What is the role of the Polish senate’s European Union Affairs Committee in European integration?

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Abstract

It has been more than 45 years since the German Bundesrat created the first European Affairs Committee in a national parliament in order to bring greater influence to bear on the federal government’s conduct of European policy (Niblock, 1971; Coombes, 1971; Barcz, 1990). Nowadays there is not a single national parliament that does not have such a committee (Tans, Zoethout, C. and Peters, 2007). Even the countries which have applied to join the European Union have established committees of this kind to assist in preparing their nations for full membership and to monitor the activities of their governments in this matter (ECPRD, 2002). The article involves an examination the role, work and functioning of the Polish Senate’s European Union Affairs Committee (Pudło, 2008, Pudło, 2006, Pudło, 2006; Szymanek, 2008).

1. Institutional and legal background for scrutinizing EU legislation

The supreme body that deals with European affairs in the Senate is the European Union Affairs Committee. The Senate’s European Union Affairs Committee plays a coordinating role in matters associated with the European Union. There are acts that regulate the powers of the Senate’s Committee to scrutinize the EC/EU legislation:

a. The Act of 11 March on Co-operation of the Council of Ministers with the Sejm and the Senate in Matters Related with the Membership of the Republic of Poland in the European Union (further referred to as Co-operation Act) (Sarnecki, 2004; Bisztyga, 2005).

b. The Rules and Regulations of the Senate (as amended on April 22 2004, Section VI, Chapter 2, Articles 67a–67d on the European Affairs Committee).

2. The Committee on EU Affairs

The European Union Affairs Committee was set up by the Senate on May 19, 2004. The European Union Affairs Committee is a standing committee and the Rules and Regulations of the Senate do not stipulate any provisions pertaining to the
composition of the Senate standing committees. The Rules only lay down that “the chairman and the members of committee shall be elected and recalled by the Senate” and that “proposals of resolutions concerning the appointment and dissolution of committees, as well as concerning their composition, shall be prepared and presented to the Senate by the Rules, Ethics and Senators Affairs Committee” (The Resolution of the Senate of the Republic of Poland, 2004). Present, it has a membership of 14 members representing three parties in proportional representation.

According to the Article 59 of the Rules and Regulations of the Senate, meetings of the European Union Affairs Committee are held in public. However, “upon the motion of the Marshal of the Senate, the chairman of the committee or at least three members of a committee, a committee can decide to hold a secret sitting or a sitting in camera”.

In the period before the accession there were several committees dealing with European issues: the Foreign Affairs Committee (1989–1997), the Special Committee to review the law on the ratification of the Europe Agreement Establishing Association between the European Communities and their Member States (1992), the Special Committee for European Integration (1993), the Foreign Affairs and International Economic Relations Committee (1995–1997), the Foreign Affairs and European Integration Committee (1997–2004). They provided a forum for discussion and debates on the European issues, with a particular focus on approximation of laws and ratification of the Association Agreement. In fact, the most important task of those Committees was to monitor and ensure the successful adjustment of Polish legislation to EU law: that is to ensure that any future Polish legislation would be compatible with Community legislation (Grzeszczak, 2003 and 2004; Łazowski, 2003; Jaskiernia, 1998).

The tasks of the European Union Affairs Committee are specified in Article 67a-67d of the Standing Orders. The current European Union Affairs Committee has the role of taking positions and expressing opinions on draft legal acts of the EU as well as draft international agreements to which the EU, the European Communities or their member-states may be a party. It also expresses it opinion on the work programmes of the Council of the European Union and the annual legislative programmes of the European Commission (See, plenary session in the Senate 19–20 Dec. 2007). It also examines information and other documents submitted by the Council of Ministers (See, debates in the European Union Affairs Committee).

3. Scrutiny of EU affairs: Procedural issues

The obligation of co-operation between the Council of Ministers and the Sejm and Senate is explicitly stated in the Co-operation Act of 11 March. The areas of
cooperation are divided into three categories (Łazowski, 2007; Wójtowicz, 2008):

1. Cooperation on the creation of EU law;
2. Cooperation on the adoption of Polish law implementing EU legislation;
3. Cooperation in appointments for certain position in the EU institutions.

The Co-operation Act gives the time-frame for both the Sejm and the Senate to express their opinion on legislative proposals of the EU within 21 days from the day of transfer of the draft position of the Council of Ministers. Failure to express an opinion within the specified time limit shall be considered as the absence of comments to the proposal.

4. EU documents

All documents including legislative proposals obtained by the Government are passed to the Senate in electronic form. According to articles 4, 5 and 7 of the Co-operation Act.

The Council of Ministers has an obligation to provide both chambers of the parliament with: consultation documents (Commission White and Green Papers, Communications, legislative plans); proposals for legislation; proposals for international agreements, proposals for decisions of the governments meeting collectively in the Council; soft law proposals.

5. Selection

The system is selective, not all EU proposals are scrutinized. Formal selection is conducted by the chairman and the three deputy chairmen of the European Union Affairs Committee. The final decision is made at the sitting of the whole Committee. Selection is based on the importance of the issue for domestic politics or on its strategic importance for the EU (COSAC, 2005).

6. Involvement of standing committees and/or plenary

The Rules and Regulations of the Senate stipulate that the European Union Affairs Committee is the committee ultimately responsible for scrutinizing of the EU draft legislation. According to the Rules:

1. “Article 67 a: Marshal of the Senate shall forward to the European Union Affairs Committee, immediately upon reception, all documents submitted in matters concerning the membership of the Republic of Poland in the European Union”;
2. “Article 67 b: The European Union Affairs Committee may endorse a position on a draft law of the European Union”; 
3. “Article 67 c: The European Union Affairs Committee may turn to another committee for an opinion on the matter deliberated at its sitting”.

7. Process of discussion

According to the regulations of the Co-operation Act, there are three stages of an EU decision-making procedure:

The first stage begins with a new legislative proposal issued by the European Commission and sent to the Polish Government. According to article 6 paragraph 3 of the Co-operation Act ("The organ competent under the rules of procedure of the Sejm, and the organ competent under the rules of procedure of the Senate, may express its opinion on legislative proposals of the European Union within 21 days of date the Council of Ministers’ draft position was delivered"). At this stage, the European Union Affairs Committee of the Senate comments on the EU proposal rather than on the preliminary government position. European Union Affairs Committee has a right to present an opinion on proposals within 21 days.

The second stage concerns Article 8 of the Co-operation Act:

1. “The Council of Ministers shall inform the Sejm and the Senate, in writing, about the progress achieved in the process of making EU law and the positions taken by the Council of Ministers in this process.
2. The organ competent under the rules of procedure of the Sejm and the organ competent under the rules of procedure of the Senate may express their opinions on positions of the Council of Ministers, referred to in paragraph 1, within 21 days following the delivery of those positions.”;

Next stage begins (Article 9 of the Co-operation Act) when the Government formulates its position before the legislative proposal is examined by the Council. At this stage, it is the government position that the Committee should assess.

However, Article 9 of the Co-operation Act omits the obligation of Government to seek the opinion of the Senate’s European Union Affairs Committee. It should be noted that because the Co-operation Act did not provide for the equal participation of the European Union Affairs Committee of the Senate’s in this stage of EU decision-making, the Co-operation Act was, instead, examined by the Polish Constitutional Tribunal (MiK. C, Pawłowski, 2005).

The Tribunal’s ruling stated that the Article 9 of the challenged Act, insofar as it omits the obligation to seek the opinion of an organ authorised by the Senate’s Rules of procedure, does not conform to Articles 10(2) of the Constitution (Łazowski, 2007).
After the ruling of the Constitutional Tribunal, the opinion of the European Union Affairs Committee of the Senate is only advisory. However, the main difference between how the opinions of the two Chambers are handled results from the discrepancy in the legislation. If the Government decides not to take into account the assessment of the Sejm’s EU Affairs Committee this must be explained and justified (Cieślik, 2006). This is not so in the case of the opinion of the Senate.

8. The role MEPs in the Senate’s or Sejm’s European Union Affairs committee

According to the Article 60 paragraph 2 of the Rules and Regulations of the Senate of the Republic of Poland stipulates that: “Committee sittings may be attended by Deputies, representatives of the Council of Ministers, and Deputies to the European Parliament elected in the Republic of Poland”. It means that:

1. There are not special provisions regarding attendance of MEPs elected in Poland at Senate European Union Affairs Committee sittings; MEPs elected in Poland can attend a Senate committees sittings but they are not directly invited to them (COSAC, 2005);
2. MEPs elected in Poland can attend the debates but without the right to speak, to vote and to suggest motions.

9. Subsidiarity

The European Union Affairs Committee is responsible for monitoring of subsidiarity in the Senate. However, the European Union Affairs Committee has not, yet, found any breach of the proportionality principle (COSAC, 2007; Popławska, 2005).

The Senate’s European Union Affairs Committee carried out the subsidiarity and proportionality check following the procedure agreed by the COSAC (COSAC, 2005, 2006, 2007, 2008).

10. Co-operation with other parliaments

The European Union Affairs Committee take part in interparliamentary cooperation in EU affairs with other Member States’ parliaments.(Pudło, 2006, Grzeszczyk, 2006; Popławska, 2002). Since 1997, the Committee members have participated as observers in the Conference of Parliamentary Committees dealing with
EU and Community Affairs (COSAC) (Knudsen and Carl, 2008). As of May 1, 2004 Polish MPs are full members of COSAC.

Exchanging best practices, views on common points of interest and problems during COSAC, as well as personal contacts established there, have contributed to the development of the Polish parliamentary scrutiny system (ECPRD, 2006).

Cooperation with the European Parliament has been institutionalised since 1997 in the form of a Joint Parliamentary Committee, where the member of the Foreign Affairs and European Integration Committee (1997–2004) formed the Joint delegation of the Sejm and the Senate’s (Jaskiernia, 2003). After the accession to the EU, the JPC has ceased to exist.

Current cooperation of the European Union Affairs Committee with the European Parliament include:

a. Joint Parliamentary Meetings: The aim of the Parliamentary Meetings is not to arrive at common positions between the representatives of National Parliaments and the EP, but to establish better parliamentary oversight and control over the intergovernmental and non-legislative decisions taken at the EU level. Another aim is to have an input in the meetings of European Council;

b. Joint Committee Meetings: The aim of these meetings is to promote exchange of views between European and national parliamentarians with a view to influence the legislative decisions of the EP.

One of important forms of interparliamentary co-operation are meetings of members of the Sejm and the Senate EU Affairs committees with their counterparts from Lithuania, Latvia, Estonia, Czech Republic, Slovakia and Hungary. Besides the formal meetings, frequent consultations on various current issues are also taking place.

Conclusions

The Senate’s European Union Affairs Committee has an opportunity to play an important role in expressing opinions on drafts of European legislation under the terms of the Act of 11 March 2004 on Cooperation between the Council of Ministers on the one hand the Polish Sejm and Senate on the other on matters connected with the Republic of Poland’s membership of the European Union.

Undoubtedly, the Co-operation Act puts the Senate’s European Union Affairs Committee in a position of influence vis-à-vis the Polish government in EU matters. It does equip both chambers (the Sejm and the Senate) of the parliament with a variety of tools to control and scrutinize the actions of the executive (especially because the Constitutional Tribunal has confirmed equal powers for both chambers in this matter).
The Lisbon Treaty (Article 8c TEU and the Protocol on the Role of National Parliaments in the European Union and the Protocol on the Application of the Principles of Subsidiarity and Proportionality) give the national parliaments new powers (Jancic, 2008; Barcz, 2008). In addition to the right of getting information and legislative proposals directly from the EU institutions, the national parliaments have been given a powerful instrument of early warning mechanism which will enable them to exert a direct influence on the legislative process. An important novelty as regards national parliaments’ remit is their right to monitor activities in the area of freedom, security and justice and the right to initiate proceedings before the European Court of Justice. Due to all these changes national parliaments may have real clout in decision making in the EU.

References


Joint Parliamentary Meetings are co-chaired by the president of the Parliament and the president of the National Parliament representing the parliament of the EU Presidency. These meetings are also jointly organised and all matters coordinated between the EP and the National Parliament of the EU Presidency. Particular emphasis and priority is given to policy issues where the EU at present does not legislate, but nevertheless takes important decisions. The common foreign, defence and security policy, the macro-economic and monetary policy coordination and areas of freedom, security and justice, climate change, cover such issues


Raport w sprawie wyników projektu pilotażowego COSAC sprawdzającego na przykładzie Trzeciego Pakietu Kolejowego funkcjonowanie „mechanizmu wczesnego ostrzega{nia} w odniesieniu do zasady pomocniczości”, May 2005; Raport dotyczący wyników przeprowadzonej przez COSAC kontroli zgodności z zasadami pomocniczości i proporcjonalności projektu Komisji dotyczącego rozporządzenia w sprawie prawa właściwego i jurysdykcji sądów w sprawach rozwodowych, November 2006.

Report on the results of the subsidiarity and proportionnality check coordinated by COSAC on the Commission proposal for a Directive concerning the full accomplishment of the internal market of Community postal services, Fabruary 2007.


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Appendix

The ACT of 11 March 2004 on Cooperation of the Council of Ministers with the Sejm and the Senate in Matters Related to the Republic of Poland's Membership in the European Union. *Dziennik Ustaw* (Journal of Laws), No. 52, item 515

Chapter 1

General Provisions

Article 1.

This Act sets out the principles for the Council of Ministers’ cooperation with the Sejm and the Senate in matters related to the Republic of Poland’s membership in the European Union.
Article 2.
The Council of Ministers is obliged to cooperate with the Sejm and the Senate in matters referred to in Article 1.

Article 3.
1. At least once every six months, the Council of Ministers shall present the Sejm and the Senate with information about the Republic of Poland’s participation in the activities of the European Union.
2. At the request of the Sejm, the Senate, a body competent under the rules of procedure of the Sejm or a body competent under the rules of procedure of the Senate, The Council of Ministers shall present – respectively – to the Sejm or the Senate, information on any matter related to the Republic of Poland’s membership in the European Union.

Chapter 2
Cooperation in the making of European Union law

Article 4.
The Council of Ministers shall deliver to the Sejm and the Senate, immediately upon receipt thereof, documents of the European Union, subject to consultation with Member States, in particular White Papers, Green Papers and Communications of the European Commission, as well as evaluations thereof made by competent institutions or other bodies of the European Union.

Article 5.
The Council of Ministers shall deliver to the Sejm and the Senate, immediately upon receipt thereof, operational programmes of activities of the Council of the European Union, the European Commission’s annual legislative plans and evaluations of annual legislative plans made by the European Parliament and the Council of the European Union.

Article 6.
1. The Council of Ministers shall deliver to the Sejm and the Senate:
   (1) legislative proposals of the European Union immediately upon receipt thereof;
   (2) the Council of Ministers’ draft positions on the proposals, referred to in subparagraph 1, taking into consideration time limits under European Union law, but no later than within 14 days of the date the proposals, referred to in subparagraph 1, were received.
2. The Council of Ministers shall append to its draft position, referred to in paragraph 1, subparagraph 2:
   (1) a substantiation thereof, including an evaluation of the anticipated legal consequences of the legislative act of the European Union for the Polish legal system as well as its social, economic and financial consequences for the Republic of Poland;
   (2) information on the procedure for adopting a legislative act of the European Union and the procedure for voting within the bodies of the European Union.
3. The organ competent under the rules of procedure of the Sejm, and the organ competent under the rules of procedure of the Senate, may express its opinion on legislative
proposals of the European Union within 21 days of date the Council of Ministers’ draft position was delivered.

4. If the time limit specified by the European Commission for expressing an opinion is less than 42 days, the Council of Ministers shall present a legislative proposal of the European Union, along with the Council of Ministers’ draft position immediately, so that the organ competent under the rules of procedure of the Sejm and the organ competent under the rules of procedure of the Senate has at least 2/3 of the time limit, specified by the European Commission for the Member States of the European Union, for expressing its opinion.

5. Failure to express an opinion within the time limit referred to in paragraphs 3 or 4, shall be deemed as an absence of comments to the proposal.

Article 7.
The Council of Ministers shall deliver to the Sejm and the Senate, immediately upon receipt thereof:
1. draft international agreements to which the European Union, the European Communities or their Member States are to be the parties;
2. draft decisions of representatives of the governments of the Member States, assembled in the Council of the European Union;
3. draft acts of the European Union having no legal effect, particularly proposals of guidelines for the economic and monetary union as well as employment;
4. European Union acts bearing significance on the interpretation or application of European Union law.

Article 8.
The Council of Ministers shall inform the Sejm and the Senate, in writing, about the progress achieved in the process of making EU law and the positions taken by the Council of Ministers in this process.

Article 9.
1. Prior to considering a legislative proposal in the Council of the European Union, the Council of Ministers shall seek the opinion of the organ competent under the rules of procedure of the Sejm, and present information on the position the Council of Ministers intends to take during the consideration of the proposal in the Council of the European Union.
2. The Council of Ministers shall append, to the information referred to in paragraph 1, a substantiation of its position and an evaluation of the anticipated legal consequences of a given legislative act for the Polish legal system as well as its social, economic and financial consequences for the Republic of Poland.
3. Due to the work organisation of the European Union bodies, with the exception of matters in which the Council acts unanimously and matters which substantially burden the State budget, the Council of Ministers may take a position without seeking the opinion referred to in paragraph 1. In such a case, a representative of the Council of Ministers shall be obliged to present to the organ competent under the rules of procedure of the Sejm the position taken and to explain the reasons for failing to seek an opinion.
Article 10.
1. If the organ competent under the rules of procedure of the Sejm has taken a decision on a matter referred to in Article 6 paragraph 3, or Article 9 paragraph 1, such decision should constitute the basis for the Council of Ministers’ position.
2. In the event that the Council of Ministers’ position, referred to in paragraph 1, does not take into consideration the opinion of the organ competent under the rules of procedure of the Sejm, a representative of the Council of Ministers shall be obliged to explain to the organ competent under the rules of procedure of the Sejm the reasons for such discrepancy.

Chapter 3
Cooperation in the making of Polish law implementing European Union law

Article 11.
1. The Council of Ministers shall submit to the Sejm a bill implementing European Union law no later than three months before the expiration of the time limit for implementation under EU law.
2. If the time limit for implementation, referred to in paragraph 1, exceeds six months, the Council of Ministers shall submit to the Sejm a bill implementing European Union law no later than five months before the expiration of this time limit.
3. In exceptionally justified cases, the Council of Ministers may, upon seeking an opinion from the organ competent under the rules of procedure of the Sejm, submit a bill implementing European Union law without observing the time limits referred to in paragraphs 1 or 2.

Chapter 4
Cooperation in expressing opinion on candidates for certain posts in the European Union

Article 12.
The organ competent under the rules of procedure of the Sejm shall express its opinion on candidatures to the following posts:
(1) a member of the European Commission;
(2) a member of the Court of Auditors;
(3) a judge of the European Court of Justice and the Court of First Instance;
(4) an advocate general of the European Court of Justice;
(5) a member of the Economic and Social Committee;
(6) a member of the Committee of the Regions;
(7) a director in the European Investment Bank;
(8) a representative of the Republic of Poland to the Committee of Permanent Representatives of the European Union.

Article 13.
1. The Council of Ministers shall present proposed candidatures for the posts referred to in Article 11, taking into consideration time limits under EU law.
2. The organ competent under the rules of procedure of the Sejm may express its opinion within 21 days of the day the Council of Ministers presented its proposed candidatures.

3. The Council of Ministers shall not designate any candidates for the posts referred to in Article 12 before the expiration of the time limit for expressing an opinion by the organ competent under the rules of procedure of the Sejm, unless an opinion on this matter has been expressed beforehand.

Chapter 5

The final provision

Article 14.

This Act shall enter into force on 31 March 2004.