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## The attitude of Polish lawyers towards the European Union and European Union law – causes and effects

### Introduction

European Union (EU) law is changing very dynamically. As a result of the provisions of the Treaty of Lisbon, the Union is acquiring new competence or more efficient tools to implement older objectives. For the last 15 years, an average of 40 new regulations, directives and decisions of the Council and the European Parliament have been enforced every year, and a similar number of obsolete legal solutions have been amended. In parallel, the EU bodies and institutions issue an average of 20 times more other non-legislative (soft law) acts every year. The development of Union law is especially noticeable in areas relating to the internal market, new technologies and science, and the area of freedom, security and justice. The latter area is particularly interesting as it was only after the entry into force of the Treaty of Lisbon that the Union gained more significant competence in this area. Consequently, legislative work in this area is attempting to fill legislative gaps. We are now clearly seeing a progressive inflation of EU law, its complexity and comprehensiveness. Every day, EU law is increasingly present in the lives of states, companies and ordinary citizens. Its interpretation more and more often requires specialist skills ('EU Legislation on Statistics' 2021; 'Legal Acts – Statistics' 2021; *Treaty of Lisbon* 2007; Teffer 2017; Toshkov 2021; Voermans 2009, 61–68).

In addition to EU law-making, the EU undertakes a great many organisational, technical, marketing, consultative and other activities aimed at furthering multifaceted integration, most of which are closely linked to the application of EU law. The number and media visibility of such activity is much higher than the daily legislative work. Apart from the EU institutions and bodies, almost all the actors in the life of the EU are involved in the creation and application

of European law and other implementation and factual activities. Firstly, the Member States are obliged to transpose EU law and to apply it. However, organisations, companies and citizens also must comply with Union law. Moreover, all the actors involved in EU life actively participate in the EU legislative work as advisers, lobbyists and experts, and are co-creators of the EU activities, for example through the European Parliament, and are current recipients of the EU activities and even active discussants of the EU institutions' activities (Stefan 2017, 200–217; Terpan 2015, 68–96).

The multidimensionality, dynamism and completeness of the activities of EU institutions and bodies may arouse admiration. On the other hand, it may give rise to far-reaching fear, or even dread. Activity on such a large scale, far removed from everyday matters and using specific working methods, certainly causes consternation and fear in the majority of the EU Member States. Generally, this is revealed by disregard for the affairs of the EU institutions and a simple submission to EU guidelines. Sometimes, the activities of the Union motivate people to work and generate a desire to become involved in this form of activity. Unfortunately, sometimes Union activities arouse in people hostility to the unknown. In all situations, the activities of the EU institutions are more or less incomprehensible. Europeans do not readily understand what the EU is and what its institutions are, they do not understand EU law and the way it is applied, and they do not understand the activities of the Member States related to the application of European law. Above all the people of Europe have direct media contact with the actual activities of the EU institutions. But, watching television, they do not understand what is happening in the European Parliament or the positions of the European Commission. Furthermore, they have absolutely no understanding of the disputes between individual Member States and the EU institutions (Büttner 2017, 13–31; 'Major changes in European public opinion' 2015, 4–39; Pew Research Center 2019, 52–69; Signorelli and Priestley 2012).

A lack of understanding and fear of the actions of EU institutions can be seen in all strata of society. It also affects those who are supposed to have the greatest awareness of how the EU functions. An excellent example of a lack of understanding, knowledge and fear of EU activity is the attitude demonstrated by representatives of the Polish elite (Stefaniuk 2019, 379–96). For many years now, the media have featured lawyers, economists, historians and politicians who have clearly and consistently demonstrated a lack of understanding and knowledge

of the functioning of the various subsystems of the EU and its laws. For some time, we have been noticing a clear lack of understanding of the functioning of the Court of Justice of the European Union and the European Commission, a lack of understanding of the relationship between European law and national law, a lack of knowledge and internalisation of the basic principles of primary EU law, and even a frequent confusion between the forms of functioning of EU bodies (e.g. calling a summit of leaders a meeting of the Council or the European Council) ('Jarosław Kaczyński: Dziś w Unii Europejskiej prawo jest podważane' 2019; 'Patryk Jaki: Unia Europejska staje się miejscem podwójnych standardów' 2020; Kaczyński 2021; Strzałkowski 2021; Woźnicki 2021).

The positions of individuals expressed in the media are only the tip of the iceberg. Insufficient internalisation of EU principles and the lack of understanding of the activities of EU institutions are a common phenomenon in Polish society. This applies not only to the poorly educated and those alienated from social life but also to highly educated people who are involved in serious professional, social and political activities on a daily basis. An excellent example of this phenomenon is the attitude of Polish lawyers (advocates and legal advisers in Poland also called attorneys at law) to the functioning of EU law and the extra-legal activities of EU institutions. There is no doubt that jurists are people with a well-established involvement in legal matters. They are assumed to know at least the basics of EU law and to be able to use EU law. Certainly, 'European Union matters' are familiar to them and at least partly internalised. Lawyers learn the principles of Union law at university, in the course of their continuing education, and also apply them in their daily professional practice. Legal professionals should be people who set an example, educate and disseminate to other strata of society the principles of Union law and the activities of the Union's institutions. If lawyers were not familiar with the activities of the EU and had not internalised the values of the EU, one would not expect other social strata to be more aware of being part of the EU and European law ('Program Studiów, Kierunek Prawo' 2019; 'Program Studiów Na Kierunku Prawo' 2019; *Uchwała Nr 108/2015 Prezydium Naczelnej Rady Adwokackiej* 2015; *Uchwała Nr 395/X/2019 Prezydium Krajowej Rady Radców Prawnych* 2020).

This study aimed to discover the level of knowledge, application and internalisation by Polish lawyers of the principles of EU law and the practical functioning of the EU institutions (exploratory purpose). Additionally, the essence

of the research was to explain the causes and consequences of the discovered state of affairs (explicative purpose). Another important element of the research was to determine whether the situation of lawyers also applies to the Polish and European society at large, especially the elites. On the basis of the study, possible actions that could change the examined state of affairs were also proposed. The research hypothesis was adopted as follows: Polish lawyers do not know and do not apply the norms of EU law and are not interested in the activities of EU institutions. The complexity, multidimensionality and progressive inflation of EU law and non-formal activities of the EU institutions aggravate the misunderstanding and lack of application of the EU legal principles. The lack of internalisation of EU principles by Polish lawyers negatively affects their clients and other actors of the justice system in Poland due to the failure to communicate values and attitudes towards the Union to others. Lawyers who do not know and understand Union principles, acting publicly (e.g., through the media) foster wrong opinions and attitudes of other social strata in Poland.

## 1. Research methods

The results of this study are a component of a larger study on the internationalisation of the Polish judiciary and legal services (Lipiec 2022a; 2022b). The research was conducted from 7 August 2017 to 22 January 2019 and supplemented in the period from November 2020 to March 2021. The study was performed using several research methods. Triangulation allowed the results to be mutually checked, supplemented and expanded. As part of the presented research component, the research was conducted using such methods as:

1. Semi-structured in-depth interviews (SSI) with a group of 43 representatives of district councils of bar associations (*Okręgowa Rada Adwokacka*, ORA) and councils of district chambers of legal advisers (*Okręgowa Izba Radców Prawnych*, OIRP). The results were meaning-oriented. Each bar association was represented by one representative. The interviews were conducted in person and the interviews were recorded, transcribed, coded, categorised and translated into English. SkryBot and Atlas.ti software were used. The study is strictly qualitative in nature (Horton, Macve, and Struyven 2004; Kvale and Brinkmann 2009, 170–78; McIntosh and Morse

2015; Nicpoń and Marzęcki 2010, 246–51; Przybyłowska 1978, 62–64; Qu and Dumay 2011, 238–61).

2. Examination of non-reactive materials as follows: analysis of the results of other studies conducted by European researchers over the last decade; an auxiliary analysis of legal acts of the EU and legal acts implementing this law, carried out by the legal functional method; and analysis of the content of the literature on the subject (Babbie 2008, 342–60; Frankfort-Nachmias and Nachmias 2001; Kędzierski 2018, 34–46).

Detailed methodological considerations are available in the report prepared for the entire study. Source data have been stored for further use (Lipiec 2020).

This research has a sociological dimension and is part of the broad paradigm of the sociology of law and legal anthropology. The research works of Richard Abel and Adam Podgórecki have had a great influence on its design and execution (Abel 1985; Podgórecki and Kurczewski 1971). The general theoretical assumptions were based on the principles of grounded theory, as interpreted by Kathy Charmaz (Charmaz 2014). The guide for the interviews was Steiner Kvale (Kvale and Brinkmann 2009). In the case of non-reactive research (content analysis), the research was influenced by the scientific activity of Bernard Berelson, also as interpreted by Walery Pisarek (Berelson 1971; Pisarek 1983).

A similar number of legal advisers (*radcowie prawni*) and advocates (22 and 21 persons, respectively), who were evenly distributed throughout the country and represented all bar associations of lawyers in Poland and their supreme bodies (*Naczelna Rada Adwokacka*, NRA and *Krajowa Izba Radców Prawnych*, KIRP), participated in the empirical research, which was conducted using the interview method. The population is dominated by men (59%), as reflected in the research sample. The most professionally active group of lawyers in Poland comprises people aged 30 to 50, which is also seen in the research sample. It was noted that all lawyers speak at least one foreign language, English dominating (62%), followed by Russian (29% of responses) (Kloc 2020; Wysmułek and Oleksiyenko 2015).

## 2. Research results

Nowadays, reports on EU activities are ubiquitous. Almost daily, there are television, radio and press reports on the activities of the EU institutions or the involvement of the institutions of the Member States in EU affairs. However, most of the effects of EU membership are not noticeable in everyday life. The impact of EU membership on all cultural, social and economic relations of individual countries and countries as a whole is tremendous and continual. This is largely related to the creation and application of EU law. We do not see daily the lengthy legislative processes taking place in Brussels and Strasbourg and between individual Member States. Moreover, we rarely see the direct effects of EU law on our daily lives. Yet, it is permanently, actively and intrusively applied in most relations between individuals, companies and public entities. This does not apply only to politicians, state institutions, courts or lawyers but to every person residing in the territory of the European countries (Sosoni and Biel 2018, 1–7).

In everyday practice it is public institutions and the people directly connected with them who encounter the consequences of the current application of EU law. They are also often directly involved in its creation and application. The extent to which public entities and individuals are involved in and competently apply EU law is first and foremost indicative of Poland's real ties with EU structures. If courts, authorities and lawyers do not know and apply EU law, it is likely that non-specialists do not know and apply it at all. This means that the degree of familiarity and involvement in EU activities of public institutions and individuals associated with them has a direct impact on other national actors and citizens. The range and size of professionals' involvement in EU activities is a litmus test for society as a whole.

Among all professionals and institutions that are predestined to create and apply Union law are lawyers. This applies to all jurists, whether they are advocates (*adwokat*) or legal advisers (*radca prawny*, in Poland also called attorneys at law) who work as service providers, or judges, prosecutors or bailiffs who work in state structures. It is precisely this professional group that is forced to apply the provisions of European Union law in the performance of its daily duties and Union law affects national and international relations through them. Without the involvement of courts and judges, advocates, and legal advisers in disseminating, amending, creating and applying European law, this branch of law would

have practically no effect. The commitment, professionalism and competence of lawyers are crucial, and of the utmost importance in making Union law present in social, economic, and institutional relations in every country.

Now, some fundamental questions need to be asked. If the involvement of lawyers in the dissemination and application of EU law is so important, what happens if there is little or no such involvement? What happens if lawyers have no competence, no respect and no willingness to apply EU law, either to disseminate it or to co-create it? There is a simple conclusion: in that case, Community law will have little or no impact on society, the economy and other national and international relations. The mere creation of law by EU institutions and its central dissemination will only marginally create legal reality. The autonomous impact of EU law without proper application and dissemination by lawyers and legal institutions will be far from sufficient to bind European countries to universal legal rules.

The importance of the involvement of jurists in the application and dissemination of EU law and activity prompts us to examine whether jurists are in fact carrying out this postulate. In principle, these regularities apply to all lawyers in all European Union countries. Therefore, checking the involvement of lawyers in EU affairs in one European country should also be a guideline for other countries of the European community. A relevant survey has now been conducted among Polish advocates and legal advisers, but the principles can also be applied to German, Italian and Swedish lawyers.

Polish advocates and legal advisers are generally not interested in EU law and the day-to-day activities of EU institutions. Also, Polish jurists do not want to get involved in their country's relations with EU institutions. Especially since 2016, in the course of a permanent constitutional crisis over violations of the rule of law in Poland, jurists have shied away from getting involved in EU affairs. Indeed, currently, only governmental agents who have to represent Poland before EU bodies, political and social activists and a small number of specialised attorneys involved in international cases are interested in the activities of EU institutions and EU law. In total, this is no more than 100 people nationwide. It is significant that judges, prosecutors and almost all advocates and legal advisers in Poland (over 80,000 professionals) categorically deny any interest in EU affairs, especially Polish–EU ties. The current main reason is disputes over constitutional principles (Bunikowski 2018, 285–307; 'Krajowy

Rejestr Adwokatów i Aplikantów Adwokackich' 2021; 'Rejestr Radców Prawnych' 2021; '#WolneSądy' 2021).



- I am interested in EU activities, but I do not follow the development of EU law
- I am not interested in EU current activities or EU law
- I am deeply interested in all activities of the EU institutions and in EU law

#### 1 Degree of interest of Polish lawyers in EU law and activities

The constitutional dispute only increases the lack of involvement of Polish lawyers in EU activities and the application of EU law. Essentially, 78% of all Polish lawyers are not interested in EU activities and law. This regularity has been evident for a decade, although just after the accession of Poland to the Union the interest was much higher. This was the effect of novelty and the need to adapt to the new rules. Interest in the law and in the activities of the Union among lawyers is regularly decreasing, and the current political crises deepen and accelerate this trend. In reality, only 3% of Polish lawyers are involved in Union activities. This means that only they follow the activities of EU institutions, legal changes and the transposition of EU law into the Polish legal order on an ongoing basis. However, a small percentage of them are involved in the procedures of creating EU law in Polish public authorities or directly in EU institutions.

The biggest problem is not the interest of lawyers in EU law and the activities of Union institutions per se; it is the lack of application of Union law in the course of national legal procedures. This situation concerns both the direct application of Union regulations and the application of Union law institutions properly transposed into the national legal order. Most advocates and legal advisers, as well as judges and court staff, when faced with the absolute necessity of applying Union regulations in a particular situation, avoid their application. Lawyers do everything they can to utilise institutions of exclusively national law, instead of using the appropriate procedure introduced by EU law. The best



example of this situation is the greater tendency of jurists to obtain national judgments in civil cases against foreign entities (based in the EU) and then to provide them with enforcement clauses in the courts of other EU countries, rather than using specific EU civil procedures, such as the European Order for Payment or the small claims procedure. The problem can also be seen in the matter of ancillary acts of the courts, such as the service of correspondence abroad or the examination of witnesses situated abroad. In both cases, lawyers do their best to serve the correspondence in Poland or to bring the witness to the Polish courts or administrative authorities instead of using the procedures of serving the correspondence abroad or hearing the witness by videoconference or legal aid in the EU courts (Lipiec 2022a, 156–68; ‘Przeprowadzenie Dowodu w Drodze Wideokonferencji’ 2019; Wróbel 2010, 1:415–35, 464–67).

Polish lawyers avoid the application of European Union law as much as possible, even outside of court and official relations. They practically do not provide their services to foreign clients and do not cooperate with international jurists (Lipiec 2020, 534–42). They do not familiarise themselves with the case law of the Court of Justice of the European Union and do not make themselves heard. They are not interested in the new legislative ideas of the European Commission. In addition, Polish legal professionals declare that they do not use or are not even familiar with EU guides and Internet portals easing. In general, Poles are alienated from the day-to-day application of EU law and other forms of activity of EU institutions. In their view, the EU is a distant, inaccessible idea, and EU institutions and bodies are not connected to the everyday life of a lawyer and a citizen. Union affairs are dealt with only by eminent specialists who appear on television or by a very narrow, specialised group of lawyers, mainly working in Warsaw.



2 Distribution of lack of interest of Polish lawyers in EU activities and EU law by bar associations

The distancing of Polish advocates and legal advisers from EU matters and their disregard for EU law concerns practically all age groups of lawyers, living in different parts of Poland and with different educational profiles. Even jurists younger than 40 reveal a lack of interest in EU matters and an unwillingness to apply EU legal solutions. Interestingly, the most experienced jurists aged 50 plus are slightly more likely to declare an interest in EU activities but are reluctant to apply EU legal solutions. This phenomenon is probably a time-lagged influence of the novelty of Poland's membership of the European Community. It might seem that lawyers working in Poland's largest cities, particularly in Warsaw, should be more open to the EU world and the application of EU law. Foreign nationals are usually present in major cities, and universities and public institutions have some influence there, hence the potential for greater willingness to learn about other trends. In the case of lawyers, however, aversion to the

Union is virtually universal. It appears in all regional bar associations (ORAs and OIRPs) almost equally. Indeed, in Warsaw the percentage of reluctant jurists is slightly lower, but this is not a significant value. It seems that aversion to Union activities and the application of Union law affects almost all Polish legal professionals. Importantly, graduates of all Polish universities are equally affected by their antipathy towards EU solutions, which may suggest that already during their academic education, a phenomenon of distancing jurists from international affairs is developing.

There is a small group of advocates, legal advisers and judges in Poland who are immersed in the activities of EU institutions and apply EU legal solutions effectively on an ongoing basis. It is, however, an extremely small group, which is statistically negligible. Lawyers are scattered all over Poland and deal with various legal specialities on a daily basis. It seems that most of them work in Warsaw, which offers greater day-to-day contact with EU institutions and the international world. Only these legal specialists are in a position to criticise the Union's activities in a more substantive and in-depth way and to consider Union law in a meaningful way. Some of them also disseminate Union activities among other lawyers, judges and even the public. Even so, their number is very small and they do not influence the general image of the legal profession or public attitudes towards the European Union (Lipiec 2022a, 328–34).

Lawyers involved in the activities of EU institutions and regularly using EU law institutions have a fairly detailed view of the reception of EU law in Poland. It is not uncommon for an advocate, legal adviser or judge involved in EU affairs to be simultaneously a researcher dealing with European affairs or an associate of the European Commission. Hence, he or she has a special insight into both the creation of law by EU bodies and the theoretical foundations of its functioning, as well as being a practitioner of using EU legal solutions. This does not change the fact that the group of such specialists is extremely small. They also have limited opportunities to disseminate the practice of applying Union law and to influence various circles on the validity of the application of Union ideas. In practice, they are not listened to by their fellow lawyers regarding the activities of the Union and the application of European law. Their knowledge and practice of Union law remains niche, not disseminated, and not taken into account in the legal profession and, subsequently, among the wider public.

Specialists stress that a particular feature of EU law is the lack of concreteness of legal norms within the legal rules. Lawyers find it difficult to apply EU legal acts because they are often unable to decode the legal norms hidden in the drafting units of directives and regulations. Consequently, they are unable to apply EU legal acts directly and interpret the specific norms hidden in EU regulations. This phenomenon is a consequence of the Anglo-Saxon roots of the EU's legislative technique. Primarily, in every EU legal act there is a teleological part indicating the direction and objectives of the application of a particular act and the directions of interpretation, and a dispositive part taking the form of specific provisions of law. In the Polish legal order, there is practically no teleological part (rarely a preamble), and the specific provisions of Polish legal acts are much more precise than in the case of acts of Union law (Craig and Búrca 2020, 155–94; Herzog 2018; *Joint Practical Guide* 2015, 10–75; Robinson 2016, 177–99).

Due to a lack of everyday practice in using legal acts similar to European or Anglo-Saxon ones, Polish jurists simply do not understand the idea of EU solutions and cannot apply EU directives or regulations correctly. In addition, some Polish lawyers do not distinguish between directives and regulations. Hence, they are virtually unaware that directives generally only provide implementation guidelines for Member States, whereas the provisions of regulations are generally directly applicable. Due to incompetence and a lack of understanding of legislative technique and the philosophy of EU law, Polish specialists conclude that the provisions of EU law are extremely imprecise, unspecific and vague. Nevertheless, the opinion of Polish jurists does not mean that EU legislation is like this, but simply that lawyers trained in German, Polish or French law are unable to properly use legal acts from a different legal tradition.

In this context, Polish advocates and legal advisers emphasise that with a deeper understanding of European Union law, they are able to apply it effectively and correctly. This, requires in-depth study and knowledge of the legislative technique of the EU institutions. They note that lawyers who are not specialists in Union law or who have no need to familiarise themselves with Union legal acts will certainly neglect in-depth studies of Union legal acts. The complexity, the different philosophies and techniques of making and applying Union law, makes it virtually impossible for non-lawyers to understand and apply the rules of European law. For the average citizen, Union law is very different from Polish

law. Without deep and extensive studies of EU law, EU citizens are unable to understand and use EU regulations on a day-to-day basis.

An additional problem in applying EU law is the discrepancy between the announcements of European institutions, adopted directives and regulations, opinions of the authorities of Member States, implementation of EU law into national systems (mainly directives) and the propaganda of national authorities. From the standpoint of lawyers, faulty transposition of EU law into the Polish legal system is particularly acute. They emphasise that in the case of almost every directive the Polish legislator is at variance with EU assumptions. It is not uncommon for the Polish legislator to implement directives in a very restrictive manner, limiting to the maximum the flexibility in applying the implemented provisions of EU law. Legal experts also note that ever more frequently, EU legal acts are not implemented into Polish law or are implemented belatedly (Koślicki 2021; Kułak 2021; 'Monitoring Implementation of EU Directives' 2021; Sokołowski and Stolicki 2017, 39–53; Wiśniewski 2004).

Implementation problems lead to difficulties with invoking EU law that has not been implemented into Polish law. The authorities and courts often believe that the lack of a relevant regulation in the domestic legal order prevents direct application of EU laws, which is incorrect. Interpretation divergences occurring in the course of transposition or partial failure to transpose certain provisions of EU law also led to far-reaching difficulties in applying acts of EU law, understanding erroneously created acts of national law and legislative chaos. These phenomena are experienced mainly by judges, but other lawyers are not unfamiliar either. Outsiders, including non-specialist lawyers, have absolutely no understanding of these problems, which are too advanced for them. Selected Polish legal counsels from Lublin and Walbrzych describe the noticed problems in this way:

There are many inaccuracies in EU legislation. Implementation in Poland leaves much to be desired. An example is the law on foreign lawyers that we have discussed. I was writing a fragment of a thesis on the provision of legal aid by foreign lawyers. Already in the general provisions of the act, we notice a great deal of terminological inaccuracy. It is now also being argued in the doctrine that this implementation was very incorrect. These are common problems in applying EU law. This is also evident in these interpretations,

but if you look for various case law and try to find something about foreign lawyers, you will hardly ever find such rulings. We have to apply [EU law] properly, try to apply properly and find different parallels.

It's vague, it reads very badly. It's enough to cite the recent GDPR [*General Data Protection Regulation*]. Unfortunately, the way it is written, very sparingly, very layered, causes a number of misunderstandings afterwards. I would prefer that the GDPR regulation itself remained, which is not so bad. However, our subsequent explanations, translations and implementation ... this is a separate issue.

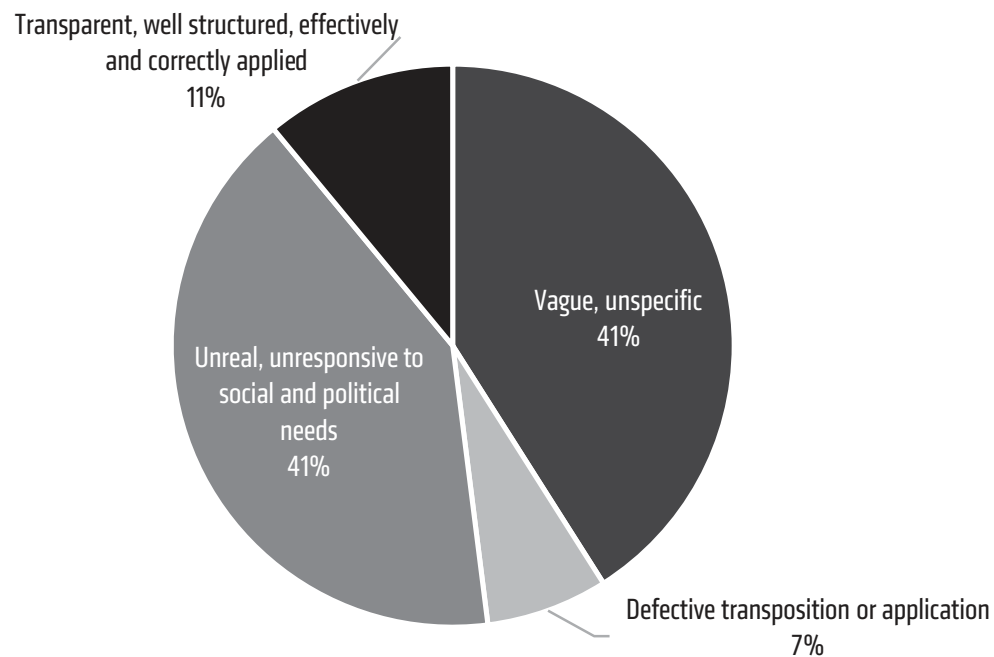
Legal experts stress that the discrepancy between EU and national realities affects citizens, especially in the media sphere. Issues communicated by national authorities and information published mainly by the European Commission very often differ from the legal reality. The information provided is highly distorted and reinterpreted by individual officials and politicians. Thus, normative reality is very different from media reality and the practice of applying the law. Consequently, lawyers, but especially citizens not involved in EU affairs, do not distinguish between legal reality and media reality. The changes made to EU legislation disappear behind the media coverage of EU institutions and national authorities. At the same time, the media message on EU matters is so loud and incomprehensible that citizens no longer wish to consult specific studies and EU legislation. Ultimately, such a state of affairs will lead to ordinary people becoming utterly reluctant towards EU affairs – sometimes even hostile.

In the legal sphere, the consequence of the legal-media duality is difficulties in interpreting EU legal acts and assessing their transposition into national law. Practically, the competition of propaganda messages and the impact of legal acts lead to chaos in the application of Union law and, in fact, to a practical suspension of the application of Union law for fear it might be applied contrary to the propaganda message or the legislator's actual intent. According to the legal profession, such a situation persists permanently and is becoming worse at a time of democratic crisis.

Polish lawyers who are familiar with the realities of EU law and who follow the current activities of EU institutions also stress that EU law and the current activities of the European Commission are unrealistic and do not respond to

current needs. This is a very common objection in all layers of society and in all European countries. It is usually illustrated by the famous phrase that the European Union is so unrealistic and restrictive that it even sets parameters for the curvature of bananas. It seems that such an opinion of Polish legal specialists is not their professional opinion. In all likelihood, the jurists are merely copying widespread opinions. We cannot accept the statement that the Union regulates every sphere in the lives of Europeans. Despite the increasing number of EU legal acts and the radically increasing informal activity of the European Parliament and the European Commission, the number of EU regulations and actions is still low. Rather, in Poland we are dealing with an inflation of negative law, incorrect application of the law and attempts to regulate every sphere of life. The law and actual activities of EU institutions only intervene where necessary in terms of the interests of the Union as a whole and in those areas in which it has competence. It is also not true that EU regulations over-regulate specific issues or sectors of the economy (Henley 2016; 'Legal Acts – Statistics' 2021; Taylor 2016; Voermans 2009, 59–95).

The opinion of Polish lawyers seems to replicate myths or respond to insufficient knowledge of the legislative and actual activities of the European institutions. The high percentage of such opinions indicates problems with EU law application and understanding of EU activities. Undoubtedly, such a legal view is very common in Poland and affects jurists also from the biggest Polish cities. This means that practically in every stratum of society we are dealing with disregard for EU involvement. It is also significant that such a high percentage of opinions like that among legal professionals indicates that these feelings are much more popular among ordinary residents of EU countries. Indirectly, this shows profound ignorance and lack of knowledge among EU inhabitants about the functioning of the EU, its institutions and EU law.



### 3 Opinions of Polish lawyers on EU law

Some Polish advocates and legal advisers also note other aspects of the impact of the EU law. These are, however, isolated opinions, coming only from jurists who are highly specialised in EU law and who apply Union rules on a daily basis. These opinions are not representative either of the legal community or other spheres of Polish society. Lawyers note that European Union law is not embedded in a uniform legal tradition, which results in a diversity of its perception and application in different European countries. It happens that one institution introduced by EU law is perceived and interpreted differently in different countries. The simplest example is the different perceptions and embedding of the lawyer himself (advocate, legal adviser, *Rechtsanwalt*, solicitor, etc.) in the law and legal tradition. Despite the development of a community-wide legal standard under EU law, lawyers are still differently embedded in national laws and traditions in each country, and EU regulations are implemented and interpreted differently. For lawyers, but also for businesses and individuals, this situation has serious ramifications. It is often problematic for professionals to navigate through the legal reality of another EU country, which appears only apparently the same as in their own country. The absence of full harmonisation or unification of Union law in all European countries leads to restrictions on the realisation of EU freedoms in the internal market (Fernández 2020; Guiraudon 2009, 131–56; Katalin 2018).



The problem noted by lawyers affects only those individuals and those companies that are actively involved in cross-border and international activities. The average citizen does not reflect on the disparity between legal traditions and different practices in the application of Union law. Nevertheless, indirectly, the differences associated with traditions and customs affect every resident of the Union. On a day-to-day basis, though, the interaction between the different legal traditions of European countries and the law of the Union is noticed only by eminent specialists. For example, legal advisers from Białystok and Warsaw state the problem as follows:

I think it is difficult to synchronise law in 20 or 27 countries. However, legal traditions are so strongly rooted that it is impossible to change this significantly and impose a single European legal standard. We are too accustomed to the legal tradition we have. An example would be the case of lawyers. If the Union were to introduce uniform standards for the legal profession, it should be remembered that we are touching specific social elites. [...] However, it will be difficult to deal with these divergences as they are the result of old customs. Every legal system is rooted in certain traditions and historical and social conditions. It corresponds to what society represents.

EU law is very liberal as it allows lawyers to do much more than they might expect. [...] It is not that the Polish judiciary is the same as the French judiciary. The procedures are different, the substantive rules, the customs are different. Just as a house can be built using the principles of physics, the same can be done in Poland or in France; a liver can be cured using the principles of biology – the same in Poland as in France, using the same knowledge. This is not the case with lawyers. This is why I consider Polish regulations introduced under the influence of EU law to be very liberal in this area, but I believe that they are ultimately positive.

The majority of opinions about EU law and the current activities of the EU institutions are critical. Negative criticism of the EU is partly related to the lack of knowledge and current involvement in the activities of EU bodies, but in a small part is based on factual reasons. This second component mainly concerns highly specialised lawyers. Unfortunately, the lack of knowledge and failure to

watch EU activities is a widespread phenomenon affecting both lawyers and the broad public. Only around 10% of all Polish lawyers view the activities of the EU institutions as purposeful, beneficial and grounded in facts, and the Union's law as necessary, transparent, and achieving its objectives. This group also includes enthusiasts of proper application of EU law in everyday activities. Unfortunately, the 10%-group of supporters of the Union's solutions has little social capital. It seems that both lawyers and outsiders, such a proportion of society fully approve of the Union's activities and EU legal regulations. This group also understands the meanders of the functioning of Union institutions and knows how to interpret EU legal solutions. This is a rather small number, but may indicate the onset of transformation of positive opinions about the Union and increasing knowledge of the Union's functioning.

## Conclusions

Polish lawyers are not interested in applying or co-creating European Union law. Furthermore, they are not interested in the current activities of the EU institutions or of other Member States. This situation concerns practically all Polish jurists: judges, advocates, legal advisers, and even foreign lawyers practising in Poland. Unfortunately, this problem also affects young lawyers who have become licensed jurists in the last five years. This is a surprising situation because young lawyers from other European countries are involved in European affairs.

Unfortunately, the consequences of not being aware of the EU's activities and law are very negative and extensive. Above all, Polish lawyers avoid applying European law to everyday cases in courts and public institutions, and this results in a situation where litigants cannot properly assert their rights. The professionalism of lawyers is also severely limited. Significantly, jurists' disregard for EU matters also causes gradual alienation of the Polish legal system from the European system and from the European judiciary and bar associations. In the long run, this implies a certain degree of Poland's legal isolationism compared to other countries in the region. At a time of deepening constitutional crisis in Poland, neglect of the Union and its law has a doubly adverse effect.

Apart from the typical effects in the area of law application, a negative attitude towards the Union also has other consequences. Our lawyers represent the Polish

social elite. Their influence on other social groups is greater than that of other professionals, which means that a jurist who is unprofessional when speaking in the media about the European Union or even lies incompetently about the activities of EU institutions distorts public attitudes and moods and popular thinking about the Union. As a result, Polish society has a negative or even defective perspective on the law of the Union and the activities of its institutions. Also, one far-reaching consequence of such ignorance is inappropriate formation of policies (national, union, local government) related to Union activities. Lawyers participate in the work of local governments, public institutions, or even trade unions, substantially influencing the actions taken and legal acts created. Hence, their wrong attitudes and knowledge about the Union have far-reaching adverse effects in the sphere of shaping national policies (Wedel 2017, 153–78; Zalc, Becuwe, and Buruian 2019).

The multitude and diversity of the consequences of lawyers' incompetence about the EU are starkly visible. However, one should also reflect on the reasons for such attitudes. The issue of legal education comes to the fore. Unfortunately, at every stage of education, including academic and apprenticeship formation, appropriate attitudes are not shaped, and future lawyers are not educated in a spirit of openness and diversity. Issues relating to EU policies and law are also overlooked. Hence, European topics are also marginalised during legal studies and legal training; this is why adult lawyers are not interested in topics remote to them. At the same time, the lack of training in open-mindedness, passion, and openness to diversity as well as in language skills makes it very difficult for most jurists to be introduced to EU affairs. It is easier for them to abandon their interest in EU affairs than to spend a significant amount of time introducing themselves to matters that are difficult and rare in Poland (Banach 2014, 147–59; Lipiec 2022a, 672–84; *Uchwała Nr 108/2015 Prezydium Naczelnej Rady Adwokackiej* 2015; *Uchwała Prezydium Krajowej Rady Radców Prawnych Nr 717/X/2020* 2020; Włoch 2011, 227–38).

The second basic reason for jurists' lack of interest in EU matters and law is precisely the lack of need. There are still few immigrants in Poland, and Poland's economic and social links with other EU countries are illusory. Lawyers and courts are not permanently required to apply EU law, because there is no need for it. Polish emigrants settle their affairs abroad, and the number of foreign nationals and businesspeople here is small. Hence, there is no need to constantly

apply Union law. The lack of constant practice leads jurists to forget the existence of rules of legal conduct other than Polish law ('Mapa migracji' 2021).

Undoubtedly, the tendency of lawyers to apply EU solutions is also influenced by the political atmosphere that has been anti-EU in Poland for years. Some legal professionals are afraid to reveal their pro-EU convictions, while others affirm the media-political message and believe that EU issues are distant, irrelevant, and sometimes hostile to Poland. Consequently, they stay as far away from them as possible. The low presence of Polish citizens in EU institutions is also significant. Unfortunately, to this day, Polish professionals (very often lawyers) are not widely employed in EU institutions. Therefore, the motivation of EU jurists is limited ('HR Key Figures Staff Members 2021' 2021; Witkowska 2015, 97–149).

In the opinion of many jurists, the most serious reason for the lack of interest in EU matters, besides the lack of need, is the complexity of the matter and EU law. This is an opinion resulting from inadequate educational preparation and a lack of shaping attitudes of openness and curiosity. In reality, the elements of EU law applied in Poland are not more complicated than Polish law. It is true that some forms of legislative technique and legal philosophy are slightly different from Polish practice, but not in the degree that the average lawyer would not understand them. The declared complexity of EU law is a sign of reluctance and incompetence, not a real feature of EU law. Nevertheless, this attitude of Polish jurists effectively deters them from delving into EU matters and applying EU law.

The study does not reveal whether specific activities of EU institutions are the reason for Polish jurists' staying away from EU matters. Generally, most jurists do not know and do not want to apply EU law and are not interested in the activities of EU institutions. Negation occurs, therefore, even before the stage of becoming more familiar with the legislative and political activities of EU institutions. It seems that the inflation of EU law and legislative differences, as well as the whole Brussels-Strasbourg media environment, do not usually influence the formation of attitudes and opinions of the majority of lawyers. The only exception is a small group of specialists in EU and international affairs who follow the activities of the Union. For them, the growth of European legislation and the wrangling within the EU institutions is a significant problem. Nevertheless, because of their specialisation and high professionalism, they can easily cope with all the difficulties. However, these legal specialists are not an adequate representation of Polish jurists as a whole.

Lawyers' disregard for EU law and the current activities of the EU institutions has disastrous consequences. The causes of this should be eliminated – otherwise, Poland's alienation from EU structures will continue to grow and Poland will become the legal pariah of Europe. The legal protection of Polish residents will also become weaker. Without the application of Union regulations by lawyers many new areas of life will remain unregulated. The daily non-application of EU law and disregard for the EU perspective in routine court, prosecutorial and legal proceedings will lead to Polish law being deprived of European and worldwide solutions. It is also likely that the non-application of EU solutions by law practitioners will deepen the democratic crisis in Poland. After all, failure to apply EU law creates the impression that EU measures are completely unnecessary, and that national solutions are the only appropriate ones.

We should try to reform Polish lawyers on EU matters. Primarily, EU affairs and European law should be given more consideration in the course of the academic education of lawyers and legal trainees. Not only should the number of classes on European law be increased, but young lawyers should also have the opportunity to complete traineeships in other European countries or EU institutions. It is also worth focusing on showing young people how to work with EU legal texts and training future legal practitioners and students in creative thinking, also on the basis of EU activities and legal acts.

Also essential is the continuous training of advocates, legal advisers, judges, and court staff in the application of EU law. Probably the most effective action would be to periodically send students, trainees and full jurists on internships and job shadowing abroad. Such educational solutions will make lawyers more open to new global trends and EU activities. Another interesting solution is to provide organisational and financial support to lawyers when they apply for internships at EU institutions. Political and organisational support for candidates for EU staff would also yield profit in the form of increased employment of Polish lawyers in EU bodies. In the long-term perspective, people participating in training and traineeships would disseminate good practices relating to the Union and even advertise the Union during media or political events.

In the current activities of lawyers, it would be beneficial to invest in training lawyers in the use of EU websites (especially e-Justice) and the use by lawyers of EU publications, newsletters and handbooks on various legal and law-related topics published mainly by the European Publications Office ('Europejski Portal

E-Sprawiedliwość’ 2020; ‘Publications Office of the European Union’ 2021). The introduction of advertising and marketing activities concerning the use of the institutions of EU law instead of solely national law should also have the effect of expanding the knowledge and readiness of lawyers to use the instruments of EU law. Finally, it seems appropriate to establish a centre for EU law that would support all legal institutions and individual attorneys in their everyday work with European and international elements. This assistance, advice, and problem-solving centre (help desk) should support lawyers in their day-to-day work with cross-border matters and the application of supranational law.

Unless Polish lawyers collectively take a more active and competent interest in the work of the EU institutions and become more proactive in using European law, the Polish justice system and legal services will become detached from EU progress. Polish law will diverge from EU law, particularly in its application. Theoretically, EU directives will be implemented and regulations applied, but in practice everyone will forget about them. Therefore, Union law will only seemingly be binding in Poland. In practice, EU values will recede into the background. Unfortunately, this may further shake Polish democracy.

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## Summary

We regularly witness the increasing involvement of the European Union in our daily lives. The presence of the EU is strongly felt in the media space, but also through the effect of EU law. Lawyers are a special group of people who are particularly acquainted with and apply European law. Their attitudes towards EU law and EU activities also influence the general public's attitudes. The study reveals the state of knowledge of Polish advocates and legal advisers on EU law, their ways of applying it in practice, their forms of dissemination and their attitudes towards the European Union.

The results of the survey indicate that Polish lawyers do not know the rules of EU law application, they are not interested in the work of EU institutions and are not enthusiastic about the Union. Consequently, they are reluctant towards the EU, not wanting to apply EU law; nor do they disseminate EU activities among other

social groups. Only a very small group of legal professionals is EU-enthusiastic. The attitude of lawyers is aggravated by the lack of knowledge, experience and approach of Poles towards EU activities, as often observed in the media.

The research has been conducted by means of structured interviews (SSI) among representatives of bar associations in all parts of Poland. It was supplemented with research based on content analysis of non-reactive materials. The whole study was based on the principles of the grounded theory.

**Keywords:** European Union, EU law, application of EU law, legal advisers, advocates, Polish law, sociology of law

### Streszczenie

*Postawa polskich prawników wobec Unii Europejskiej i prawa Unii Europejskiej – przyczyny i skutki*

Jesteśmy świadkami coraz większego zaangażowania Unii Europejskiej w nasze codzienne życie. Obecność UE jest silnie odczuwalna w przestrzeni medialnej, ale także poprzez oddziaływanie prawa unijnego. Prawnicy stanowią grupę osób, która w sposób szczególny zna i stosuje prawo europejskie. Ich postawy wobec prawa UE i działań UE wpływają także na postawy ogółu społeczeństwa. Badanie ukazuje stan wiedzy polskich adwokatów i radców prawnych na temat prawa unijnego, sposoby jego stosowania w praktyce, formy rozpowszechniania oraz postawy prawników wobec Unii Europejskiej.

Wyniki badania wskazują, że polscy prawnicy nie znają zasad stosowania prawa unijnego, nie interesują się pracą instytucji unijnych i nie są entuzjastycznie nastawieni do Unii. W związku z tym nie chcą stosować prawa unijnego i nie upowszechniają działań instytucji unijnych wśród innych warstw społecznych. Tylko bardzo niewielka grupa prawników jest euroentuzjastami. Postawa prawników ma wpływ na często obserwowany w przestrzeni medialnej brak wiedzy, doświadczenia i nastawienia Polaków do działań unijnych.

Badania zostały przeprowadzone za pomocą wywiadów ustrukturyzowanych (SSI) wśród przedstawicieli izb adwokackich i radcowskich we wszystkich częściach Polski. Uzupełniono je o badania bazujące na analizie treści materiałów niereaktywnych. Badanie w całości zostało oparte na zasadach teorii ugruntowanej.

**Słowa kluczowe:** Unia Europejska, prawo UE, stosowanie prawa UE, radcowie prawni, adwokaci, prawo polskie, socjologia prawa

**Ключевые слова:** Европейский Союз, право ЕС, применение права ЕС, юридические консультанты, адвокаты, польское право, социология права