the country's social policy, societal and cultural coherence of community and public order. With regard to the March 2020 initiative of South European countries, which called for swift and compulsory relocation to be instituted and was partly supported by subsequent member states in April 2020[15], the head of the Polish Ministry of the Interior and Administrations said the following: "The Polish government will not consent to any social or cultural experiments to be imposed on us. How this type of experiment ends can be seen in the example of many Western European countries, where significant clusters of people who are culturally and socially unrelated to their places of residence have emerged. This leads to tragic consequences, racist and religious conflicts. Such situations are unacceptable to us. […] We have consistently been presenting this position" (MSWiA, 2020c).

The minister firmly emphasised that the PiS government was adamantly opposed to "returning to the issue of compulsory relocation of illegal immigrants in the EU's migration policy, […] this issue is non-negotiable" (MSWiA, 2020c). The same position was taken on the issue of relocation after the European Commission published the New Pact on Migration and Asylum. It was stressed that "the concepts of forced migrant relocation are a factor pulling migration to the EU and hindering progress in the negotiations on the Pact" (MSWiA, 2021a). The Polish side was strongly opposed to the relocation as a mandatory measure of solidarity, also in crises of strong migratory pressure and in relation to migrants

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[15] In March 2020, Cyprus, Greece, Spain, Malta and Italy issued their position on the reform of the EU's migration policy, demanding a revision of the asylum system, including by establishing a mechanism for the compulsory redistribution between member states of asylum seekers who entered the EU irregularly. In turn, on April 9, 2020, the governments of Germany, France, Spain and Italy sent a letter to the Vice-President of the European Commission and the Commissioner for Internal Affairs of the European Commission, presenting their position on the desired directions of the reform of the EU's migration policy. In that letter, these countries argued in favor of "a fair sharing of responsibility and a reform that must create a binding mechanism for fair distribution according to certain criteria, in particular when a member state is under disproportionate pressure", and noted at the same time that "Member States resorting to other measures of solidarity than relocation must remain an exception, only for motivated reason" (Cyprus, Greece, Spain, Italy, & Malta, 2020; Italy, Spain, France, & Germany, 2020).

brought ashore due to search and rescue operations at sea (MSWiA, 2020f). For the Polish government, these issues were the ultimate borderline of an acceptable compromise when negotiating the proposed regulations on migration and asylum management and on a common procedure for applying for international protection in the EU.

Poland was also sceptical about the resettlement mechanism for refugees from the camps located outside the EU. While it was not rejected as a whole, Poland demanded this mechanism be entirely voluntary for receiving countries. The Polish Ministry of Foreign Affairs reported that "Poland agreed that the Dublin system needed adjustments, but was determined to refuse to agree to any mandatory mechanism distributing responsibility to be established, and called for voluntary participation in the resettlement program" (Ministerstwo Spraw Zagranicznych, 2019b, p. 65). This position was maintained in the following years, emphasising that Poland is not opposed to a uniform resettlement procedure in the EU, provided that member states can participate in it voluntarily (Kancelaria Prezesa Rady Ministrów, 2021a, p. 39).

These issues resulted from how the two fundamental principles on which migration and asylum management in the EU was based, i.e., solidarity and responsibility, were perceived. In discussions on this subject, the Polish government referred to the rhetoric of the conclusions of the European Council of June 2018, which emphasised the need to maintain a balance between solidarity and responsibility. Poland reinterpreted this postulate, demanding that these principles should lay the foundation not so much for activities in the field of asylum policy in the strict sense but migration policy in general. Limiting a country's ability to comply with the principles of solidarity and responsibility only to asylum instruments, including relocation, was called a "fragmented approach to solidarity" (MSWiA, 2020d). It was demanded that the repertoire of solidarity measures should be as wide as possible and that individual states should choose them voluntarily and in correspondence with their respective capacities and burdens: "In the Council, Poland has consistently emphasised the need to strike a balance between responsibility and solidarity and expressed concern about the structure of the solidarity principle, which does not take into account the capacities of member states or their efforts in border, migration and asylum management, as well as the disproportionate role of the EC in the entire mechanism. Poland has repeatedly signalled that departing from the paradigm of forced relocation is a necessary condition to reach consensus on the New Pact on Migration and Asylum" (Kancelaria Prezesa Rady Ministrów, 2021b, p. 40).

In practice, this would mean that Poland could meet its solidarity obligations using the instruments preferred by the Polish government, namely supporting border checks and protection of the external borders of the EU, without the need to participate in asylum policy instruments (relocations or resettlements).

CONCLUSIONS

The position of Poland in discussions on the changes to the EU's migration policy and specific proposals contained in the New Pact on Migration and Asylum show that Poland approves reforms that seek to counteract irregular migration. That is why the Polish government prioritises the management of the EU's external borders and the returns and readmissions of migrants while including neighbouring countries as well as countries of origin and transit in these activities.

Firstly, this translates into Poland's support for a new border procedure (including screening before entry), the extension of expensive IT tools employed in border checks (including EES and ETIAS), and enhancing the institutional and operational capacity of Frontex (provided that its mandate does not infringe on the sovereign rights of individual countries), the modernization of current information systems (such as SIS, VIS, and Eurodac) and launching full interoperability. Secondly, as concerns migration and asylum management, this approach stresses the importance of returning migrants who have been refused consent to stay in the EU to their countries of origin and effective readmissions of irregular migrants to third countries. Thirdly, the position of Poland stresses the external dimension of migration, with particular emphasis on including third countries – using visa policies, trade cooperation, development policy, and humanitarian aid – in all the activities aiming to stop the influx of migrants to the EU.

Finally, this position has consistently rejected compulsory relocation and resettlement as migration policy instruments and meant an actual limitation of the asylum system reform to calling for making the system more impermeable, for more severe sanctions to be imposed on migrants who violate regulations, and for more effective returns. CEAS should be first of all resilient to the migration pressure of irregular migrants; it should prevent secondary movements and place greater emphasis on aiding migrants outside the EU. This approach clearly ignores the humanitarian aspect of migration flows. The issues of compliance with the provisions of the Geneva Convention, including the non-refoulment principle, as well as the matter of the legal situation (and admission rules) of

unaccompanied minors, or the standardisation of reception conditions for applicants for international protection in member states, are completely absent from the reports on the activities of the Polish government and statements of its representatives. What is more, the proposals for applying special asylum solutions to immigrants rescued at sea due to search and rescue operations are questioned.

In discussions on the New Pact on Migration and Asylum, the Polish side does not seem to attach particular importance to issues related to legal migration channels, both about economic migrants and persons seeking international protection. The Polish government treats these matters as "subjected to the sovereign decisions of member states" and points out that when preparing solutions in this area, EU institutions should meet their expectations (MSWiA, 2021c).

Generally, the security approach dominates the Polish government's perception of migration and asylum issues, strongly connected with the securitisation and even criminalisation of immigration and immigrants in political discourse. Immigration is discussed primarily in negative aspects of Poland's membership in the European Union. It is defined as a threat, rarely a challenge, never an opportunity for European (and Polish) economies and societies. This approach is a continuation of the rhetoric of the PiS applied during the parliamentary campaign in 2015 when the party used anti-immigrant arguments, filled with threats to social cohesion, cultural order, public order and security of Polish society caused by mass migration (especially from Muslim countries) (see, e.g.: Pędziwiatr & Legut, 2016; Trojanowska-Strzęboszewska, 2019). This rhetoric blurs the differences between the various categories of migrants. Refugees and asylum seekers are called economic migrants, and these are named illegal immigrants. In this way, the term 'refugee' is deprecated in the public debate and equated with unlawful immigration and threats to the host country (Łodziński, 2019). It is worth noting that this kind of perception of immigration as strangers[16], foreign and unwanted people, carrying threats and being a source of a severe crisis in Europe (especially Western Europe) was used not only in the political rhetoric of representatives of the ruling party but also in the party program, published in 2019 (Prawo i Sprawiedliwość, 2019).

However, the Polish government is not alone in its perception of some migration issues in Europe. It should be mentioned that the position of Poland in

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[16] The usage of such an approach is so surprising that after 2014 there was a systematic and dynamic influx of Ukrainian immigration to Poland. However, this issue did not affect how the Law and Justice problematises immigration in the public discourse.

debates on the EU migration policy has the support of other Central and Eastern European countries under multilateral agreements. In this context, Salzburg Forum and Visegrad Group (V4) are the most important. Within their framework, common positions are adopted and used in intra-EU debates on migration policy and negotiation on specific legislative provisions based on the New Pact on Migration and Asylum[17]. These positions contain all the essential elements of the Polish position on migration in the EU, such as redirecting the EU migration policy towards combating illegal migration, strengthening and developing border control measures, fighting with migrant smuggling and human trafficking and eliminating secondary movements, improving the functioning of returns and readmission, and involvement of third countries in the management of the EU's external borders. The V4 countries and the members of the Salzburg Forum also question relocation as an effective instrument of asylum policy and opt for a flexible approach to the choice of solidarity measures by the Member States under the EU migration policy, including actions related to border protection and control. Thanks to these initiatives, the position promoted by Poland certainly has a more significant impact on the processes of shaping legal regulations and other measures in the EU migration and asylum policy.

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[17] In the framework of Salzburg Forum, it is worth pointing out two documents: a joint ministerial declaration signed on November 7, 2019 – Joint position paper in the context of the discussion on the future EU asylum and migration policy (December 2019), and Prague Declaration on Political Guidelines for the Joint Coordination Platform on effectively combating irregular migration along the Eastern Mediterranean route (adopted at the Ministerial Conference on June 23–24, 2021). And the position of the Visegrad Group is expressed, inter alia, by the letter of June 4, 2020 to the Vice-President of the European Commission and the Justice and Home Affairs Commissioner on the New Pact on Migration and Asylum (also signed by Estonia, Latvia, and Slovenia), and joint position of December 10, 2020 addressed to the German presidency in the Council, the incoming Portuguese presidency and the European Commission (signed by Estonia and Slovenia as well).

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